

Pan Yellow Sea ACTION: A Possible Localized FTA and its Implication to GATT Article XXIV

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Abstract

Mayors of ten major cities surrounding the Yellow Sea from China, Korea and Japan signed a document to create a possible localized FTA on November 25, 2010. If this initiative really leads to the actual establishment of FTA by local cities remains to be seen, but at least the effort is innovative and ambitious. FTA is generally regulated under the Article XXIV of GATT and the tariff elimination is the core requirement; therefore, this initiative by the ten cities needs to clarify this point if it is to be truly termed as an FTA. OEAED, a tripartite organization established by the ten cities, constructed the planned localized FTA from studying similar past initiatives and agreements such as Japan-Vietnam Joint Initiative, Bogor Declaration of APEC, and various Economic Partnership Agreements. Under the initiative, already over 800 requests were submitted from private sector of these cities and 198 action plans were identified by the administrative offices. A unique inter-city network combining ten one-stop centers for trade and investment is also underway. Even though local cities are not capable of agreeing issues related tariff and other legal-binding concessions that are exclusively handled by their central governments, the purposes and effects of the proposed local FTA seem to be very close to those by national governments. If the current work is completed in two years as planned, this may function as a localized EPA. In the light of these issues, this article seeks to analyze the contents of PYS-ACTION in order to ascertain whether it is possible to create a localized FTA under this initiative or not.

1. Introduction

On November 25, 2010, mayors of ten major cities surrounding the Yellow Sea from three countries, i.e., Dalian, Qingdao, Tianjin, and Yantai from China; Busan, Incheon, and Ulsan from the Republic of Korea;

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Fukuoka, Kitakyushu and Shimonoseki from Japan, signed an agreement titled “Memorandum of Understanding for the Implementation of Pan-Yellow Sea Active Cooperation for Trade, Investment and Other Needs (PYS-ACTION).” On the next day, many newspapers in China, Korea and Japan reported the event with headlines stating it as a new effort for the realization of a localized FTA¹.

PYS-ACTION is probably the first initiative in the world to create an FTA among local city governments. FTA is basically an international agreement regulated under the Article XXIV of GATT; therefore, it is generally deemed impossible to create an FTA without authorization from national governments. This is exactly why the media showed their interest in PYS-ACTION. These ten cities embrace the total population of over 40 million and their aggregate GDP is over USD 430 billion. If the local FTA is completed, the impact to the regional economy may not be small.

The purpose of this article is to analyze the contents of PYS-ACTION and verify if it is possible to create a localized FTA under the initiative. This article includes some aspects derived from the facts the author learned himself as the Executive Director of the OEAED (Organization for the East Asia Economic Development) Secretariat during 2009 and 2011, but the most of this document is constructed from the written and published materials.

2. Organization for the East Asia Economic Development (OEAED)

A. Background of the Establishment of OEAED

Before going into details about PYS-ACTION, it is necessary to introduce an organization called Organization for the East Asia Economic Development (OEAED), because PYS-ACTION is a plan initiated and developed by this regional organization².

¹ See, for example, the article appeared on Nikkei Newspaper with a title “Signed for a localized EPA” on page 33 of its Kyushu edition on November 26, 2010. Many other newspapers carried similar articles on the same day.

² The Secretariat of OEAED is installed at the International Department of Kitakyushu City Government. Secretariat members are composed of administrative officials from Kitakyushu City Government and Shimonoseki City Government.

OEAED is an international organization established by the above-mentioned ten cities on November 16, 2004. In the “Joint Declaration of the Organization for the East Asia Economic Development” adopted at its inauguration session, mayors of ten cities stated that the establishment of the organization was decided in response to “the need for deepening and strengthening partnership among local cities in consideration of the future direction and strategy of East Asia.” The Declaration also emphasized the need to promote localized economic partnership by pointing out that ten cities then faced “the time in which local governments must deploy new plans of regional cooperation for creating and nurturing new industries, new venture businesses, and new employment.”

A background of this establishment of OEAED was that there had been a common interest in the region that a new economic area engulfing countries in East Asia would have to be created to compete against EU and NAFTA, the two largest economic groups in the world, to bring economic benefits in and energize the East Asia region³.

Even though the Doha Round (Doha Development Agenda) was launched in 2001, WTO was unable to conclude negotiations over this round with over 150 countries⁴. Hence, many Countries in the world turned their trade policy to rely on from WTO-based global system to FTA-based regional system. However, even though three countries, i.e., China, Japan and Korea, were the core economic nations in East Asia and their portion in the global economy was substantially large, the FTA among these three countries was not in scope in the foreseeable near future⁵. This

³ For example, the final report of EAVG (East Asia Vision Group) adopted in 2001 stated “Growing regionalism elsewhere has created the need for East Asia to pay more attention to securing regional common interests in the multilateral trading arena. Economic integration in East Asia should lead to the reaping fruits of liberalization while promoting a cohesive response to new challenges in the global economy.”

⁴ Pascal Lamy, the Director-General of WTO, stated on May 31, 2011, that the priority of DDA was for issues related to developing countries and that negotiations for market access and other substantial issues were put into “slow lane.”

