

Chapter 9

A Threshold for Tariff and/or Tax Exemption

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A Threshold for Tariff and/or Tax Exemption

Inkyo Cheong

1. Introduction

Although e-commerce ranges from the trade of digitised products to all types of trades based on information and communications technology (ICT), this chapter focuses on the international trade of goods. E-commerce is gaining importance in international business, providing new opportunities for businesses and consumers to engage in international trade (Dan, 2014; Rillo and Cruz, 2016).

Global Internet users number about 3.4 billion, and have grown at higher than 10% per year since 2009.¹ The global expansion of the Internet has provided the environment for creating new business models that bring trade and related information together, and it has underpinned the development of some of the world's most innovative companies providing goods and services to consumers in entirely new ways (Cheong and Hong, 2017).

Since e-commerce business is based on the Internet, the business could be activated more efficiently in an advanced country than in a developing country. Despite the advantages and potential economic gains of e-commerce, it is difficult for many developing countries to realise numerous business opportunities due to the lack of fundamental Internet infrastructure. This applies to most countries of the Association of Southeast Asian Nations (ASEAN). Although ASEAN's annual potential online retail market reaches US\$7 billion, the share of e-commerce in national sales is still low. The ratio of Internet users ranges widely across countries. In Indonesia, only 16% of the total population, or 36 million people, use the Internet, whilst the ratio of Internet users is 50% of the populations in the Philippines, Thailand, and Viet Nam. In reference, 73% of the total populations in the United States (US) utilise the Internet.²

¹ Refer to Meeker (2017) regarding the growth of Internet users.

² Regarding the market scale of e-commerce and Internet use in ASEAN, refer to A.T. Kearney (2017).

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Yet, in various aspects, the ASEAN region is a promising region for e-commerce industries. Above all, the scale of e-commerce market in ASEAN is developing rapidly. In Indonesia, the e-commerce market in 2013 was only US\$1.3 billion, but its potential market is about US\$25 billion–30 billion. Further, the low utilisation ratio is subject to an increase by two to three times in the near future.

Because of the network effect in e-commerce, a large scale of investment is required to build the infrastructure for advertising, placing orders, authorisation, and others. As the scale of order placement for small and medium-sized enterprises (SMEs) is diminutive, it is challenging to actualise the economies of scale. Thus, such cases become more disadvantageous compared to big and/or global e-commerce corporations not only in production but also in sales. However, the development of the Internet could be helpful for businesses in developing countries, especially for SMEs, in expanding international trade and planning to engage in new international business due to cheaper costs of communication, market information, consulting services, and others. Although SMEs in developing countries could improve global competitiveness, various barriers restrict consumers and SMEs to do cross-border e-commerce.

Although research on measures for improving e-commerce use in ASEAN and other countries are many, it is difficult to find one that studies such topics in terms of trade agreements and economic logic based on the burden of tariffs that the user of cross-border e-commerce pays. In addition to the lack of Internet infrastructure, one of the most serious barriers in cross-border e-commerce in developing countries is the risk related with customs clearance, addressing tariffs and domestic taxes, the certificate of origin (CoO) and related rules of origin (ROO), the transparency of customs, digitisation of customs procedures, inspections, and others. This chapter focuses on tariff and/or tax exemption for low-value shipments, benchmarking the special arrangement on ‘express shipments’ in the Korea–US (KORUS) Free Trade Agreement (FTA). Although physical infrastructure necessary for the Internet and e-commerce is satisfied, importation itself may be abnegated due to the high pressure of paying tariffs. In general, paying tariffs during customs clearance takes a longer time. Tariffs and time, which are required for moving goods across countries, will be an immensely critical factor to consider by SMEs and individual consumers who wish to do e-commerce.

In ASEAN, although the majority of debates and initiatives are for the promotion of e-commerce, doing cross-border e-commerce in many ASEAN countries except Singapore is still insignificant. This chapter searches a way for facilitating e-commerce utilisation in the context of tariff and/or tax exemption for low-valued shipments. It further suggests

to include in the Regional Comprehensive Economic Partnership (RCEP), now under negotiation, a similar article on express shipment to promote e-commerce in ASEAN and East Asia.

2. E-commerce in ASEAN

A cooperative project for Internet and e-commerce development has been actively promoted under the program of the ASEAN ICT Master Plan 2015. The ASEAN ICT initiative began as e-ASEAN initiative in 1999; the ASEAN ICT Master Plan 2015 started in 2011. The total of 29 actions was identified and two-thirds of the 29 actions have been achieved. Two years after the goal year of 2015, the Internet groundwork should have been constructed as most of the initial goals were achieved. However, according to the research results by the international economic/cooperation institutions, such as the World Economic Forum, the United Nations Conference on Trade and Development (UNCTAD), and others, most ASEAN countries are evaluated to have poor environments for the Internet and e-commerce as seen in Table 9.1.

