



# Trade Facts

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## **Free Trade with Korea Summary of the KORUS FTA**

The United States concluded an historic agreement with the Republic of Korea on April 1, 2007. This comprehensive trade agreement will eliminate tariffs and other barriers to trade in goods and services, promote economic growth, and strengthen economic ties between the United States and Korea.

### *A Gateway to Significant Markets*

Korea is a \$1 trillion economy and is the United States' 7th largest goods trading partner. In 2006, U.S. goods exports to Korea were \$32.5 billion, an increase of 16.9 percent from the previous year. In 2005, U.S. foreign direct investment in Korea totaled roughly \$18.8 billion and was concentrated largely in the manufacturing, banking, and wholesale trade sectors. Korea currently enjoys broad access to the U.S. market and the United States is Korea's second largest market, importing 17 percent of Korea's worldwide exported goods.

### *New Market Access for U.S. Consumer and Industrial Products*

- Nearly 95 percent of bilateral trade in consumer and industrial products becomes duty-free within three years of entry into force of the Agreement, with virtually all remaining tariffs eliminated within 10 years.
- Agreement to allow trade in remanufactured goods under the agreement. This will provide significant export and investment opportunities for U.S. firms involved in remanufactured products such as medical equipment, machinery, and auto parts.

### *Increased Access for U.S. Autos*

- The agreement includes a broad range of focused provisions designed to open up Korea's auto market to U.S. cars and ensure that U.S. cars have a fair opportunity to compete in Korea.
- Eliminates the discriminatory aspects of Korea's Special Consumption and Annual Vehicle Taxes. In addition, commits the Korean government not to impose any new engine displacement taxes and to maintain non-discriminatory application of those taxes.
- Korea agrees to address specific auto non-tariff barriers to ensure they do not impede the market access of U.S. autos, and to create an Autos Working Group to serve as an early warning system to address regulatory issues that may develop in the future.

- Contains innovative expedited dispute settlement process for auto-related measures that violate the FTA, with a full snapback of MFN car tariffs in the case of a violation.
- Establishes an Autos Working Group to address regulatory issues that may develop in the future. Korea also agrees not to adopt technical regulations that create unnecessary barriers to trade, and to cooperate to harmonize standards.

### ***Expanded Markets for U.S. Farmers and Ranchers***

- More than half (\$1.6 billion) of current U.S. farm exports to Korea will become duty-free immediately, including wheat, feed corn, soybeans for crushing, hides and skins, and cotton, plus a broad range of high value agricultural products such as almonds, pistachios, bourbon whiskey, wine, raisins, grape juice, orange juice, fresh cherries, frozen french fries, frozen orange juice concentrate, and pet food.
- U.S. farm products benefiting from expanded market opportunities with two-year tariff phase-outs include avocados, lemons, dried prunes, and sunflower seeds.
- U.S. farm products benefiting from expanded market opportunities with five-year tariff phase-outs include food preparations, chocolate and chocolate confectionary, sweet corn, sauces and preparations, other fodder and forage (alfalfa), breads and pastry, grapefruit, and dried mushrooms.
- Other U.S. farm products that will benefit from expanded market access opportunities through tariff rate quotas include skim and whole milk powder, whey for food use, cheese, dextrans and modified starches, barley, popcorn, and soybeans for food use.
- Market access was also expanded for beef and pork products, pears, apples, grapes and oranges.

### ***Textiles and Apparel – Promoting Cooperation and Benefits***

- The agreement adopts the “yarn forward” rule, meaning that, generally, apparel using yarn and fabric from the United States and South Korea qualifies for preferential tariff treatment.
- The agreement provides reciprocal duty-free access immediately for most textile and apparel goods.
- The agreement contains strict customs enforcement provisions. U.S. and Korean customs authorities may conduct unannounced site visits to Korean producers and the United States is authorized to undertake a variety of enforcement actions (up to and including denying entry for suspect goods).
- The agreement contains a special textile safeguard, allowing the United States to impose tariffs on certain goods should injury occur due to import surges.

- As in past free trade agreements, there is a provision to ensure visible linings that originate from the United States or Korea. The agreement contains mechanisms that allow the Parties to modify the rules of origin to address the availability of fibers, yarns, and fabrics.

