

Cambridge University Press

978-1-107-06376-1 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester, Bryan Mercurio and Lorand Bartels

Excerpt

[More information](#)

1

The United States–Korea Free Trade Agreement*

YONG-SHIK LEE

I. Introduction

The historic US–Korea Free Trade Agreement (FTA),¹ which is the largest FTA since the North American Free Trade Agreement (NAFTA) and the first FTA between major trading nations in North America and Asia, was agreed upon on 2 April 2007 after 14 months of negotiations, and signed on 30 June 2007.² Nonetheless, legislatures of the two countries were not able to ratify the FTA after well over four years, until 22 November 2011 for Korea and 21 October 2011 for the United States. Considering that the governments of the two countries were able to sign the controversial FTA after negotiations that continued for only 14 months, this delay in ratifying the agreement is somewhat ironic. The FTA entered into force on 15 March 2012.

The US–Korea FTA faced significant political opposition in the two countries: on 18 December 2008, Korean media reported that a disturbance had erupted in the National Assembly of Korea (i.e., the Korean legislature) during a deliberation of the Foreign Affairs Sub-Committee at which the ruling party attempted to table a motion to pass the US–Korea FTA, a prerequisite procedure for the vote of

* This chapter is based on the author's previous works, including 'The United States – Korea Free Trade Agreement: Path to Common Economic Prosperity or False Promise?' (2011) 6:1 *University of Pennsylvania East Asia Law Review* 111–162 (co-authored with Jaemin Lee and Kyung Han Sohn) and 'The Beginning of Economic Integration between East Asia and North America? – Forming the Third Largest Free Trade Area between the United States and the Republic of Korea' (2007) 41:5 *Journal of World Trade* 1091–1123, and is current as of June 2013.

1 Free Trade Agreement between the Republic of Korea and the United States of America, US– S Korea, 30 June 2007, *modified*, 5 December 2010 [hereinafter KORUS FTA], *available at* www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text.

2 For the chronology of the US–Korea FTA negotiations, *see* 'Korea – US FTA Chronology', *at* www.fta.go.kr/korus/board/diary.asp (in Korean) [hereinafter *KORUS Chronology*]. Two months after the completion of the FTA negotiations in April 2007, and at the request of the United States, the two countries conducted additional negotiations on labor and environmental issues, signing a final text on 30 June 2007. William H. Cooper *et al.*, US Congressional Research Service, *The US–South Korea Free Trade Agreement (KORUS FTA): Provisions and Implications* (2010), p. 39 (describing in note 148 how the two sides held further negotiations and included new language in the final text signed on 30 June 2007, incorporating "internationally-accepted" labour rights and certain environmental principles), *available at* <http://fpc.state.gov/documents/organization/127268.pdf> [hereinafter Cooper, *Provisions and Implications*]. For a brief outline of the "new trade policy" principles articulated by the U.S. Congress, *see infra* note 47.

Cambridge University Press

978-1-107-06376-1 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester, Bryan Mercurio and Lorand Bartels

Excerpt

[More information](#)

ratification at the plenary session under the Korean constitution.³ Representatives of NGOs, academics and former high-level government officials in Korea all expressed concern about the unfairness of the terms of the FTA and possible adverse long-term effects on Korea's economy and society, some of which are elaborated upon in this chapter.

The prospect did not appear very promising in the United States, either. While the Republican administration welcomed the negotiated FTA at the time of its completion, the then Democratic majority leaders in Congress raised objections to its ratification.⁴ Hillary Clinton, then US Secretary of State, indicated that the re-negotiation of some of the terms of the US–Korea FTA would be necessary before Congress could ratify it.⁵ Even though the United States made important achievements in the negotiations, fulfilling key American interests in the areas of agriculture, pharmaceuticals, intellectual property rights (IPRs), and services, some leaders in Congress doubted whether American automobiles would gain long-awaited market access to Korea as a result of the FTA, and expressed concern that the FTA would further increase Korean exports to America at the expense of US domestic automobile producers.⁶ A report circulated by the US Senate Committee on Finance indicated that four major issues would have to be addressed before the US–Korea FTA could be consented to, namely: the large imbalance in the automobile trade between the United States and Korea; problems involving US beef exports to Korea; the

3 See Hyun-Kyung Kang, 'Assembly in FTA Conflict' *Korea Times* (18 December 2008), www.koreatimes.co.kr/www/news/nation/2008/12/116_36329.html.