Table 9.1: ASEAN Countries' B2C E-commerce Index 2016

2016 Rank	Economy	Share of individuals using Internet	Share of individuals with credit card	Secure Internet servers / million people	Postal reliability score	UNCTAD B2C e-commerce Index (2015)	2014 Rank
23	Singapore	82	35	88	98	75.8	26
44	Malaysia	68	20	69	84	60.1	45
69	Thailand	35	6	58	90	47.2	70
75	Vietnam	48	2	52	70	43.1	90
89	Philippines	40	3	52	48	35.7	N/A
93	Indonesia	17	2	47	66	33	88
115	Lao PDR	14	3	38	26	20.3	105
119	Cambodia	9	3	41	25	19.5	91
133	Myanmar	2	0	25	21	12	N/A

B2C = business to consumer.

Source: Modified from the UNCTAD B2C E-commerce index 2016.

Numerous studies are proposing measures to activate e-commerce of SMEs in developing countries. Some examples include Meltzer (2014), A.T. Kearney (2015), and UNCTAD (2017). Meltzer (2014) points out that the Internet infrastructure does not fully serve as a platform for international trade. This is because of a range of barriers for SMEs' e-commerce in developing countries, ranging from physical (technical) factors, such as limits to Internet

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access, to legal factors, such as regulations on cross-border data flows. A.T. Kearney (2015) recommends (i) increasing broadband access, (ii) supporting the emergence of local players, (iii) reinforcing online security, (iv) promoting e-payment, and (5) improving logistics and trade efficiency. UNCTAD (2017) suggests to use international programs, such as the eTrade for All initiative, Aid-for-Trade, and ICT-related substantive work of UNCTAD.

Apart from Meltzer (2014) and A.T. Kearney (2015), many other comments point out to lower logistical costs for e-commerce to flourish. Yet, Meltzer (2014) differentiates from other studies in that he emphasises increasing incentives for e-commerce use by decreasing customs duties of e-commerce goods by actively using trade agreements, such as the multilateral trade agreement of the World Trade Organization or the FTAs.

Although the expansion of the physical infrastructure must precede the spread of e-commerce, the merits of exemption of custom duties on imported commodities should be considered as very crucial. The FTAs with China, Japan, the Republic of Korea (henceforth Korea), Australia, New Zealand, and India of the 10 ASEAN countries already came into force Individual member countries also concluded bilateral FTAs with trading partners. For example, Viet Nam signed its bilateral FTA with the European Union (EU) in early 2016. In order to relish in the FTA merits, one must satisfy several requirements, such as those on ROO, rules of business dealing, rules of procedure, direct transportation (consignment) regarding the application of tariff preference for imported goods. Many SMEs are aware of the need to submit a CoO to satisfy the ROO when applying for the preferential tariff given in FTAs. However, other requirements are not in their worksheets.

For instance, many corporations are unfamiliar with the requirement of a direct transport rule. The direct transport rule secures the equivalence between the imported commodity in the import document and the exported commodity out of the exporting country. This rule aims to prevent the manipulation or mix of the goods eligible for preferential tariffs and the non-eligible goods during transport. Direct transport is needed to prevent unqualified goods from being changed into products originating from a member country, as well as illegal products being imported with the legitimate products from the member country. However, in the case of small orders, it is difficult for e-commerce sellers, who have the lowest delivery fees, to deliver goods to buyers through direct transport.³

³ Most e-commerce businesses store goods at their major international logistics bases. , They deliver products from the distribution points when an order is made. Presentation of verifying documents of a direct transport is possible but issuing such documents to individual e-commerce users is rare.

Small e-commerce businesses not only have a difficulty in receiving a CoO from exporters or producers but also lack knowledge in regulations regarding the origin; thus, disputes from such circumstance have been lately escalating. From a theoretical perspective, the burden of tariffs towards cross-border e-commerce can be regarded as absent; but realistically, it is hard to use FTAs for SMEs and most individuals.

Although the application of FTA preferential duty has been recognised as a useful means for activating e-commerce, all requirements regarding the place of origin must be satisfied to prevent risks of origin verification and more after customs clearance. Yet, it is not easy for SMEs or individual e-commerce users to manage such risks. In terms of number of cases, most e-commerce transactions carry low-value shipment, and e-commerce businesses are not cooperative as regards regulations on the ROO. Therefore, we have to seek new methods of approach based on such reality.

3. A Threshold for Tariff and/or Tax Exemption

3.1. Phasing Out Tariffs in ASEAN FTAs

Apart from the ASEAN Free Trade Area (AFTA), ASEAN+1 FTAs with six countries – China, Japan, Korea, India, Australia, and New Zealand – also came into force. ASEAN members are negotiating the RCEP with these six countries; they completed the 21st round of RCEP negotiations in February 2018 in Yogyakarta, Indonesia. Moreover, each country has either taken numerous bilateral FTAs or is facilitating a negotiation. For instance, Singapore's FTAs with major countries, such as the US, Europe, and others, had taken effect. Apart from the ASEAN FTAs, Viet Nam's FTAs with Japan, Chile, Korea, and the Eurasian Economic Union already came into force. Viet Nam also signed the Trans-Pacific Partnership (TPP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

The AFTA has now been virtually established. Following the Common Effective Preferential Tariff (CEPT) scheme, ASEAN-6⁴ countries liberalised more than 99% of the tariff lines in the CEPT Inclusion List. ASEAN's newcomers, the CLMV⁵, achieved 80% of their CEPT Inclusion List commitments. AFTA permits maintaining 0%–5% of tariffs for each country without completely eliminating them. Considering the economic development stage, CLMV countries are given more flexibility than ASEAN+6 in terms of the commitment for tariff liberalisation.