### ***Important New Protections for U.S. Investors***

- Establishes a stable legal framework for U.S. investors operating in Korea. All forms of investment will be protected under the agreement, including enterprises, debt, concessions and similar contracts, and intellectual property. With very few exceptions, U.S. investors will be treated as well as Korean investors (or investors of any other country) in the establishment, acquisition, and operation of investments in Korea.
- Pursuant to the Trade Promotion Authority (TPA) statute, the agreement draws from U.S. legal principles and practices to provide U.S. investors in Korea with substantive and procedural protections that foreign investors currently enjoy under the U.S. legal system. These include due process protections and the right to receive fair market value for property in the event of an expropriation.
- The investor protections are backed by a transparent, binding international arbitration mechanism, under which investors may, at their own initiative, bring claims against a government for an alleged breach of the chapter. Submissions to investor-state arbitral tribunals will be made public, and hearings will generally be open to the public. Tribunals will also be authorized to accept *amicus* submissions from non-disputing parties.

### ***Open Services Markets***

- Korea vastly improved upon its WTO commitments in services, providing meaningful market access commitments that extend across virtually all major service sectors and include services supplied both cross-border (such as through electronic means) as well as through a commercial presence.
- Korea's commitments provide U.S. service suppliers with new opportunities and greater assurance of their rights and privileges in the robust Korean market. Significant progress was made in the area of express delivery services, where Korea provided greater and more secure access to international delivery services and charted a course for future reform on domestic services.
- Korea also made great strides on legal services, opening for the first time to foreign legal consulting services and committing to phase in additional liberalization that will permit foreign lawyers to more freely associate with Korean lawyers and offer a broader range of services. Similar steps were taken for accounting services.
- Korea also provided meaningful commitments in the areas of health care and education services, guaranteeing that current health care reforms in special economic zones will be maintained and extending new market access commitments in the areas of higher education and distance adult education.

- Other areas where Korea offered improved access include research and development services, services incidental to mining, maintenance and repair of equipment, and environmental services.

### ***Improved Financial Services***

- Under the agreement, the U.S. financial institutions:
  - have full rights to establish or acquire financial institutions in Korea to supply a complete range of financial services;
  - may establish branches of U.S. banks, insurance companies, and asset managers; and
  - have rights to supply cross-border a specified list of financial services, including portfolio management services for investment funds in Korea.
- Korea committed to ensure regulatory reforms in the financial services sector, such as increasing the allowance of foreign currency reserves, bancassurance reform, more regularized and transparent regulatory procedures, adoption of a negative list approach to financial sector regulation, regional integration of data processing, and leveling the playing field between private insurers and Korea Post and cooperatives selling insurance services.

### ***A more open broadcast market for U.S. audio-visual products***

- Improved market access concerning broadcasting and audiovisual services, including a commitment to phase-in over three years 100 percent foreign ownership of program providers for U.S. firms that establish a Korean subsidiary.
- Commitment to lock in all other content requirements at the least restrictive level allowed under current law, including the motion picture screen quota.
- Commitment to decrease Korean TV content quotas for key audiovisual products (film and animation).
- Commitment to allow U.S. controlled companies to invest up to 100 percent in Korean broadcast program providers (channel operators) after two years.
- Commitment to permit U.S. investment in IPTV and to bind Korean content quotas in the platform.

### ***An Open and Competitive Telecommunications Market***

- The agreement includes a commitment by Korea to permit U.S. companies to own up to 100 percent of an operation in Korea.
- It also ensures U.S. operators cost-based access to the services and facilities of dominant Korean phone companies, including their submarine cable stations, facilitating U.S. companies' ability to build competing networks to serve customers in Korea.

- The FTA also includes groundbreaking safeguards on restrictions that regulators can impose on operators' technology choice, particularly in wireless technologies, where U.S. service and equipment suppliers have strong competitive advantages.

### ***E-Commerce – Free Trade in the Digital Age***

- Agreed to non-discriminatory and duty-free treatment of all digital products (e.g., software, audio-visual products, etc.), whether imported in physical form or over the Internet.
- Agreed to principles ensuring consumers' reasonable access to the Internet for electronic commerce.
- Agreed to commitments facilitating the use of electronic authentication in their respective markets.

### ***Pharmaceuticals and Medical Devices: A Shared Commitment On Access to Innovative Medicines***

- Agreement on common principles on facilitating high-quality health care and continued improvements in public health for nationals.
- Commitment to increase access to innovative products, including through ensuring the fair, reasonable, and non-discriminatory treatment for pharmaceutical products and medical devices.
- Commitments on transparency in the pricing and reimbursement process for pharmaceutical products and medical devices.
- Agreement to adopt and maintain measures to prohibit improper inducements by pharmaceutical products and medical device manufacturers and to enforce such measures.
- Agreement to establish a Medicines and Medical Devices Working Group that will provide for continued dialogue between the United States and Korea on emerging health care policy issues.
- Agreement by Korea to establish and maintain an independent body that reviews recommendations or determinations regarding the pricing and reimbursement of pharmaceutical products and medical devices.