4 For instance, Sander Levin from the State of Michigan, chair of the House Subcommittee on Trade, stated that the agreement failed to "assure elimination of the barriers against US automotive products and the opening of Korea's iron curtain around their market" and promised to oppose the deal unless changes were made to rectify this during the 90-day Congressional review period. 'US and Korea Conclude Free Trade Agreement', *Bridges Weekly Trade News Digest* (4 April 2007), <http://ictsd.org/i/news/bridges-weekly/7581>. Other prominent Democratic Senators – including then-campaigning presidential candidates Hillary Clinton and Barack Obama – were also known to oppose the US–Korea FTA. See 'Hilori "Han-Mi FTA Bijun Bandae"' ['Hillary "Opposes Ratification of Korea–US FTA"]', *Dong-A News* (11 June 2007), www.donga.com/fbin/output?n=200706110083 (reporting presidential candidate Hillary Clinton's remarks at a meeting with the AFL–CIO that disparaged the Korea–US FTA on grounds that it did not favor US auto exports and was disadvantageous to the US's current trade deficit; she predicted that other democratic candidates would be motivated to take similar positions so as to secure labour union support).

5 See Michael Ha, 'Clinton Indicates Renegotiation of KORUS FTA', *Korea Times* (14 January 2009), www.koreatimes.co.kr/www/news/nation/2009/01/116_37853.html (quoting Hillary Clinton during the Democratic administration's transition period as arguing that the "[FTA] provisions need to be renegotiated to ensure fair bilateral trade practices in the future ... [and adding] that Obama hasn't changed his position on the FTA [negotiated and signed by the outgoing Bush administration] and continues to oppose the deal in its current form").

6 Congressional leaders' attitudes towards such deals were little changed from months earlier, when the Vietnam deal provoked stormy opposition. Steven Weisman, 'Trade Bills Now Face Tough Odds', *NY Times* (16 November 2006), at C1, C5.

opening up of the Korean rice market; and the treatment of Korea's outer production zone in North Korea, called the "Kaesong Industrial Complex".⁷

Despite the continued controversies in Korea,⁸ and the air of discomfort and hesitation surrounding the ratification of the US–Korea FTA by the US Congress,⁹ the legislatures of both countries eventually ratified the FTA because of the closely interconnected political and economic interests of the two countries.¹⁰ Had the proposed US–Korea FTA failed to go into effect, the repercussions would have been felt not only in the economic sector, but also in the political and diplomatic sectors.¹¹ Such interconnectedness has developed over several decades: the United States and Korea have maintained a strong military alliance and close economic relations for over six decades. In 2012, trade between the United States and Korea amounted to US\$101.8 billion,

7 Staff of S. Comm. on Fin., 111th Cong., 'Trade Issues in the 111th Congress' (2009). See also Lee Jeewon, 'US Senate Points Out 4 Potential Points of Discussion Regarding FTA', *Arirang.Co.Kr* (14 January 2009), www.arirang.co.kr/News/News_View.asp?nseq=86330&code=Ne4 (describing the Senate Finance Committee's position on the four major changes that the FTA would have to include, while forecasting "a rough road ahead for the already signed and sealed free trade agreement").

8 See Jaemin Lee, 'Korea–US Economic Relationship With or Without an FTA: KORUS FTA as a Better Alternative to Manage the Bilateral Economic Relationship', (2009) *Joint US–Korea Academic Studies* 159 [hereinafter Lee, *Better Alternative*], available at www.keia.org/publication/korea-us-economic-relationship-or-without-fta-korus-fta-better-alternative-manage-bilate.