⁴ Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand.

⁵ CLMV means the four ASEAN members of Cambodia, the Lao PDR, Myanmar, and Viet Nam.

Following the protocol to speed the CEPT in 2003, the average tariff rate for ASEAN-6 is now 1.51% from 12.76% when AFTA began tariff liberalisation.

Table 9.2: The Progress of Tariff Liberalisation in ASEAN+1 FTAs

	ASEAN-China FTA	ASEAN-India FTA	ASEAN-Japan FTA	ASEAN-Korea FTA
Partner	93.2%	60.5%	93%	90.7%
Average of ASEAN	91.1%	88.2%	91%	89.2%

FTA = free trade agreement/area.

Source: Calculated based on tariff concession of relative FTAs

Most tariffs committed in ASEAN's bilateral FTAs are supposed to be eliminated soon, although large gaps in the ratios of tariff elimination in the FTAs exist (Table 9.2). In the case of the ASEAN-Korea FTA, about 90% of the products being traded between ASEAN and Korea are eligible for the application of zero tariff importation. The items belonging to the Normal Track covering about 90% of the whole tariff lines (HS codes) in the FTA were fully liberalised in all members of the FTA as of 2018. Both parties agreed that the items in the Sensitive Track will be grouped into the Sensitive List and the Highly Sensitive List. Latecomers such as the CLMV are supposed to eliminate all tariffs in the Sensitive List not later than 2024, whilst Korea and ASEAN-6 eliminated tariffs not later than 2016. Members are allowed to keep some or whole tariffs in the Highly Sensitive List.

Through FTAs, the majority of the tariffs have been reduced. In general, corporations or consumers of ASEAN members do not face many barriers from tariffs when doing cross-border e-commerce.⁶

3.2. Requirements for Using Tariff Preference in FTAs

Even if the FTA took into effect, the minimum requirements have to be fulfilled to utilise the preferential tariffs mentioned in the FTA for actual businesses. After the preferential tariffs are applied, one must prepare for origin verification by customs authorities. Due to such difficulties and risks, the utilisation rate of FTAs is low. According to the survey by the East Asia Business Council (2017) on FTA utilisation, 23.5% of the wholesale and/or retail industry and 23.5% of the textile industry have given up FTA use due to non-fulfilment of stringent ROO. Even big companies had substantial constraint for ROO (insufficient regional value contents (RVC) ratio due to narrowly defined accumulation rule) and give up FTA use.

⁶ For information about ASEAN's customs clearance and a burden of tariffs towards e-commerce, refer to East Asia Business Council (2017).

The complexity of ROO in existing FTAs was major bottleneck for FTA use, especially in the textile industry (47.1%), automotive industry (46.7%), and food industry (43.2%).

The procedure for FTA use is as follows:

- (i) Confirm the HS code of the goods that are to be applied for the FTA tariffs. As the tariff rate and ROO depend on the HS code of goods, one must carefully check the HS code.
- (ii) Check the tariff rate in the FTA and related benefits at the time of customs clearance. If the tariff benefits are small, there is no point applying for the FTA preferential tariffs.
- (iii) Check the ROO. How the FTA acknowledges the goods of its member countries includes general standards that apply to many items, and specific standards apply only to specific items.
- (iv) Prepare certifying documents of origin. These documents refer to basic documents that confirm the goods as items of origin; generally, bill of materials, manufacturing process, material specifications, country comprehensive certification, and others.
- (v) Verify from the document whether the goods correspond to the ROO. This is the process of confirming whether the ROO is satisfied, based on production and relevant information (breakdown of raw materials, the HS code of raw materials, price of raw materials and goods, production process, and etc.). When the ROO is satisfied, a CoO is to be issued. As methods and forms of issuing a CoO are different, careful attention is needed.

Issuance of a CoO can be largely divided into two: official issue and self-issue by a producer or an exporter. Official issue requires submission of corroborating documents to the customs service, chamber of commerce and industry, and any organisation issuing the CoO. For self-issuance, an exporter or producer judges the ROO fulfilments based on his/her knowledge and the FTA rules, and issues the CoO himself or herself. Advanced countries generally prefer the self-issue approach but developing countries, such as ASEAN, India, and others, favour the official issue method. When an item is at the customs clearance or even after the importation is released, customs authorities can check whether the CoO has been legitimately issued based on the FTA. That is, all FTAs assign the duty of origin verification to an exporter or producer for 4 or 5 years after the CoO is issued. Origin verification means a series of administrative procedures of confirming whether the criteria can be satisfied as goods of the origin or not.