⁵ On May 13, 2012, the leaders of China, Korea and Japan gathered in Beijing and adopted the “Joint Declaration on the Enhancement of Trilateral Comprehensive Cooperation Partnership” which stated “Recognizing that the establishment of an FTA among China Japan and the ROK would contribute to the economic growth and prosperity of the three countries, we hereby endorsed the recommendations from the trade ministers that the trilateral FTA negotiation would be launched within this year.”

was also a crucial reason that ten cities surrounding the Yellow Sea, where economic inter-action was deep and dynamic, decided to create a localized FTA, without waiting for a national level FTA.

B. Purposes and Activities of OEAED

Now let us see how the purposes of OEAED are regulated in the “OEAED Agreement” adopted at the inauguration meeting. The Article 2 of the Agreement states as below:

Article 2: The organization will promote economic activities and vitalize exchanges among ten cities by strengthening partnership, economic exchanges, and mutual network, thereby create a new economic zone in the pan Yellow Sea region, and contribute to the development of East Asia economic area.

Thus, the Article 2 clearly states that the contribution to the “East Asia economic area” is a purpose of the OEAED, and then regulates that the creation of a new economic zone in the pan Yellow Sear region is also a purpose of the organization.

The term “East Asia Economic Area” is often seen on the media but no such area existed officially to this date. There is no clear definition in the OEAED Agreement as to what this “East Asia Economic Area” actually means. Based on this, it is presumed that the founders of the OEAED did not possess a concrete image of the East Asia economic area or the pan Yellow Sea economic zone. In other words, the OEAED founders showed a strong will to face the economic challenges of the region, but they did not make it clear how and what measures the organization should implement to realize the purposes of the organization. The OEAED thus held a risk at its inception to face implementation problems in the future.

Next, the Article 3 of the Agreement regulates the following 6 sub-articles for the realization of the Article 2 objectives.

Article 3 (1): Creation of new business: Focus and study in the four important areas, i.e., manufacturing, environment, logistics and tourism, delve into possible new businesses and implementable projects, and then propose and implement.

Article 3 (2): Policy recommendations: Research and recommend administrative measures and private sector promotion activities to be

adopted by member cities. Propose projects covering the region as a whole to national governments and seek their support and cooperation.

Article 3(3): Creation of a local network: Based on the recommendations from the working groups on four areas stated in the Article 3-1, and also by exchanging information and strengthening partnership in regard to business opportunities, deepen the existing regional local network and create a new multilayered regional local network.

Article 3 (4): Human resources development: Promote human resources development to narrow the gaps among member cities in regard to manufacturing traditions, business attitudes, and organizational and social customs.

Article 3(5): The dissemination of information: Share the recommendations from the four working groups on the local network and disseminate them to all member cities. Disseminate the information from each city to other cities in their respective countries and to the world.

Article 3 (6): Other projects necessary for the realization of the OEAED purposes

The Article 3(1) is ambitious. The determination of the founders to create new businesses for the vitalization of the region is clearly seen in this sub-article. Identification of four areas is an important step for OEAED to move forward as an implementing organization, not as a friendship-only organization. The four working groups were actually established based on this sub-article and they hold meetings regularly. This should be positively evaluated as a proper formation of administrative system which would enable officials of ten cities to pursue economic development of the region.

The ultimate goals of these four working groups must be, under the Article 3-1, to create new businesses as a result of their activities, and contribute to the economic development of the region; however, the activities of the working groups so far seem confined into just discussions and there has been no sign of implementing projects for the creation of new businesses in the region.

The reason why there has been no substantial outcome from the Working Groups has its root in the founding agreement itself. As already seen, the Article 3 (1) regulated the establishment of four working groups, but the activities to be implemented by them were left for themselves to determine. If a new system is to be installed, the public administration is usually required to enact, abolish or amend legal-binding rules or regulations. Otherwise, there would be no basis for private businesses to go into truly new activities or phases in their private capacities. The Article 3 (1) left this point unclear so that the working groups could not implement new projects without any new legal foundations.

The Article 3 (2) is a general provision but it provides a basis on which ten cities vitalize regional economy. That is because this sub-article states clearly that the recommendations of administrative measures are imperative. As stated above, it is generally a requirement for a new system, such as an economic zone, to be established, that a new legal system or legal regime change which enable private sector businesses to develop new economic strategies must be introduced by administration. If proper recommendations are made based on this Article 3(2) and if they are properly implemented, then finally the function of administration would be fulfilled. PYS-ACTION can be considered as the first project derived out of this Article 3(2). The advent of PYE-ACTION, therefore, can be said to have its roots right in the founding agreement itself.

The Article 3(3) is a unique and important provision. As seen later, PYS-ACTION adopted the concept contained in this sub-article. At a glance, it may deem a matter-of-course that a network must be installed since an organization composed of ten cities is established. However, the importance lies with the mode of the network. The shape of the local partnership community will be different from a mode of its network to another. The significance of the Article 3 (3) therefore, lies with the word "multilayered." The network the founders of OEAED envisaged was not just a network but must be a multilayered network. They must have considered that a new type of sophisticated network was inevitable if a new economic zone was to be created. However, again in this sub-article, the exact ways and means to create such a multilayered network were left undecided. There was no mandate given from the founders to the working groups in identifying and creating such a new network. Without detailed

mandates from founders, the discussion at four working groups seem to have drifted away from starting the actual construction of a network so far, even though they are very much aware that the creation of network itself is a mandate clearly given in the Agreement.