### ***State-of-the-Art Protection for U.S. Trademarks***

- Provides trademark protection for sound and scent marks, as well as certification marks.
- Requires a system to resolve disputes about trademarks used in Internet domain names, which is important to prevent "cyber-squatting" with respect to high-value domain names.
- Applies principle of "first-in-time, first-in-right" to trademarks and geographical indications, so that the first person who acquires a right to a trademark or geographical indication is the person who has the right to use it.

- Provides for an on-line system for the registration and maintenance of trademarks, as well as a searchable database and requires transparent procedures for the registration of trademarks, including geographical indications.
- Prevents requirements for license recordation in order to establish the validity of that license.

### ***Protection for Copyrighted Works in a Digital Economy***

- Protects music, videos, software, and text from widespread unauthorized sharing via the Internet by giving copyright owners the ability to maintain rights over temporary copies of their works.
- Provides extended terms of protection (e.g., life of the author plus seventy years) for copyrighted works, including phonograms, consistent with emerging international standards.
- Establishes strong anti-circumvention provisions to prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.
- Requires that government agencies use only legitimate computer software, setting a positive example for private users.
- Requires rules to prohibit the unauthorized receipt or distribution of encrypted satellite signals, to prevent piracy of satellite television programming.
- Provides rules for the liability of Internet Service Providers (ISPs) for copyright infringement, reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the infringement of copyright.

### ***Patents & Regulated products***

- Provides for the extension of patent terms to compensate for delays in granting the original patent.
- Permits inventors to publish their inventions in journals and still have 12-months before their own publication will prevent patenting that invention.
- Protects against arbitrary revocation of patents and assures protection for newly developed plant varieties and animals.
- Clarifies that test data submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of five years for pharmaceuticals and 10 years for agricultural chemicals.
- Requires measures to prevent the marketing of pharmaceutical products that infringe patents, and to provide notice when the validity of a pharmaceutical patent is to be challenged.

### ***Tough Penalties for Piracy and Counterfeiting***

- Criminalizes end-user piracy, providing strong deterrence against copyright piracy and trademark counterfeiting.
- Requires parties to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them.
- Provides for customs enforcement against goods-in-transit, to deter violators from using ports or free trade zones to traffic in pirated products.
- Streamlines customs procedures to increase efficiency of enforcement.
- Permits customs officials and prosecutors to bring an IPR enforcement action without having to wait for a formal complaint from the right holders, providing for more effective enforcement.

### ***Protection and Promotion of Worker Rights***

- Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor rights. The agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment between the United States and Korea.
- Requires Korea and the United States to effectively enforce their own domestic labor laws, and this obligation is enforceable through the agreement's dispute settlement procedures.
- Contains procedural guarantees that ensure that workers have access to fair, equitable, and transparent proceeding for enforcement of labor rights.
- Establishes a process for further cooperation on labor matters, including possible joint cooperative activities to advance common objectives and work on labor law and practice in the context of the ILO Declaration on Fundamental Principles and Rights at Work.

### ***Commitments and Cooperation to Protect the Environment***

- Requires each party to effectively enforce their own domestic environmental laws, and this obligation is enforceable through the agreement's dispute settlement procedures.
- Commits each party to establish high levels of environmental protection and to strive to ensure that it does not weaken or reduce environmental laws to attract trade and investment.
- Promotes a comprehensive approach to environmental protection. Procedural guarantees that ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws are complemented by provisions that promote voluntary, market-based mechanisms to protect the environment.

- Highlights the importance of public participation in the successful implementation of the Agreement and requires a public submissions process to ensure that views of civil society are appropriately considered.
- Builds on the history of collaboration and cooperation between the United States and Korea on bilateral, regional, and multilateral environmental matters under a parallel Environmental Cooperation Agreement.

### ***Expanded Access to Government Procurement Contracts***

- Grants U.S. suppliers rights to bid on more contracts to supply Korean government ministries, agencies, and other central government entities than are covered under the WTO Agreement on Government Procurement (GPA), to which both countries are a party.
- Covers the purchases of more than 50 Korean central government entities, nine more than are covered under the GPA. The United States added one more entity than it covers under the GPA (the Social Security Administration).
- Expands the procurements to which U.S. suppliers will be ensured non-discriminatory access by reducing by nearly half the threshold applied by the GPA. Procurements above the threshold are opened under the FTA. Low-value procurements are excluded from the FTA.
- Builds and expands on the WTO Agreement on Government Procurement by incorporating important improvements that reflect the current practices in procurement, such as:
  - Reducing the tendering period where procurement notices and other procurement information are made available electronically;
  - Reducing the tendering period for commercial goods and services (off-the-shelf goods and services); and
  - Encouraging use of electronic procurement.
- The FTA provides for a working group on government procurement to take up any issues, in particular, those related to information technology.