As mentioned, numerous ROO need to be satisfied other than submission of the CoO. But even a direct transport is difficult to be satisfied by SMEs or individual consumers. Many SMEs in ASEAN countries lack in trade expertise. Consequently, the direct transport requirement becomes burdensome for SMEs, since it costs a lot compared with the scale of trade volume. Especially, myriad individuals order foreign commodities via e-commerce. There is a high possibility of commodities being assembled at a bonded site of distribution bases in Singapore, Shanghai, Yokohama, Busan, Bangkok, etc. which are then transported to the final destination via a different vessel. For instance, corporation A in Jakarta orders goods from corporation B in Tokyo, whilst applying tariff exemption under the ASEAN–Japan FTA. In such circumstance, the goods of corporation A can only receive the tariff benefits if the goods depart from Japan (for example, Yokohama) and are transported to Indonesia (Jakarta) without any transshipment. However, commercial vessels operate between Yokohama and Singapore, and goods are transported to Jakarta via Singapore–Jakarta vessels after the goods are held in a bonded warehouse in Singapore.

It is difficult for SMEs to satisfy direct transport due to maritime transportation service practice. This has been one of the main causes of the FTA utilisation in most countries, eventually impairing the incentives to use e-commerce. Many FTAs introduced a set of measures to ease the direct transport requirement. ASEAN FTAs, despite adopting easing measures,⁷ have fragile aspects compared to other FTAs. But the requirements of ASEAN FTAs can be further improved. Especially, SMEs' utilisation of preferential tariffs in FTAs and e-commerce will be improved if FTAs adopt a special arrangement for direct transport.

3.3. TPP Negotiation and Threshold for Tariff/Tax Exemption

As discussed, in order to utilise the FTA preferential tariffs, the ROO should be satisfied; when it is not, producers or exporters are exposed to risks of having to pay the penalty, in addition to tariffs and taxes. Accordingly, if it is not a business that regularly deals with more than a particular amount of money, an exporter or producer tends to avoid issuing the CoO because of small incentives. For an example, no exporter is likely to issue a CoO when he/she exports small amounts, since it costs for him/her to prepare documents needed for supporting the CoO. A similar situation may apply to SMEs and consumers. Even if the

⁷ The FTAs by ASEAN require direct consignment of originating goods between the member states, but goods transported through a third member state or a non-member state can be considered as consigned directly under the following conditions: (i) the transit entry is justified for geographical reasons or by consideration related exclusively to transport requirements, (ii) the goods have not entered into trade or consumption in the state of transit, and (iii) the goods have not undergone any operation in the state of transit other than unloading and reloading or any other operation to preserve them in good condition

amount of tariffs to be paid is small, a lot of documents must be written in relation to tariffs. They may give up utilising cross-border e-commerce.

Today, the e-commerce business is becoming diffused; in terms of the number of cases, high-value shipments are insignificant but most e-commerce takes place as low-value shipments. US industrial associations, which are very insightful about the dealing structure of current e-commerce, have requested the trade negotiating authorities of the US, the US Trade Representative (USTR), to add an article of a threshold for the customs *de minimis* to the Customs Administration and Trade Facilitation chapter of the TPP. The TPP, led by the US to reach a conclusion, is a trade agreement with the highest level of trade liberalisation and the most comprehensive context. Although the trade agreement was signed on 4 February 2016, US President Trump officially withdrew from it on 23 January 2017. On 3 March 2018, the 11 countries, except the US, decided not implement 22 articles of the TPP for the time-being, and signed the Comprehensive and Progressive TPP (CPTPP) on 8 March 2018.

Fergusson and Williams (2016) highly evaluated the trade liberalisation and improvement of trade rules by the US and member countries of the TPP, and suggested critical components that the US Congress may review from the viewpoints of national interests. One of the components was setting limits to tariff exemption. Fergusson and Williams (2016, pp.32) add: 'Unlike KORUS, TPP lacks a specific threshold for the customs *de minimis*, a critical commitment for express delivery providers as shipments valued below the *de minimis* receive expedited customs treatment and pay no duties or taxes. Industry sought a US\$200 *de minimis*, like that in KORUS, and has noted that TPP parties agreed to periodically review their respective thresholds'. In the US where lobbying is legalised, corporations or industrial associations voicing out opinions on government policies is an ordinary practice. Especially during negotiations of trade agreements, the USTR must listen to the Advisory Committee for Trade Policy and Negotiations (ACTPN) according to US trade laws.

With the talks of the TPP having started earlier, the ACTPN (2015) and the Industry Trade Advisory Committee on Customs Matters and Trade Facilitation (2015) evaluated the TPP as a 'fair and balanced' agreement. However, they pointed out the TPP not setting limitations on tariff exemption which could contribute to the development of trade facilitation and e-commerce. 'The Customs Administration and Trade Facilitation chapter also includes many provisions that will help SMEs and micro-businesses access the global market. We regret, however, that the agreement does not include harmonised and increased *de minimis* customs and duties exemptions for all physical goods. ACTPN recommends the Administration seek to include *de minimis* exemptions in future trade agreements, as they have enormous

potential to reduce the export barriers SMEs and micro-businesses face' (ACTPN, 2015, pp. 8–9).

4. Logic for the Customs *de Minimis*

Many studies – such as those of Suominen (2017), Copenhagen Economics (2017), Evdokia and Sorescu (2013), Holloway and Rae (2012), USPS (2010), Hufbauer and Wong (2011a, 2011b), Hufbauer, Schott, and Wong (2010), Hummels (2007), Fremont (2009), and Ikenson (2008) – demonstrate that logistics costs related to charging tariffs for low-value shipments are more burdensome than tariff revenues collected in most countries.