Nevertheless, the fact that the founders agreed to create a new multilayered network and succeeded in showing their determination to do so to their private sector was itself a very important outcome which would support the activities to be implemented by administrative officials through four working groups.

The Article 3(4) is not directly related to the formation of a new economic zone. However, considering the fact that many international or regional organizations are implementing human resources development projects, it is natural for OEAED to put human resources development as its one of core objectives, particularly when the established organization is composed of as many as ten cities from different countries with different cultural, social, administrative and political background. However, the Agreement again left it open to their administrative officials to decide the ways and means of human resources development projects.

The Article 3(5) is just a statement of the importance of information dissemination. Therefore, the implication of this sub-article is somewhat different from the previous four sub-articles. While the previous four sub-articles provide some ideas relating to the formation of the new economic zone, this sub-article just encourages administrative officials to disseminate information regarding the activities of OEAED. Although the public relations are very important for any organization including OEAED, the announcement itself does not create a new economic zone or new businesses. Nevertheless, this is an article from which we feel the strong will and wish of the OEAED founders for the creation of a new economic zone.

The Article 3(6), just like the previous one, is also a very general article. However, the importance of this sub-article is amplified as other sub-articles remain ambiguous about the actual mode under which the new economic zone must be created.

The Article 3 is placed in the Agreement as a set of rules to implement the purposes of OEAED regulated under the Article 2, but the Article 3 so

far falls short of giving proper mandates to administrative officials of ten cities how to implement projects as seen above. This Article 3-6, therefore, can be mobilized if and when a project is nurtured and developed for the realization of a new economic zone but it is not considered to be a project derived from any of the mandates given in the sub-articles from Article 3(1)to3(5).

As explained later, PYS-ACTION itself can be considered as a project to materialize Article 2 and Article 3 of the OEAED Agreement, particularly Article 3 (1) and 3 (3), but some future projects which would be derived from PYS-ACTION may not be positioned under any of the said five sub-articles. In such a case, this Article 3 (6) may be employed to guarantee that the project is in line with the original mandate given from the mayors of ten cities. To this effect, the role of this Article 3(6) may be important.

The purposes elaborated in the OEAED Agreement are as seen above; however, the purposes of the organization generally contemplated by the general public are not necessarily the same. In fact, even among the officials related the work of OEAED, the five visions declared at the high rank officials meeting held on January 9, 2004, more than ten months prior to the inception of OEAED, are the ones that are generally perceived as the purposes of OEAED.

At the high rank officials meeting, the representatives from ten cities adopted five visions as the main challenges of an organization to be established by the ten cities, i.e., (i) Founding the “East Asia FTA,” (ii) Founding the Pan Yellow Sea Environmental Model Region, (iii) Creating a new system for generating businesses, (iv) Developing Pan Yellow Sea Tourism Brand Strategy, and (v) Forming Technical and Human Exchanges Platform.

It is pretty clear that the Articles 2 and 3 of the OEAED Agreement are the ones that are transformed from these five visions. However, it should be noted that the expression used in the very first vision, i.e., the “East Asia FTA,” is used nowhere in the OEAED Agreement.

There is no written record about the reason behind this transformation, or rather an omission of the words, it is presumed that the founders of OEAED considered that the word “FTA” generally implies an international agreement ratified among central governments and that local governments

are not in a position to sign such an agreement. FTA is under normal circumstances an agreement regulated under Article XXIV of GATT and that the elimination of tariff⁶, which normally requires the authorization from the national government, is the core of the system. From this view point, the avoidance of the word “FTA” from the OEAED Agreement may be justified.

Even so, the term “East Asia FTA” is still widely used as the ultimate goal of the organization on the OEAED home page and on other information materials published by OEAED. Hence, it is judged that the founders of OEAED and also the current administrative officials responsible for OEAED among ten cities still cherish the “East Asia FTA” as a vision of the organization through which the larger entities such as “East Asia Economic Area” or “Pan Yellow Sea Economic Zone” would be created, even though they understand it is very difficult for them to achieve an FTA among local cities. Also, they may consider that the expression such as “East Asia FTA” is easily understood and sounds nice to the general public because of the recent FTA boom around the world, and that it would be advantageous politically to keep the term for the explanation to the private sector.

However, even though the zest of the founders can be very well felt through the term “East Asia FTA,” the frequent usage of the term seems to have invited some unnecessary confusion even among the administrative officials of ten cities. Although FTA as a general concept is easily understood and has an useful political impact on to their citizens, the officials seem to have been in a state of give-up and refrained themselves from moving forward to achieve the goals tasked under the OEAED Agreement.

Hence, this FTA issue has become an obstacle that must be cleared if the ten cities are to realize the wishes of the founders to create the Pan Yellow Sea Economic Zone, and Pan Yellow Sea ACTION came up as a possible answer to this problem.

⁶ Article XXIV 8 (b) regulates that “A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce....are eliminated on substantially all the trade....”