9 The reluctance of the US Congress necessitated renegotiation of certain terms of the US–Korea FTA. After the June 2007 signing date, the Korean government established its opposition to any proposed re-negotiation, arguing that it would undermine the balance of concessions between the two countries achieved through the original negotiations, although it had implied a possibility of "additional negotiations" that would address remaining concerns of the parties without involving any change of terms in the previously agreed FTA provisions. In early November 2010, the two sides conducted "additional negotiations" in Seoul mostly with respect to the automobile sector, though it initially appeared as though they would remain mired in contention. The Associated Press, 'Obama to return home empty-handed: US, South Korea Fail to Reach Agreement on Free-Trade Deal', *NYDailyNews.com* (11 November 2010), www.nydailynews.com/news/politics/2010/11/11/2010-11-11_us_south_korea_fail_to_reach_agreement_on_freetrade_deal.html; see also He-Suk Choi, 'Korea, US, to Meet to Settle FTA Disputes', *Korea Herald* (5 November 2010), www.koreaherald.com/national/Detail.jsp?newsMLId=20101105000555 (explaining how the two nations were conducting additional meetings to iron out areas of disagreement in the run-up to G20 Seoul Summit); see President Obama and President Lee, Joint Press Conference on G-20 (11 November 2011), available at www.whitehouse.gov/the-press-office/2010/11/11/president-conference-with-president-obama-and-president-lee-republic-kor (quoting President Lee as announcing to the press that he had agreed with President Obama on the need for further talks between the Trade Minister and US Trade Representative, and President Obama emphasizing the priority the US placed on removing barriers, while articulating the ways in which the FTA would "create jobs and prosperity in both our countries" and constitute a "win-win for both countries"). On December 3, 2010 the two sides finally reached a final agreement and concluded re-negotiation of the FTA, with Korea making further concessions in the automobile sector.

10 In an interview, President Barack Obama pledged to push for ratification of the US–Korea FTA. Mike Dornig and Julianna Goldman, 'Obama Says He's "Fierce" Free-Market Advocate, Rejects Critics', *Bloomberg Businessweek* (11 February 2010), available at www.bloomberg.com/apps/news?pid=newsarchive&sid=aDLk0lPYaSa0 ("[President Obama] said he would press for passage this year of free-trade agreements with South Korea, Panama and Columbia, though he cautioned that 'different glitches' must first be negotiated with each country.").

11 See Lee, 'Better Alternative', *supra* note 8, at 166 ("If the proposed KORUS FTA fails to go into effect, the impact will not be simply confined to the obvious economic loss. Needless to say, political and diplomatic repercussions will certainly follow").

making the United States Korea's third-largest trading partner and Korea the United States' seventh-largest trading partner.¹² This FTA between the two countries stands to be the most significant trade agreement for the United States since NAFTA in terms of its economic and trade impact.¹³ Due to the broad political and economic effects it will have on both countries, as well as on the trade and economy in Asia and beyond, the US–Korea FTA has become a subject of much interest and considerable debate. This chapter provides a discussion of the background of the US–Korea FTA, the key issues involved, and its broader impact on the trade relations in the Asian-Pacific region and beyond.

II. History and background of the US–Korea FTA

A. Economic background

The FTA talks between the United States and Korea began in November 2004 when the two countries agreed, at a Trade Ministers' meeting held in Chile, to hold preliminary working-level talks to examine the feasibility of an FTA between the two countries.¹⁴ The driving forces behind the US–Korea FTA can be analyzed from many different angles. First, from the US economic perspective, Korea provides a major export market, and the United States wants to increase access to products and services markets in which it has a competitive advantage, such as in agricultural and pharmaceutical goods, as well as the financial services market. Because Korea, in Washington's view, has a low level of openness in these markets, the United States can expect the FTA to yield large increases in exports.¹⁵ For this reason, the Office of the United States Trade Representative (USTR) has emphasized the economic importance of the FTA with Korea, in contrast to other post-NAFTA US FTAs, which were more politically motivated.¹⁶ In addition, the United States can seek to benefit US businesses by adopting a

12 See Korea Trade Association, *2012 Daemi Muyeok Donghyang [State of Korea–US Trade]* (28 February 2013).

13 See 'US Senate Points Out 4 Potential Points of Discussion Regarding FTA', *Arirang.co.kr supra* note 7.

14 'KORUS Chronology', *supra* note 2.