### ***Increased Transparency***

- Includes strong transparency obligations, including commitments that the national governments will publish proposed regulations in advance, allow a reasonable opportunity to comment on the proposed regulations, address significant substantive comments received, and publish final regulations in an official journal of national circulation.
- Additional transparency provisions apply in the areas of customs administration, pharmaceutical reimbursement, technical regulations, services, financial services, and telecommunications.
- Requires transparency in the operation of the FTA. The agreement's dispute settlement mechanisms provide for open public hearings, public access to documents, and the opportunity

for third parties to submit views.

### ***Strengthened Protection against Technical Barriers to Trade***

- Strengthens disciplines to promote transparency in the way governments develop and apply technical regulations and related conformity assessment procedures (e.g., testing and certification). For example, Korea will be obliged to:
  - provide national treatment to U.S. persons for participation in the development of standards, technical regulations, and conformity assessment procedures;
  - publish criteria it uses to recognize conformity assessment bodies;
  - explain objectives and how proposed regulations will address those objectives when regulations are notified for comment and again when they are adopted as final;
  - make available to the public all comments received on proposals;
  - notify proposals for comment, even if they are based on international standards;
  - allow 60 days for written comments on proposals;
  - publish notice of proposed and final regulations in a single official journal; and
  - when publishing a final regulation, include responses to significant comments received along with an explanation of the revisions made to the proposal.
- Requires Korea to make binding the WTO TBT Committee Decision to promote reliance on international standards that are consensus-based.
- In areas where Korea recognizes non-governmental bodies to perform testing and certification for compliance with its technical regulations, commitment to provide national treatment to U.S. conformity assessment bodies and otherwise for Korea's government authorities to provide national treatment when testing and certifying U.S. products.
- Establishes a bilateral committee to strengthen FTA and WTO commitments on TBT. This committee will monitor implementation, promote cooperation, and facilitate discussion of such topics as good regulatory practice and alternative regulatory approaches to facilitate the cross-border acceptance of conformity assessment results.

### ***Customs Procedures and Rules of Origin***

- Agreement on landmark, cutting-edge commitments on customs administration, rules of origin, and origin procedures that will ensure that the U.S. and Korean private sector stakeholders lock-in and maximize the benefits of the FTA.
- Agreement on transparency and publication commitments that will ensure our respective private

sectors have access to each others customs laws and regulations, and have an opportunity to comment on proposed changes to customs laws/regulations before they are implemented.

- Agreement to streamlined and trade facilitative customs procedures for the timely and efficient release of goods that will facilitate the "just-in-time" supply chain logistics systems utilized by each party's private sector. The United States and Korea also agreed to allow for advance electronic submission of manifests and trade data to ensure that goods are cleared with a minimum of delays; in many cases goods can clear customs before they physically arrive at the importing party's port.
- Agreement to maximize the use of automation and electronic clearance to expedite the release of goods.
- Agreement to establish expedited customs procedures for express shipments through the electronic submission of manifest and the release of express shipments before they physically arrive. These commitments reflect the importance of the express shipment industry to the functioning of our respective industrial and service sectors.
- Agreement to allow importers, exporters and producers the ability to obtain binding advance rulings from each side's respective customs authorities on matters such as tariff classification, whether a good qualifies for preferential tariff treatment and country of origin marking, among a list of items. This provision will provide unparalleled transparency, predictability, and certainty to bilateral trade between the United States and Korea.
- Agreed to trend-setting origin procedure commitments governing how importers will make claims for preferential tariff treatment. These trade facilitative customs procedures rely on importers to make claims for preferential tariff treatment, while allowing importers, exporters and producers the flexibility of issuing certifications that need not be in a specific, stylized format. The United States and Korea also agreed to allow importers to make claims based on the importer's knowledge that the good is originating, which reflects the fact that importers today have intimate knowledge of the production process, and the source of the inputs/components from which comprise their goods, and therefore possess the necessary information to make a claim for preferential treatment.
- Agreement to clear and comprehensive product-specific rules to determine which products can benefit from the preferential tariff treatment of the FTA.