3. The Background of Pan Yellow Sea ACTION

In this part of the article, the process during which PYS-ACTION was planned and developed will be verified. According to the OEAED home page, the term ACTION is the abbreviation of *Active Cooperation for Trade, Investment and Other Needs* and that it implies a proactive cooperation among ten cities which involves not only trade and investment, though these should be the core of the cooperation, but also all other issues related to the economy of the region.

A. The Relations between EPA and FTA under the Article XXIV of GATT

As briefly mentioned above, the term “Free Trade Agreement (FTA)” generally means the agreement between sovereign states to eliminate tariffs mutually under the Article XXIV of the General Agreement on Tariffs and Trade (GATT) enacted in 1947.

The Article XXIV clearly regulates that the core concept of FTA is the tariff elimination, but the tariff elimination may not become the central issue in recent years among countries which have already eliminated substantially all tariffs on MFN basis to all countries. Singapore is considered one of those countries. Japan, if the agricultural sector is excluded as an impossible area, may also be considered one of such countries, since the tariffs for non-agricultural products are already very close to zero on MFN basis.

In 2002, Japan and Singapore signed an agreement called “Japan-Singapore Economic Partnership Agreement.” This is an FTA agreement that is bound by the Article XXIV of GATT but these two countries did not use the term FTA but they used the term EPA (Economic Partnership Agreement) for the first time in the history of FTAs. As implied above, this is because virtually all tariffs were already abolished between these two countries⁷ and that the tariff elimination alone could not be ambitious enough in making a bilateral trade package. These two countries;

⁷ The tariff rates for agricultural products in Japan were still high but there was no substantial agricultural trade between these non-agricultural trade countries. Therefore, as far as actual trade volume is concerned under the Article XXIV of GATT, substantially all tariffs were virtually eliminated between Japan and Singapore.

therefore, decided to include not only tariff elimination but also many other areas of bilateral economy, such as investment, finance, information technology, and human resources development and make it as a package in creating an FTA between the two countries. Then they also decided to change the name of the agreement from FTA to EPA, because EPA was the better term to describe their agreed economic package, though the tariff elimination was still placed in the core of the Agreement to fulfill the conditions laid under the Article XXIV of GATT.

There are many other similar international agreements like this Japan-Singapore EPA⁸ that contain many elements that are normally achieved without legal endorsements in respective countries such as human resources cooperation and information exchanges, but still these agreements are termed under the name EPA which is equivalent to FTA in its essence. The OEAED Secretariat paid attention to this aspect of EPAs. If national governments have agreements called EPA or FTA which contains elements that do not require approval from the central governments like trade facilitation, local governments may also be able to enact agreements termed EPA or FTA excluding tariff elimination and other legal-binding national promises from the package.

B. APEC Bogor Goals

The second international agreement the OEAED Secretariat paid attention to was the APEC (Asia Pacific Economic Cooperation) Bogor Goals. In 1994, the leaders of APEC member countries gathered in Jakarta and adopted “Bogor Declaration” under which the leaders are bound to achieve trade and investment liberalization in Asia and Pacific region by 2020.

The most important feature of this Bogor Declaration was that the trade liberalization was agreed under the non-legal binding declaration, not in a form of international agreement like FTA. Under the Bogor Declaration, the ways and means to achieve the trade liberalization were left to each member state to choose and implement. Even so, the Bogor Goals expressed the support of the member states to the Uruguay Round

⁸ Japan alone signed EPAs with Mexico, Thailand, Malaysia, Indonesia, Philippine, Vietnam, Peru, Switzerland, and ASEAN.

negotiations that were simultaneously being conducted by GATT member states then, and thereby mandated the APEC member states to eliminate tariffs in consistent with GATT regulations. In this manner, the tariff reduction, the core concept of FTA under Article XXIV of GATT, was also included in this legally non-binding political declaration.

Since APEC's Bogor Goals were legally non-binding as seen above, there were speculations that the trade liberalization would not actually take place⁹. For addressing these concerns from the private sector, APEC member states at its 3rd Summit Meeting held in Osaka, Japan, in the following year in 1995, adopted the "Osaka Action Agenda," with a purpose to urge member states to implement their own liberalization efforts in schedule. APEC member states repeatedly revised the Osaka Action Agenda and continuously strengthened and improved the trade liberalization measures introduced by each member state. In this manner, APEC member countries have been trying to vitalize the trade and investment flow in the Asia and Pacific region under the legally non-binding political declaration, but still it is called trade liberalization. Although the effect of the Bogor Declaration and Osaka Action Agenda may not be as deep as that of FTA, nobody now denies that a certain degree of trade and investment liberalization effect has been achieved through this process.

This effort by APEC member countries presented another good example to the OEAED Secretariat. The fact that there is a multinational system that does not rely on legal endorsement by the national governments but actually promotes trade and investment liberalization, encouraged the OEAED Secretariat to pursue to create a localized FTA/EPA. If the trade liberalization is achieved among 21 Sovereign nations without having a legally binding agreement, the same may also be made by local governments that do not have power in national rule making.