Hufbauer and Wong (2011a, 2011b) analysed barriers to low-value shipments based on microdata of US e-commerce and suggested to raise the US' *de minimis* threshold for duty-free shipments from US\$200, which was the amount at the time of publication of the paper, to US\$800. Such suggestion was accepted by the US Congress and government (US Customs and Border Protection); thus, the former threshold was increased. Hufbauer and Wong (2011a, 2011b) preached the logic of threshold augmentation in favour of the shipments with low value. Hufbauer and Wong (2011b, p. 2) stated: 'Historically, the *de minimis* threshold for duty-free shipments (mainly air cargo) is intended to achieve a balance between the costs of assessing and collecting customs duty and the revenue raised. While a higher *de minimis* exemption might reduce government revenue, it will also cut overall compliance costs, reduce delivery times, and encourage low-value imports, especially direct purchases by consumers and small business firms from foreign suppliers.. Moreover, as just mentioned, it will free up resources to deal with more important security and product safety issues'.

Although the burden of tariffs drastically decreased due to the progress of trade liberalisation by the World Trade Organization and FTAs, the costs of customs clearance and logistics are not so reduced. This issue was pointed by several studies such as USPS (2010), Hufbauer, Schott, and Wong (2010), and Hufbauer and Wong (2011b). Hufbauer and Wong (2011b, p. 6) stated: 'Enhanced trade facilitation could increase the annual global level of manufactured exports by as much as US\$400 billion. *De minimis* entries by express firms now amount to roughly 17.3 million per year, with an annual declared value around US\$1.0 billion. The significance of trade facilitation and the "time to trade" are gaining proper recognition among scholars and officials alike. Administrative procedures related to exports and imports especially hamper small and medium enterprises (SMEs) in their efforts to engage the global marketplace'.

For the US, in 2010, cross-border shipments that are less than US\$200 numbered 17.3 million; those costing US\$200–US\$800 numbered 3.8 million; those costing US\$800–US\$2,000 totalled 1.2 million; and those costing US\$2,000–US\$2,500 numbered 0.5 million. Thus, the number of dealings are conspicuously declining. Whilst the cost of customs clearance takes a comparable amount of time both for goods costing US\$200 and US\$2,000, as tax revenues from low-value revenues are small, from the perspective of economics, Hufbauer and Wong (2011a) empirically proposed that raising the *de minimis* threshold for duty-free shipments from US\$200 to US\$800 is beneficial to everyone, including government, special delivery companies, consumers, and corporations producing goods.

From Suominen’s (2017) research summarised in Table 9.3, we can comprehend how the increasing low-value e-commerce is not only a phenomenon in the US but is also a universal trend. According to this research, international parcel service has rapidly increased the delivery of low-valued parcels in the last few years. Analysis of the data from the USPS reveals that low-valued parcels increased by 73% from 2011 to 2015; specifically, those delivered from China, the US, and the EU have immensely increased. It shows that shipments with a value of less than US\$100 occupy 80% of the entire parcels, and those with a value from US\$101 to US\$1,000 are less than 20%.

4.1. Analysis of Cost and Benefits

Whilst the revenue of the Customs and Border Protection (CBP) decreases as duty-free limit is increased, other economic agents can expect substantial benefits. The benefit of total of 77 million dollars consists of 10 million dollars from customers’ time saving, 56 million dollars of reduced costs that USPS and special delivery services can expect to acquire by skipping customs declaration procedures, and 11 million dollars of another reduced costs from the customs authorities, CBP. Considering the reduced amount of customs revenue of US\$51 million, the net gain (benefits) becomes US\$26 million (Table 9.4).

Table 9.3: Distribution of Shipments of Major Blocs (2015)

	US\$0-100	US\$101-200	US\$201-500	US\$500-1000	+US\$1000
Share	78-80%	About 8%	9-10%	3-4%	Less than 1%

Note: Averages of APEC (Asia Pacific Economic Cooperation), ASEAN, EU, and NAFTA (North American Free Trade Agreement).
Source: Suominen (2017, p. 8).

Table 9.4: Costs and Benefits of Raising *de minimis* Threshold to US\$800

Items of cost/saving	Amount
Value of customer time saved for all entries	US\$10 million
Estimated cost savings to express firms and USPS	US\$56 million
Estimated cost savings to CBP	US\$11 million
Estimated loss of tariff revenue	US\$51 million
Net gain from raising <i>de minimis</i> threshold	US\$26 million

Source: Modified based on Hufbauer and Wong (2011a, p.23).

These calculations are mere analyses of customs revenue reduction and benefits due to the augmentation of threshold. But when the US and Asia-Pacific Economic Cooperation (APEC) countries promote comprehensive trade facilitation, domestic production would be magnified due to the creation of new trade, and the real GDP of those countries can rise by 1%–2% as consumption is enhanced with an increase in GDP. The measure of trade facilitation can be a critical aid for SMEs' participation in international trade and can expedite cross-border e-commerce participation of consumers and SMEs. In fact, according to Evdokia and Sorescu (2013), trade facilitation can reduce total trade costs by 10%–15%, and a more substantial influence is expected for developing countries. Recognising the importance of trade facilitation, the World Trade Organization entered the Trade Facilitation Agreement into force in 2013. The World Trade Report by WTO (2015) anticipates that this agreement would increase trade of goods up to US\$1 trillion annually.