15 According to the US International Trade Commission's Report to Congress, Korea's exports to the United States are expected to increase by 21% under the US–Korea FTA, whereas Korea's imports of US agricultural products will increase by more than 200% in four years. US International Trade Commission ("USITC"), (USITC Pub. 3452), *US–Korea FTA: The Economic Impact of Establishing a Free Trade Agreement ("FTA") Between the United States and the Republic of Korea* (Inv. No. 332–425, 2001) [hereinafter USITC, *Impact*], available at www.usitc.gov/publications/docs/pubs/332/pub3452.pdf. US exports to Korea of manufactured products including movie films will increase by more than 54%, resulting in significant market expansion for major US exports. *Ibid.* at 5–1.

16 In light of the economic importance of the FTA, the former head of the USTR Rob Portman stated that the US–Korea FTA "is the most commercially significant free trade negotiation [since NAFTA]." Press Release, Off. of the US Trade Rep. (USTR), United States, 'Korea Announce Intention to Negotiate Free Trade Agreement' (2 February 2006) [hereinafter Portman Press Release], www.ustr.gov/archive/Document_Library/Press_Releases/2006/February/United_States_South_Korea_Announce_Intention_to_Negotiate_Free_Trade_Agreement.html; or www.sice.oas.org/TPD/USA_KOR/Negotiations/Announce_e.pdf.

comprehensive FTA that requires Korean laws and practices to conform to US standards in areas where US trade interests are affected.¹⁷ Furthermore, the successful conclusion of the US–Korea FTA may also prompt Japan, which provides an even larger market for US exports, to consider its own FTA with the United States more seriously in order to avoid being excluded from the US-driven free trade area in Asia.¹⁸ Japan indeed officially joined the US-led, Trans-Pacific Partnership trade initiative (TPP) negotiations on July 13, 2013 in Malaysia.

In turn, the Korean government expects the FTA with the United States to provide its “middle-aged” economy with new growth momentum by expanding trade with the United States and improving its less productive service industries.¹⁹ The FTA is also expected to induce competition between Korean service industries and their competitive US counterparts operating on a global scale. Proponents of the US–Korea FTA argued that by inducing this competition, the agreement will enhance the quality and competitiveness of Korean service industries, thereby simultaneously improving consumer welfare and creating more service-related jobs.²⁰ This supposedly positive effect of the US–Korea FTA on the Korean economy has been subject to intense debate. The following section discusses this point.

B. Political background

Although the economic aspects of the US–Korea FTA have been emphasized by the governments of both countries, there is also a subtle but significant political dimension to the agreement. China, Korea’s largest export

17 Further discussion on this point and treatment of the characteristics and problems of a comprehensive FTA are provided in the next section.

18 The possibility of an FTA between the United States and Japan has long been discussed, but Japan’s unwillingness to open its agricultural market has been an obstacle to the promotion of an FTA between the two countries. In an annual US–Japan business meeting held in Tokyo, the US ambassador to Japan, Thomas Schieffer, said that agriculture must be included in any talks if the United States and Japan are to discuss a free trade agreement, and that Washington would not be prepared to talk about one so long as Japan treats its agriculture sector “in a different way.” See Ambassador Thomas Schieffer, ‘Address Before US–Japan Business Council at the Imperial Hotel’ (13 November 2006) (“The second tenet that is important to remember is that agriculture has to be a part of any negotiation, whether you call that a free trade agreement or an economic partnership agreement . . . Comprehensive in the American context means agriculture has to be included.”), available at <http://japan2.usembassy.gov/e/p/tp-20061113-74.html>; see also Emma Chanlett-Avery *et al.*, Cong. Research Serv., (RL 33436), *Japan–U.S. Relations: Issues for Congress*, (2011) at 14, available at www.fas.org/sgp/crs/row/RL33436.pdf [hereinafter Chanlett-Avery, *Issues*].

19 The Korean economy was one of the most rapidly growing economies from the 1960s until the 1997 financial crisis. It recovered from the crisis, but its economic performance became sluggish, showing only 0.7% real growth in gross national income in 2005, with some improvement of 2.6% and 3.9% in 2006 and 2007, respectively. See generally Bank of Korea, Economic Statistics System (ECOS), http://ecos.bok.or.kr/jsp/use/economyinfo_e/EconomyInfoCtl.jsp?actionType=&searchGubun=4&lm=5&nowNo=1.

20 Hyun-Chong Kim, ‘Significance of the Korea–US FTA from Korea’s Perspective’ (8 March 2006), available at www.fta.go.kr/user/intro/Media_view.asp?idx=953¤tPage=20¤tBlock=2&search=title&keyword=.