⁹ For example, ABF, the business entity for APEC, issued a comment on October 16, 1996, that "APEC is moving too slow" and demanded the "concrete actions to facilitate trade and investment flow."

C. Japan-Vietnam Joint Initiative

As illustrated above, the OEAED Secretariat had come to an understanding that a localized EPA/FTA might be possible if a similar framework like EPAs or Bogor Declaration was developed among ten cities. However, they were still not sure what kinds of contents should be included in such a framework. They needed to examine more into possible elements that were suitable for local cities and consistent with the trade and investment liberalization. Then they turned their attention to the Japan-Vietnam Joint Initiative.

Japan-Vietnam Joint Initiative is a legally non-binding bilateral agreement between Japan and Vietnam signed in 2003¹⁰. The signatories of the Initiative were not only representatives of national governments, i.e., Minister of Planning and Investment of Vietnam and Ambassador of Japan to Vietnam, but also a representative of the private sector from Japan, i.e., Vice-President of the Japan Federation of Economic Organizations. The uniqueness of this initiative was to include private sector as a formal member of the national level official agreement. The Joint Initiative was viewed as a success from the private sector of Japan, because the actual enactment, abolishment or revisions of laws and regulations occurred as a result of this initiative, significantly benefiting Japanese business entities operating in Vietnam.

The Joint Initiative was first adopted as a two year project from 2003 to 2005; however, based on the success of the project, the second phase of the Initiative was launched immediately after the first project and the third and forth phases were also incessantly implemented to this day. Further, seeing the success of the Japan-Vietnam Joint Initiative, a similar initiative was launched between Indonesia and Japan in 2005 as the “High Level Public/Private Sector Joint Forum on Investment.” A few other similar initiatives have been agreed and implemented between Japan and other Asian nations as well in recent years.

The mechanism of the Japan-Vietnam Joint Initiative can be summarized into the following six points.

¹⁰ See the home page of the Ministry of Foreign Affairs of Japan at <http://www.mofa.go.jp/region/asia-paci/vietnam/report0312.pdf>

- (i) Japanese companies conducting business in Vietnam can freely submit their requests to the Government of Vietnam in regard to any of their problems faced in Vietnam. (The emphasis here is that the issues to be tabled between the two national governments are decided by the private sector.)
- (ii) The Government of Vietnam must provide action plans to all of these requests with the time schedule to be completed in two years in principle.
- (iii) If the Japanese private sector is not satisfied with the proposed action plans from the Government of Vietnam, the Government of Japan must negotiate with the Government of Vietnam to come up with a solution that can satisfy the needs of the Japanese private sector.
- (iv) The agreed set of action plans is signed by the Government of Vietnam, the Government of Japan, and the Japan Federation of Economic Organizations, as a confirmation of political will of the Governments to solve problems faced by the Japanese private sector.
- (v) The Japanese Government provides ODA, when applicable, to support the Vietnamese Government in implementing the action plans.
- (vi) The Government of Japan closely monitors the implementation of the action plans by the Government of Vietnam during the two years. The evaluation will be made to each and every item of the action plans by the private sector of Japan after two years.

Under the framework characterized by these six points, the Government of Vietnam commenced its own action plans for 44 items requested from the private sector of Japan. In 2005, after two years of the implementation phase of the Joint Initiative, the Japanese private sector evaluated that 85% of the actions taken by the Vietnamese Government was satisfactory to them. In other words, the Government of Vietnam changed their rules, regulations and administrative practices and systems to comply with 85% of demands from the Japanese private sector.

Immediately after the conclusion of this Japan-Vietnam Joint Initiative, the investment from Japan to Vietnam started to surge, and the economic relations between the two countries including trade dramatically

improved¹¹. There must have been other factors like the trend of global economic recovery that affected the economic relationship improvement between Japan and Vietnam, but the fact that the advent of the administrative improvement which satisfied 85% of the Japanese private sector must have affected the business attitude of the Japanese companies. The OEAED Secretariat closely analyzed the mechanism and result of the Japan-Vietnam Joint initiative¹², and came to a conclusion for a platform on which a localized EPA would be created among ten cities, i.e., Pan Yellow Sea ACTION.

4. The Significance of the MOU for the Implementation of PYS-ACTION

A. The Contents of PYS-ACTION MOU

The mayors from ten cities signed on the paper titled the “Memorandum of Understanding for the Implementation of Pan Yellow Sea ACTION – Realizing the Pan Yellow Sea Community” on November 25, 2010 in Qingtao, China. As reproduced at the end of this article as an Annex, it is a short document but it contains a number of important elements necessary for realizing a localized EPA.

The MOU can be summarized as below:

Three Joint Objectives

- (i) Each city tries its best to become the most attractive city within their country in providing an efficient trade and investment environment.
- (ii) Each city tries its best to make the lead time for customs clearance the shortest within their country.

¹¹ The final report of the Joint Initiative states that “The increase of large-scale investments from Japan to Vietnam is a proof that Japanese investors consider Vietnam as a stable investment destination. This is a result from the implementation of the Japan-Vietnam Joint Initiative which impacted and improved policies and rules of Vietnamese Government. Also through this implementation, the Vietnamese Government succeeded in showing its determination and willingness to accept FDI to foreign investors.”