Although the duty-free threshold is much lower compared to that of the US, the Korea Customs Service is reported to demonstrate similar results with those of the US. The Korean duty-free threshold towards cross-border shipment consists of (i) US\$125 (the Cost Insurance Freight [CIF] price) when delivered through postal operators, (ii) US\$100 (the Free on Board [FOB] price) when utilised express parcel couriers, and (iii) US\$200 when importing from the US according to the KORUS FTA. This is the only agreement that sets cross-border shipment threshold through an FTA (more about this will be discussed in section 5).

When adopting *de minimis* threshold or increasing threshold, a net economic gain is expected as suggested in the research of Holloway and Rae (2012). When the six countries of APEC (Canada, Indonesia, Japan, Malaysia, the Philippines, and Thailand) set their *de minimis* threshold as US\$200, they expected net benefits of US\$5.93 billion; and when all of 21 APEC countries adopt this, the net benefits would reach US\$30.3 billion. They suggest that a *de minimis* regime is adequate for e-commerce consignment.

According to the research of Copenhagen Economics (2017, pp.2-4), when the value added tax (VAT) exemption system of low-value (12~20 euros [€]), which the European Commission reviewed in 2016, is abolished, ‘the delivery industry is significantly affected and will face additional processing cost of 1 billion euros... The removal of the small consignments exemption will mean that delivery operator will have to process a significant larger number of packages through customs.’ The VAT additional revenue due to abolition of *de minimis* could increase to €0.05 billion, yet the cost for tax collection is absurdly trivial. When the plan of the EU is facilitated, cross-border e-commerce will decrease by 0.9% (€1.7 billion in sum), and the cost of e-commerce is viewed to generally increase by 0.5%. Particularly, non-EU e-commerce corporations are anticipated to face considerable damage.

For Korea, 96% of cross-border e-commerce transactions (in terms of number of transactions) has prices below duty-free threshold, yet 0.3% of cross-border e-commerce transactions have exceeded US\$1,000. In 2014, 150,000 e-commerce transactions totalled US\$1.2 billion, and tax loss of the Korea Customs Service (KCS) amounted to US\$230 million. This tax loss is a small cost as it is only 0.4% of Korea’s total tax revenue. The KCS explains that it is a small cost, relative to the loss of consumers (corporations) followed by delay of customs clearance and cost of KCS for tax collection.⁸ By applying the simplified procedures of customs clearance on imports of low-value goods, Korea takes measures to deliver the product to its purchaser as soon as possible when it arrives at the airport. In spite of fast customs clearance, Korea conducts X-ray tests on all goods to avoid illegal importation or safety problems, and makes it compulsory for all transport providers to report the final destinations to the KCS after delivery.

5. E-commerce and Trade Facilitation in FTAs

The range of e-commerce can be as wide as from goods and plane tickets to government procurement. However, the majority of the goods for most countries are low-value shipments from e-commerce (as discussed in section 4). For ASEAN countries comprised mostly of developing countries, such phenomenon would be even more obvious. Tedious processes related to customs clearance accompanied by cross-border e-commerce, such as tariffs and domestic taxes, submission of customs clearance documents, and others may lead many consumers and corporations to give up e-commerce.

E-commerce remains relatively underdeveloped in Southeast Asia with less than 1% of total retail sales, compared to rates of 6%–8% in Europe, China, and the US (Table 9.5). However,

⁸ For the case of Korea, refer to Sung and Choi (2016).

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in the coming years, as purchasing power increases, Internet penetration spreads, and online offerings improve, online retail in ASEAN markets could grow as much as 25% annually.

Table 9.5: Online Retail Sales (% of Total Retail Sales)

	Europe	China	US	Singapore	Other ASEAN countries
Share	7.8%	7.2%	5.8%	90.7%	About or below 1%

ASEAN = Association of Southeast Asian Nations, US = United States.
Source: A.T. Kearney (2016).

The East Asia Business Council (2017) survey on FTA utilisation shows that the concern for e-commerce use is significantly active in SMEs (17.8%) over large enterprises (9.9%). The textile industry (41.2%) was identified as the most active e-commerce user. However, 58.85% of the industry had confronted to limited channels for cross-border e-commerce. They say it urgent to develop simple rules and disciplines to utilise e-commerce. In this regard, the e-commerce environment of ASEAN is not being notably improved.

ASEAN has sought various forms of e-commerce initiatives up until now. The E-ASEAN Framework was adopted by ASEAN leaders in 2000. The ASEAN Economic Community Blueprint 2025⁹ was to intensify cooperation on e-commerce with a view to developing an ASEAN agreement on e-commerce to facilitate cross-border e-commerce transaction in 2015. The ASEAN ICT Master Plan 2020 was launched in 2015, aiming to transform ASEAN towards a digital economy by 2020. The ASEAN Strategic Action Plan on Consumer Protection 2025 was initiated to develop a Common ASEAN Consumer Protection Framework including the e-commerce provisions in ASEAN FTAs.