Cambridge University Press

978-1-107-06376-1 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester, Bryan Mercurio and Lorand Bartels

Excerpt

[More information](#)

market,²¹ had approached Korea with an interest in beginning government-level talks for a free trade agreement,²² which would further strengthen the rapidly growing economic ties between China and Korea. Amid the growing Sino-American tension,²³ the US–Korea FTA is in line with the strategic needs of the United States to hold China in check and to strengthen its political and economic alliance with the other East Asian countries.²⁴ From the Korean government’s point of view, establishing closer economic relations with the United States through an FTA will also help solidify Korea’s security cooperation relationship with the United States.²⁵ In the years preceding the FTA negotiations, some key security issues, including policies on North Korea, were the subject of disagreement between Washington and Seoul. This discord raised significant concerns, and it was hoped that the new FTA with the United States would help patch up the differences and mollify anxiety over the perceived gaps in US–Korea relations.²⁶

C. FTA negotiations

Once the negotiations were initiated, both governments strove for a speedy conclusion of the negotiations. At the commencement declaration, the then head of the

21 See *supra* note 13.

22 Soh-Jung Yoo, ‘China Expresses Interest in FTA with Korea’, *Korea Herald*, (4 August 2005), available at <http://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=108&oid=044&aid=0000052410> [hereinafter Yoo, *China*]. During a meeting with Korean Prime Minister Lee Hae-Chan in Beijing, Chinese Premier Wen Jiabao expressed strong hopes for the early launch of FTA negotiations with Korea; see also Jin-Woo Lee, ‘Tonghwa Suwap Gomapji? FTA Haja.’ Joong-Il Jungsang Ittara Yogu [‘Aren’t You Thankful for the Monetary Swap? Let’s Sign an FTA.’ China and Japan Are Calling for FTAs], *E-Daily*, (13 December 2008), www.edaily.co.kr/news/NewsRead.edy?SCD=DA31&newsid=01207046586638192&DCD=A01502&OutLnkChk=Y (reporting announcements by Japanese Prime Minister Taro Aso and Chinese Premier Wen Jiabao, during the December 2008 Korea–Japan and Korea–China summit meetings, declaring their interest in initiating FTA negotiations with Korea) [hereinafter Lee, *China and Japan*]. Korea and China subsequently announced the beginning of FTA negotiations between the two countries on 2 May 2012. As of June 2013, the fifth round of negotiations has been completed. See ‘Korea–China FTA Chronology’, available at www.fta.go.kr/china/policy/diary.asp.

23 See Jaemin Lee, ‘Torn between the Two Trade Giants: US–China Trade Disputes and Korea’ (June 2010) 5 KEI Academic Paper Series 5, available at <http://keia.org/publication/torn-between-two-trade-giants-us-china-trade-disputes-and-korea> (discussing Sino–American tensions and their effects on Korea).

24 It has been reported that the United States was suspected of exerting influence over Korea’s decision to pursue an FTA with the US before China. See Yong-Ma Lee, ‘FTA, Joonggug Daeshin Migug’ [‘FTA: United States instead of China’], *MBC News*, 10 August 2006, available at <http://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=115&oid=214&aid=0000013951>.

25 Jae-Joon Heo, *Han-Mi FTA*, ‘Nodong Shijang, Nosa Gwangae’ [‘US–Korea FTA, Labour Market, Labour–Management Relationship’] (Korea Labor Institute, Seoul, South Korea), 23 April 2006, cited in Cho Sang-Gi, ‘Iljari Jungga Tumuniupko, Dwaerae ‘Gujojong’ Wooryu’ [‘What Does Korea–US FTA Mean to Labourers: Increase in Jobs is Ridiculous, in fact Concerns about Restructuring’], *Labor Today*, 28 March 2007.

26 Won-Hyuk Lim, Visiting Researcher at the Brookings Institute, Washington DC, held the view that the proposed US–Korea FTA was not the proper way to solve this problem in the US–Korea relations. See Won-Hyuk Lim, ‘Roh Moo-Hyun Daetongryungee Nixon Daetongryung Dalmattago?’ [‘Does the Korean President Roh Moo-Hyun Resemble Nixon?’], *Pressian News*, 30 August 2006, www.pressian.com/scripts/section/article.asp?article_num=40060830164422&s_menu=%BC%BC%B0%E8.