¹² Officials of the OEAED Secretariat made frequent visits to organizations responsible for the Joint Initiatives between September 2009 and November 2010, including the MOFA, METI, JETRO, and Keidanren of Japan, and also the MOFA in Vietnam to learn from their experiences directly.

- (iii) As for the requests made from private sector related to the authorization of central government, each city must introduce its own local substitution plan to overcome the problems contained in the requests.

Points Agreed

- (i) Implementation of action plans adopted under PYS-ACTION
- (ii) Set-up of a one-stop center in each city in two years
- (iii) Creation of a network among the ten one-stop centers in two years
- (iv) Completion of private company directory of each city
- (v) Introduction of special support measures for foreign companies from the member cities

PYS-ACTION Mechanism

- (i) Business companies located in member cities can freely submit requests for the improvement of their business environment to any of the member city governments.
- (ii) All member city governments must make action plans to each and every requests received from the private sector of the ten cities.
- (iii) The requests can be made not only from the companies already operating in foreign cities but also from those considering establishing business relations in the future.
- (iv) The requests can include issues exclusively handled by central governments; however, the city that receives such a request must first propose a local substitution plan. The city may also press the national government to provide solutions to the request.
- (v) The Secretariat must closely monitor the implementation of the action plans of each city. Evaluation for the process and result of the implementation must be conducted after one year and two years from the date of signature.

It should be quite clear that the PYS-ACTION mechanism is akin to that of the Japan-Vietnam Joint Initiative. The main differences are that the PYS-ACTION is a multiplayer project while the Japan-Vietnam Joint

Initiative is a bilateral one, and that the liberalization responsibility is equally born by all ten cities under PYS-ACTION while that is born only by Vietnam under the Joint Initiative (the responsibility of Japan is to provide ODA and the increase in investment as a result of the Vietnamese action plans).

The crucial aspects of the Joint Initiative, such as that the issues to be tabled must be chosen by the private sector, the administration side must provide action plans to all such issues, actions must be concluded in two years of time, the top level commitment must be made clear in a political document, and the evaluation must be made by the private sector, are all incorporated into PYS-ACTION as well.

It should be reiterated that the most important aspect of PYS-ACTION lies in the fact that the administrations of the ten cities promised to each and every private company which submitted requests that they would implement actions for all these requests. Namely, if such actions are properly implemented, there would be no problems left for the companies which submitted the requests in doing businesses in ten cities. If such a condition prevails among ten cities, it should be certain that commercial activities by these private companies will be energized, leading to the vitalization of the economy in the pan Yellow Sea region as a whole.

As explained in details later, altogether 198 problems were identified under PYS-ACTION, and each city promised to implement around 60 action plans in average¹³ in two years. The success of PYS-ACTION depends on the result of implementation of these 198 action plans.

One of the conditions put forward in PYS-ACTION to member cities constitutes an innovative and workable foundation as a localized trade liberalization framework. The above mentioned PYS-ACTION mechanism (iv) is the condition. As analyzed in the previous chapter, it has been presumed impossible or very difficult to create a system akin to FTA by local governments, because the tariff elimination is defined as the core of

¹³ Many companies submitted the same requests to several or all cities. There were of course requests made only on to particular issues of particular cities. Therefore, the number of requests received differs from city to city and the total figure is not 198. The number of requests a city received was around 60 and there was no big difference in this figure.

FTAs under GATT Article XXIV and that local governments do not have any authority over tariffs. The said condition (iv) was agreed exactly as a means to address this issue. Namely, even though the requests about tariffs must be sent forward to the central governments for fundamental solutions, i.e., tariff elimination or reduction, the local city governments also agreed to provide substitution local solutions to the problems without waiting for reply from the capital.

It is totally up to each city to consider and implement its own substitution measures. If a city can propose and implement substitution measures attractive to foreign businesses, the city may be able to vitalize its economy through the increased trade and investment. PYS-ACTION holds this type of positive competitive aspect. PYS-ACTION is devised to create a competitive atmosphere among ten cities in regard to the installments of concessional administrative orders for luring trade and investment from other cities.

The implementation of tariff substitution measures is not a new idea. It was already included in the APEC Bogor Declaration, for example. As already seen, the Bogor Declaration is a political commitment and not legally binding; therefore, member states were unable to include tariff elimination as a scheduled promise to other members. Instead, the Declaration admitted the effectiveness of trade facilitation and strongly advised that all member states introduce and promote trade facilitation measures¹⁴.

Normally, the reason why private companies request tariff reduction is that they wish to sell their products in foreign markets. However, the tariff reduction or elimination is not the only way for the products to be successfully sold in foreign markets. Even though the tariff remains relatively high for the products, if consumers in the foreign market come to recognize the competitive quality of the products, they may start buying them at a high price set under the tariff rate. Or they may also start buying

¹⁴ The Declaration states that “We are determined to pursue free and open trade and investment in the Asia-Pacific in a manner that will encourage and strengthen trade and investment liberalization in the world as a whole.....to complement and support this substantial process of liberalization, we decide to expand and accelerate APEC’s trade and investment facilitation programs.”

them if and when a good brand image is established as a result of strategic advertisement. These are just some of the possibilities.