In spite of ASEAN's various efforts to activate e-commerce, the environment of ASEAN's e-commerce has not been so enhanced. Further, ASEAN countries do not actively introduce provisions on cross-border e-commerce issues such as tariffs and taxes and customs clearance procedures in the ASEAN FTAs. The ASEAN Trade Facilitation Framework, adopted in Vientiane, Lao PDR on 3 August 2016, lacks in the provisions in cross-border issues for promoting e-commerce but only covering very general subjects such as scope, objectives, and principles. Individual ASEAN countries have been working arduously to establish physical infrastructure, such as an e-commerce platform, rather than institutional aspects.

⁹The ASEAN Economic Community Blueprint 2025 comprises five elements: (i) a highly integrated and cohesive economy; (ii) a competitive, innovative, and dynamic ASEAN; (iii) enhanced connectivity and sectoral cooperation; (iv) a resilient, inclusive, people-oriented, and people-centred ASEAN; and (v) a global ASEAN.

However, it is difficult to expect activation merely through acquiring physical infrastructure. For many consumers to use e-commerce, risks of customs clearance for low-valued shipments should be mitigated, and the burden of tariffs and taxes should be lessened. The TPP and the CPTPP, evaluated as the most comprehensive and excellent agreements amongst the FTAs currently signed, also need future supplementation. As US industrial associations suggest, the KORUS FTA could be a typical model case for supplementing the TPP.

5.1. The KORUS FTA

KORUS FTA's Chapter 7 on 'Customs Administration and Trade Facilitation' tries to ensure that goods between Korea and the US are traded quickly across borders. Goods are supposed to be treated with speedy and transparent procedures, whilst reducing bilateral conflicts between customs authorities of the two countries. This chapter is supposed to guide customs staffs to minimise abuses and to cooperate for fast customs clearance.

Chapter 7, Article 7.7 of the FTA (Box 1) on express shipments regulates quick customs clearance and a threshold for tariff exemption. About express shipment, which takes speed delivery as its key service, the KORUS FTA coordinates the quickest customs clearance than any other FTAs around the world. The contents of subparagraphs (a) to (d) may be similar to other FTAs, but subparagraphs (e) to (g) contain what is regulated very rarely in other FTAs or for the first time, as seen the box of Article 7.7. Both Korea and the US have agreed to deliver goods to express shippers within 4 hours when goods arrive at the airport and relevant documents are submitted. Subparagraph (e) of Article 7.7 also mandates express shippers to proceed to customs clearance without questioning weight or customs value (subparagraph f).

Korea and the US concurred on subparagraph (g) of this article as follows: 'Under normal circumstances, [Korea and the US should] provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at 200 U.S. dollars or less'. For imports with a value less than US\$200, they agreed to offer the most convenient customs clearance service and not to impose tariffs and domestic taxes.¹⁰ Yet, as a footnote to subparagraph (g), goods that can be applied to import regulations could be imposed tariffs exceptionally. This is a clue for preventive measures, and goods for import regulations were not specifically introduced.

¹⁰ Although it is difficult to find the impact of the subparagraph (g) in Chapter 7, Article 7.7 of the KORUS FTA, Korea's customs services officials mention that most express shipments of lower than US\$200 from the US are requested to be exempt from tariffs and taxes, implying that this special arrangement has contributed to the expansion of e-commerce.

Box 1: Article 7.7: Express Shipments

Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide a separate and expedited customs procedure for express shipments;
- (b) provide for information necessary to release an express shipment to be submitted and processed electronically before the shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;
- (d) to the extent possible, provide for certain goods to be cleared with a minimum of documentation;
- (e) under normal circumstances, provide for express shipments to be cleared within four hours after the necessary customs documents have been submitted, provided the shipment has arrived;
- (f) apply without regard to an express shipment's weight or customs value; and
- (g) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at 200 U.S. dollars or less.¹

A Party may require express shipments to be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes, and may require formal entry documents, for restricted goods.

¹ A Party may require express shipments to be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes, and may require formal entry documents, for restricted goods.
Source: KORUS Free Trade Agreement, Chapter 7, Article 7.7.

5.2. The TPP Agreement

Customs administration and trade facilitation are regulated in Chapter 5 of the TPP, and like other FTAs, publication of laws, regulations, and procedures; release of goods; advance rulings; express shipments; penalties; customs cooperation, and more are included. This chapter is reflected in the CPTPP without any reservation.

The USTR (2016) states that the TPP's chapter on customs administration and trade facilitation will help move express shipments more quickly across borders by streamlining documentation needed to move such shipments, and by ensuring timely release of those goods. It states: 'In addition, TPP Parties will not charge any customs duties for express

shipments valued below an amount that each government will set in order to further expedite the movement of goods and reduce documentation'. That is, the TPP, unlike the KORUS FTA, has not adopted the threshold for a custom *de minimis*.