Cambridge University Press

978-1-107-06376-1 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester, Bryan Mercurio and Lorand Bartels

Excerpt

[More information](#)

USTR, Rob Portman, optimistically stated that the negotiations would be completed by the end of 2006, and the Korean Trade Minister Hyun-Jong Kim also stated that the US–Bahrain FTA – signed after only two rounds of negotiations – provided an ideal model for the US–Korea FTA negotiations.²⁷ Reflecting on this declaration, the US–Korea FTA negotiations were initially scheduled to take place only through to the end of the year, but were then extended until March of the following year.²⁸ Even though an agreement was finally reached between the two countries after several rounds of treacherous negotiations,²⁹ concern about various provisions of the FTA still remains, particularly in Korea.³⁰ Intense demonstrations in opposition to the FTA swept through a number of cities in Korea during the negotiations.

III. Recent trends in FTAs and the US–Korea FTA

A. General development

As of January 2013, over 230 regional trade agreements (RTAs) were in effect,³¹ and more than 60% of world trade volume was attributed to trade under RTAs.³² This indicates that along with the WTO's multilateral trading system, the regional trading system based on numerous bilateral and multilateral FTAs³³ constitutes an integral part of the world trading system today. The number of RTAs has been rapidly increasing since the establishment of the WTO.³⁴ The reason for this increase can be traced to the growing difficulties for countries in reaching agreements in the multilateral trading system of the WTO, which is comprised of as many as 159

27 'Portman Press Release', *supra* note 17. 28 See *supra* note 2.

29 The FTA negotiations between the United States and Korea proceeded expeditiously. When compared to the Korea–Japan FTA, which is in a state of deadlock after many years of discussions, extensive research work, and six rounds of negotiations, the US–Korea FTA was not prepared nearly as well. The author warned in a previous article that if the US–Korea FTA negotiations were to continue at the proposed fast pace without domestic consensus, many problems could arise. See Yong-Shik Lee, 'Korea – USA Free Trade Agreement: Issues and Outlook', (2006) 15 *Korea Forum on International Trade and Business Law* 215 [hereinafter Lee, 'Issues and Outlook']. These problems have indeed occurred, including a widespread civil alliance against the US–Korea FTA and strong opposition manifested in nationwide rallies in Korea.

30 By November 2006, as many as 300 NGOs and labor unions in Korea had formed a civil alliance against the US–Korea FTA, and on November 22, 2006, over 72,000 demonstrators in 13 cities rallied against the FTA. See 'Korea Sees Worst Labor Protests in Years', *Chosun Ilbo*, 23 November 2006 [hereinafter 'Labor Protests'], http://english.chosun.com/site/data/html_dir/2006/11/23/2006112361009.html.

31 See World Trade Organization, List of all RTAs (15 December, 2008), <http://rtais.wto.org/UI/PublicAllRTAList.aspx> [hereinafter WTO RTAs] (listing all GATT/WTO treaties currently in force as of the stated date). To access more comprehensive information about every aspect of RTAs, see generally www.wto.org/english/tratop_e/region_e/region_e.htm.

32 Mitsuo Matsushita, 'Legal Aspects of Free Trade Agreements: in the Context of Article XXIV of the GATT 1994', in Mitsuo Matsushita and Dukgeun Ahn (eds.), *WTO and East Asia: New Perspectives* (Cameron May Publishers, 2004).

33 The number of RTAs was only 27 during the 1970s and the 1980s but increased to 64 in the 1990s and over 100 after 2000, rapidly increasing since the establishment of the WTO. See generally WTO RTAs, *supra* note 31.