Likewise, the substitution local actions that are requested under PYS-ACTION are the ones that provide support for making those foreign companies possible to sell their products in a better manner. Such support measures may be provided as a form of dispatching experts in marketing or installing subsidy program for foreign companies seeking professional advice, or holding seminars for those foreign companies interested in their market to explain the characteristics of their local markets, to mention just only a few. As stated above, those cities that succeeded in introducing attractive such support program may win competition among ten cities in attracting businesses from other cities. This is the core and most important aspect of PYS-ACTION.

On the other hand, PYS-ACTION does not deny that each city that received requests normally handled by the national government exclusively can pass the requests to the national government and ask their actions. If the national government takes an action and the problems presented from the foreign private companies are cleared, that also can be considered as a successful outcome of PYS-ACTION.

Nevertheless, this type of solutions depending on the national government must not be put in the core of the action plans. Local cities have actually been making requests to national government for years without taking any responsibilities and initiatives in relation to the problems foreign companies facing in their cities. Therefore, if the actions depending on national governments are put in the core of PYS-ACTION action plans, the responsibility and effort of local cities would remain minimum and nothing may be expected to change after all.

From this view point, it is considered a very innovative and ambitious trial made under PYS-ACTION that the condition was set to mandate member cities to first implement their own local substitution measures in the cases they receive requests on the issues normally handled by their national government exclusively.

B. Outline of the Requests under PYS-ACTION

As implied earlier, the action plans had already been enacted by all ten cities at the time of signature on the MOU. As a formality, PYS-ACTION

officially started at the time of signature on November 25, 2010; however, the preparation process had commenced about a year before the date. According to the press release issued from the OEAED Secretariat on March 31, 2010, the following schedule in 2010 had been agreed by member cities.

April-May: Chambers of Commerce of ten cities research into requests that would be taken care of under PYS-ACTION

June-October: Administration offices of all ten cities draft action plans to the requests submitted to them.

November: Signature on the action plans by the mayors from ten member cities.

The press release issued on the eve of the signature day from the OEAED Secretariat announced that the chambers of commerce of all ten cities as a whole sent out as many as 30,000 inquiring sheets to the private companies located in those cities, that around 800 requests were submitted from the private sector to the city administrations¹⁵, that these 800 requests were grouped into altogether 198 problems to be solved by the city administrations, that around 60 requests in average were allocated to each city to make corresponding action plans, and that all cities provided action plans to all requests by the date of signature.

C. Creation of a New Network

Another important element contained in the MOU is the installation of a one-stop center at each city and the creation of new network combining all ten one-stop centers¹⁶.

¹⁵ The figure of 800 requests submitted may look small compared to the figure 30,000 sent out, but this is because some cities sent out the inquiry on their newsletter to all members of chamber of commerce. Some other cities sent the inquiry only to small number of companies they considered as possible participants to the program. The ways and means to sent out the inquiry or questionnaire were left to each city to decide.

¹⁶ One-stop centers are set up in many developing countries in Asia in recent years. Foreign investors often felt it troublesome to identify an administrative office which was responsible for their requests or troubles. They often had to visit from one office to another before they could start necessary procedures. In response to demand from such foreign investors, many countries set up an office that would singlehandedly accept all requests and problems raised from them.

Among the OEAED ten cities, one-stop centers are installed already in all four cities in China (Dalian, Qingdao, Tianjin, Yantai) and Kitakyushu City¹⁷ in Japan. Other five cities do not have organizations called one-stop center, though some cities have administrative function that are designed to provide official services to foreign companies like those given from one-stop centers. In any case, the services provided from these one-stop centers and administration offices were not considered sufficient by both private sector and administration. Based on such a situation, the OEAED Secretariat judged that it would be necessary that all cities install one-stop centers that can provide a comprehensive service package to foreign companies doing business in their cities.

The portion spent for the one-stop centers and network in the MOU is relatively long. This is because there were a number of requests, among the above mentioned 800 requests, asking for the basic ways and means to start business with foreign companies. The OEAED Secretariat learned that there were many potential companies in ten cities that would be able to establish business within the region but did not know how to start it. If a proper support is extended to these companies, they may expand their business activities to foreign cities in a relatively short time.

The companies that submitted such requests were mainly small to medium companies that did not possess sufficient internal capacity to conduct foreign business by themselves, but the number seemed to be huge. It was deemed difficult for them to make inquiries, for example, directly to one-stop centers of foreign cities, owing to language, cultural, social and other barriers. If a workable network among ten cities is installed, however, these companies may be able to submit their inquiries to the one-stop center of their own city. The center then uses the network and sends forward the requests to the one-stop center in foreign city and receives reply on behalf of the company that made the initial inquiry. This is just an example what the new one-stop center network could do to facilitate business among member cities. If this type of new network is successfully installed, the economic activities among ten cities may

¹⁷ See the home page of the KTI Center at <http://www/kti-center.jp/>. KTI is the one-stop center of the Kitakyushu City and it is consisted of three organizations, i.e., Kitakyushu City Government, Kitakyushu JETRO, and Kitakyushu Trade Association.

substantially expand. This is why the MOU spared a large portion for the establishment of one-stop centers and a new network combining them.