To enhance the TPP and the ASEAN FTA, this chapter seeks to compare the articles (see Box 1 and Box 2) on express shipments of the KORUS FTA with that of the TPP. These two agreements are similar in terms of an expedited customs procedure, electronic means, a single manifest, a minimum of documentation, coverage of express shipment, and others. However, they are divergent in a way: the KORUS FTA provides that the time of sending out goods to express shippers after arriving at the airport should not exceed 4 hours; the TPP allows up to 6 hours.

Table 9.6: Comparison of Express Shipments

Items	KORUS FTA	TPP
Expedited customs procedure	Yes	Yes
Electronic means	Yes	Yes
Single manifest	Yes	Yes
Minimum of documentation	Yes	Yes
Maximum hours for customs clearance	4 hours	6 hours
Coverage of express shipment	Yes	Yes
Common threshold for a customs <i>de minimis</i>	US\$200	n.a.

KORUS FTA = Korea-US Free Trade Agreement, TPP - Trans-Pacific Partnership.
 Source: Author's assessment based on the text of the KORUS FTA and the TPP

The TPP does not adopt the cost of the threshold for tariff exemption but delegates it to individual countries. Although the tariff/tax exemption threshold by domestic laws for each member country varies, mostly it is less than US\$100.¹¹ Considering the characteristic of express shipments transported via air, the maximum time for customs clearance should be as short as the customs office can set after the goods arrive at airport and customs clearance documents are submitted. Even though the TPP requires customs clearance within 6 hours, it should be coordinated as 4 hours like the KORUS FTA. Moreover, a universal standard should be applied to all member countries, instead of leaving a threshold for a customs *de minimis* to individual countries.

¹¹ The threshold of Japan is US\$90; that of Indonesia is US\$50; Viet Nam, US\$40; and the Philippines, US\$0.33, which is quite low. Various kinds of customs clearance documents are required for each country.

Box 2: Article 5.7: Express Shipments

1. Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:
 - (a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;
 - (b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means¹;
 - (c) to the extent possible, provide for the release of certain goods with a minimum of documentation;
 - (d) under normal circumstances, provide for express shipments to be released within six hours after submission of the necessary customs documents, provided the shipment has arrived;
 - (e) apply to shipments of any weight or value recognising that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and
 - (f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law.² Each Party shall review the amount periodically taking into account factors that it may consider relevant such as rates of inflation, effect on trade facilitation, impact on risk management, administrative cost of collecting duties compared to the amount of duties, cost of cross-border trade transactions, impact on SMEs or other factors related to the collection of customs duties.
2. If a Party does not provide the treatment in paragraph 1(a) through (f) to all shipments, that Party shall provide a separate³ and expedited customs procedure that provides that treatment for express shipments.

¹ For greater certainty, additional documents may be required as a condition for release

² Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods such as goods subject to import licensing or similar requirements.

³ For greater certainty, 'separate' does not mean a specific facility or lane.

Source: Trans-Pacific Partnership, Chapter 5, Article 5.7.

6. Conclusion

The e-commerce market is rapidly growing. By the year 2021, the size of the global e-commerce market is perceived to reach US\$4.5 trillion. The industry that started as an experiment of a small group of corporations only 10 years ago has grown into a cutting-edge industry, which gives consumers and producers an opportunity to shop online. E-commerce corporations should improve the competence of cross-border e-commerce including for placing an order and shipping, but government must reduce the costs related to e-commerce through trade agreements.

Low-value consignments are quickly increasing and are emphasised as a vital challenge in trade facilitation. Introducing a system that suits a new logistics environment to reduce the pressures of e-commerce vendors and consumers is exigent. Customs authorities may worry about the loss of tariff revenue, security, and other risks but should also seek measures to constrain any hindrances for newly emerged e-commerce businesses by maintaining complicated customs clearance regulations to collect scanty taxes. Security management can be implemented by actively using a risk management system and close cooperation with logistics businesses which deal with delivery.

The East Asia Business Council (EABC) (2017), which raises the concerns of corporations to the attention of ASEAN+3 economic ministers, documents a series of the recommendations for facilitating e-commerce in the East Asia. Amongst the many suggestions of the EABC, the closest with the theme of this chapter is expansion of cross-border e-commerce test zones to overcome issues of import duties on cross-border e-commerce and complex customs procedures and distribution system. Although there have been numerous similar discussions until today, they are still not subject to implementation. Due to ASEAN's characteristics, they should facilitate suggestions of corporations in the perspective of ASEAN rather than of individual countries. All ASEAN+3 countries are RCEP members, and the RCEP negotiation, which began in May 2013, is still ongoing. The FTAs of the 10 ASEAN countries with China, Japan, Korea, India, Australia, and New Zealand already took effect. And the ASEAN countries are finalising the RCEP agreement. If the express shipments article from the KORUS FTA is included in the RCEP, ASEAN e-commerce could be activated in a ground breaking manner. Considering the different stages of development of ASEAN countries, it will be difficult for all members to set the same *de minimis* threshold for the exemption of tariffs and taxes. A practical approach may be to adopt the arrangement with different thresholds, although the region targets the same threshold in the long run. Lastly, an article on whether tariffs and domestic taxes are to be exempted can only be judged with a meticulous analysis of the relationship between tax revenue and collection expenses through the present system.

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