34 *Ibid.*

countries.³⁵ The WTO member countries have shown significant differences in their interests and views, resulting in a deadlock in negotiation talks. Effective resolutions of these different interests through the WTO remain very difficult, if not entirely impossible. The stalled negotiations of the Doha Development Agenda evidence this difficulty.³⁶ Accordingly, the current trend of entering into an FTA with other countries in the same region or with countries that share similar interests and views is expected to intensify.³⁷

Following this trend, both the United States and Korea, which had not been actively engaged in bilateral or multilateral regional trading arrangements until the 1990s,³⁸ began to increase efforts to conclude FTAs. Korea started with an FTA with Chile in 2004 and then entered into FTAs with Singapore (2006), European Free Trade Association (EFTA, 2006), Association of Southeast Asian Nations (ASEAN, 2009), India (2009), the European Union (2011), Peru (2011), United States (2012), and Turkey (2013), all of which are currently in effect.³⁹ Korea then completed negotiations on FTAs with Colombia.⁴⁰ Korea is currently engaged in FTA negotiations with Indonesia, China, and Vietnam.⁴¹ Notably, Korea is also promoting regional FTAs including the Korea–China–Japan FTA and Regional Comprehensive Economic Partnership (RCEP), including a wider range of Eastern Asian countries.⁴²

On the other hand, since NAFTA with Mexico and Canada, the United States has entered into FTAs with Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore.⁴³ The United States is also a party to the Trans-Pacific Partnership.⁴⁴ While it has shown interest in

35 See World Trade Organization, 'Members and Observers' (2 March 2013), www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

36 It has been over 11 years since the negotiations began in 2001. See 'World Trade Organization, Ministerial Declaration of 14 November 2001', WT/MIN(01)/DEC/1, 41 *ILM* 746 (2002).

37 See Yong-Shik Lee, 'Foreign Direct Investment and Regional Trade Liberalization: A Viable Answer for Economic Development?' (2005) 39 *Journal of World Trade* 701–702 [hereinafter Lee, 'FDI']; see also Yong-Shik Lee, *Reclaiming Development in the World Trading System* (Cambridge University Press, 2009), p. 141 [hereinafter Lee, *Reclaiming*] (observing that RTAs "have significant effects on international trade because about 90 percent of WTO members, including a number of developing country Members, have signed at least one or more RTAs").

38 The United States made only two FTAs until the 1990s: the NAFTA agreement and a bilateral FTA with Israel, the latter primarily for political purposes.

39 See MOTIE, 'Status of FTA Promotion (In Effect)', available at www.fta.go.kr/new2/ftakorea/ftakorea2010.asp.

40 See MOTIE, 'Status of FTA Promotion (Concluded)', available at www.fta.go.kr/new2/ftakorea/ftakorea2010_b.asp.

41 See MOTIE, 'Status of FTA Promotion (In Progress)', available at www.fta.go.kr/new2/ftakorea/ftakorea2010_c.asp.

42 *Ibid.*

43 Office of the United States Trade Representative, Free Trade Agreements, www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html.

44 *Ibid.*

Cambridge University Press

978-1-107-06376-1 - Bilateral and Regional Trade Agreements: Case Studies

Edited by Simon Lester, Bryan Mercurio and Lorand Bartels

Excerpt

[More information](#)

making an FTA with Japan, the third largest economy in the world, commencement of negotiations has been impeded by disputes over agricultural issues.⁴⁵

B. Social impacts of FTAs

The goals of recent FTAs – particularly those promoted by the United States – go well beyond removal of trade barriers to promote trade in goods and services: they include provisions that are designed to affect a broader range of domestic policies, including enforcement of intellectual property rights, protection of investment activities, establishment of environmental and labor standards, transparency in applications of domestic laws and regulations, and establishment of investment dispute settlement processes outside national court systems. This type of FTA is designed to bring a range of relevant laws and practices of the signatory trading partners in line with those of the United States in order to create a favorable regulatory environment for US businesses.⁴⁶ Provisions of the comprehensive FTA also carry certain social and political preferences, such as environmental and labor standards, which go beyond the realm of traditional trade liberalization.⁴⁷

Thus, the comprehensive FTA has potentially significant consequences not only for trade practices of the signatory countries, but also for their overall economic, cultural, and social policies.⁴⁸ For example, the United States demanded that the

45 Chanlett-Avery, *Issues*, *supra* note 18.

46 By way of example, in the course of lengthy negotiations for the US–Korea FTA, the two countries were engaged in intensive research into relevant statutes and precedents of the other. This research concerned both legal and factual aspects and was needed to get an accurate glimpse of how the agreement would actually operate in each country, mainly because the purpose of the agreement is to adjust respective domestic policies in accordance with the standards set in the US–Korea FTA. Although this adjustment would not be economic integration per se, it still indicates that close policy coordination, one way or another, by the two governments is expected to arise from the agreement. See Jaemin Lee, ‘Minimizing the Aftershocks of the Korea–US FTA: How to Manage Disputes Arising from the Two Countries’ Discrepant Perspectives and Legal Systems’, in *On Korea*, (February 2009) 2 KEI Academic Paper Series 29, 30–33, available at www.keia.org/sites/default/files/publications/APS-JaeminLee.pdf.