5. Conclusion

Pan Yellow Sea ACTION is an unprecedented and ambitious initiative introduced at a local level. It should be worth closely observing how ten cities implement their action plans in schedule and how they construct the new network combining ten one-stop centers. It goes without saying that this is a very challenging and difficult task because there are as many as ten players with different concerns, interests and backgrounds. However, if it succeeds, PYS-ACTION may present an efficient model for other local cities in the world.

As analyzed in details above, strictly speaking, PYS-ACTION is not an FTA as defined under the GATT Article XXIV because it does not directly offer concessions of tariff elimination or reduction. However, the purpose of PYS-ACTION is the same as that of GATT as to reduce trade barriers among members to vitalize their economic interactions. The structure is also very similar to that of EPA already adopted by many countries and considered as a form of FTA. PYS-ACTION even includes tariff reduction efforts as the form of request from local governments to national governments. More importantly, it is not just a political declaration but contains a mechanism to generate actual trade and investment interactions among member cities. From these points, PYS-ACTION can be termed as a localized EPA, just as many newspapers stated in their reports on the MOU signing on November 25, 2010. At least, PYS-ACTION can be considered as the best initiative so far implemented by local cities to establish a localized FTA/EPA, and it is probably the closest to it.

ANNEX**Memorandum of Understanding for the Implementation of Pan Yellow Sea ACTION****–Realizing the Pan Yellow Sea Economic Community –**

On November 25, 2010, mayors of 10 cities forming the Organization of East Asia Economic Development (OEAEED) gathered in the City of Qingdao, shared the common understanding that we should further improve the business environment of the Pan Yellow Sea region, and signed this Memorandum of Understanding under which mutual cooperation would be strengthened as described below.

The economic partnership cooperation among 10 cities has increasingly and strategically become important, especially when the national level FTA or EPA between Japan, China and Korea is not expected to be agreed in the near future.

We, the Mayors of 10 Cities, will form the economic partnership by jointly implementing the Pan Yellow Sea ACTION (Active Cooperation for Trade, Investment and Other Needs) which will remove business barriers in the region, and facilitate the economic exchanges among 10 member cities.

1. Goals of the Pan Yellow Sea ACTION

We will successfully complete the Pan Yellow Sea ACTION by individually achieving the goals stated below, so that the 10 cities would become the most attractive and advanced area in terms of business environment within three countries.

- (1) the city in which trade and investment will be conducted most smoothly in respective country.
- (2) the city in which the overall time required for the trans-boarder delivery of goods including custom clearance will be the shortest in respective country.
- (3) within the process of achieving the above (1) and (2), each city will introduce actions that substitute those which require approval of their respective central government while requests may also be submitted to the national government for their direct actions.

2. Actions to be taken by each member city government

- (1) Each city will install 'One-Stop Center' where advisors and experts comprehensively extend services on issues related to trade and investment for those doing businesses in 10 cities, or install the function that guarantees the services of the One-Stop Center.
- (2) Through the activities of the One-Stop Center, and by cooperating with other local organizations, each city shall facilitate trans-border transaction of goods. With a purpose to provide a platform that promotes business information exchanges, 10 cities shall altogether form One-Stop Center Network by integrating each and every One-Stop Center among 10 cities.
- (3) 10 cities will jointly create a database that provides information related to private firms in 10 cities. (The Manufacturing Working Group of OEAED is expected to introduce such a database.)
- (4) Each city will prepare its own support policy menus which should include supports in holding seminars and dispatching experts.
- (5) While each city is requested to exert its best efforts in implementing the Pan Yellow Sea ACTION, each city may ask for supports from national government.

3. Administration of the Pan Yellow Sea ACTION

The framework of the Pan Yellow Sea ACTION is that; the chamber of commerce of each city identifies requests and problems faced by private firms in doing foreign businesses within the region; each city government provides answers and solutions to the requests and problems by filling in each and every action plan format; each city vigorously implement the action plans.

- (1) Each city will implement and complete actions proposed in their action plan formats within 2 years in principle.
- (2) Each city will evaluate the progress of actions after a year and 2 years of the implementation.
- (3) Each city will report the progress at the Deputy Mayors Meeting of OEAED to be held in the autumn 2011.
- (4) The Secretariat of OEAED will establish a system that accommodates

revises and additions of actions during implementation, reflecting the changes in business environment and responding to requests from private sector.

- (5) At the next General Assembly Meeting of OEAED to be held in 2 years, the Secretariat shall report the outcome of the Pan Yellow Sea ACTION and a committee tasked to evaluate the project will verify the outcome with setting emphasis on the views expressed from private firms.
- (6) Each city shall appoint a responsible office that implements the Pan Yellow Sea ACTION, and the Secretariat shall manage the entire process of the project.

The mayors of 10 cities hereby declare that we shall exert our best efforts for the realization of the 'Pan Yellow Sea Economic Community' by vigorously implementing the Pan Yellow Sea ACTION.

November 25, 2010

City of Qingdao

City of Shimonoseki

City of Tianjin

City of Ulsan

City of Yantai

City of Busan

City of Dalian

City of Fukuoka

City of Incheon

City of Kitakyushu