47 On 27 March 2007, Congress announced a “new trade policy,” which calls for the USTR to:

- Require countries to adopt, maintain and enforce basic international labor standards in their domestic laws and practices
- not merely to “enforce their own laws.”
- Promote sustainable development and combat global warming by requiring countries to implement and enforce common Multilateral Environmental Agreements, and address illegal logging of mahogany in Peru.
- Re-establish a fair balance between promoting access to medicines in developing countries and protecting pharmaceutical innovation.
- Promote US national security by protecting operations at US ports.
- Ensure that [any] trade agreement accords “no greater rights” to foreign investors in the US than to US investors.

Press Release, Trade Subcommittee Chairman Sander Levin, ‘Rangel and Levin Unveil New Trade Policy for America: Plan Incorporates Changes to Strengthen Pending FTAs and Regain Bipartisan Consensus’ (27 March 2007), available at <http://democrats.waysandmeans.house.gov/press-release/rangel-and-levin-unveil-new-trade-policy-america>.

48 Lee, *Reclaiming*, *supra* note 37, at 151–152.

screen quota in Korea be reduced as a precondition for the initiation of the negotiations of the Korea–US FTA. This quota, in fact, does not restrict the import of foreign movie films but mandates the number of days that Korean movie theaters must show only Korean movies. The reduction in the screen quota would not only make it easier for theatres to show foreign movies, but it would also affect the Korean cultural policy of protecting the minimal commercial viability of Korean movies and arts.⁴⁹ On this issue, opinions about the justification for the screen quota vary among Koreans, and many have argued that the prosperous Korean movie industry no longer requires such protection. At any rate, the Korean government's cultural and social policies, such as the screen quota, which aimed to protect and preserve cultural activities will be challenged under the call for increased market access for foreign exports whenever these policies clash with foreign trade interests, regardless of whether these policies target foreign trade per se.

Another hypothetical example is the Korean universal health care system, which may prove to be an impediment to the operations of foreign for-profit hospitals and insurance companies. This is because of the monopoly the publicly funded system has over primary health care in Korea. If this health care system were to be abolished or reformed in order to create a better business environment for foreign hospitals, insurance companies and pharmaceutical companies, then the Korean health care policy would fundamentally change, as would the way in which health care is provided to the Korean population.⁵⁰ Suspension of the public health authorities' mandatory drug price review and authorization process – or limitation of the price regulation mechanism during the review process⁵¹ – may also be expected to drive up public health insurance premiums to cover the higher cost of foreign drugs. It may then cause difficulty in maintaining the currently favorable premium for low-income families, which has been an important social policy in Korea. Although it is still too early to tell how the FTA with the United States would implicate these important policy areas, these examples do indicate that the promotion of a comprehensive or higher level FTA may lead to fundamental changes in an array of domestic, social, economic, and cultural policies of the signatories. In this respect, there is a possibility

49 It is noteworthy that recently the United Nations sponsored a multilateral convention to recognize the authority of countries to adopt policies to preserve their respective cultural identities, which was accepted almost universally. See *Convention on the Protection and Promotion of Cultural Diversity*, art. 1 para. h, United Nations Educational, Scientific, and Cultural Organization ("UNESCO"), (20 October 2005) UNESCO Doc. No. CLT-2005/Convention Diversité-Cult. Rev.2, available at <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>.

50 The reduction of the screen quota has already been implemented at the request of the United States, but the abolition or amendment of the universal health care coverage is only a hypothetical example. Although it has been suggested that the current pharmaceutical provisions in the draft FTA can have a significant impact on the Korean health care system, the Korean government has not announced any possibility of abolishing or amending the current health care system nor has the United States made any official demand to this effect.

51 *Ibid.*