

ISSUE BRIEF

No. 4838 | APRIL 13, 2018

Analyzing the Renegotiated U.S.–Korea Free Trade Agreement (KORUS)

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On March 28, 2018, Ambassador Robert Lighthizer and Republic of Korea Minister for Trade Hyun Chong Kim announced that the two countries had reached an agreement in principle on the renegotiation of the U.S.–Korea Free Trade Agreement (KORUS). The renegotiation covered such areas as automobiles, customs processes, and investment, as well as the recently imposed U.S. steel and aluminum tariffs.

The Trump Administration is hailing the renegotiation as a “historic” development in U.S. trade policy. While praise may be warranted in some crucial areas, the renegotiation achieved no major changes. In fact, it advanced several Obama Administration-era policies that do nothing to expand the freedom to trade for Americans.

As the U.S. moves forward with finalizing KORUS, and works to advance other free trade agreements (FTAs), the focus should be to simply lower tariffs and non-tariff barriers to trade and investment. This priority should hold true for the treatment of U.S. exports and investment abroad as well as for the way the U.S. treats imports and investment from our partners.

The Negotiating Process

On July 12, 2017, Ambassador Lighthizer initiated the process to review KORUS by calling for a

meeting of the Joint Committee, established under Article 22.2 of the agreement. The committee “supervises the implementation of the Agreement and...seeks to resolve disputes concerning the interpretation and application of KORUS.” In addition to these functions, “the joint committee may consider amendments to KORUS or make modifications to the commitments therein.”¹

By using the Joint Committee, the White House was able to circumvent Trade Promotion Authority, precluding the need for Congress to vote to approve the new agreement. While the majority of the updates to KORUS do not necessitate changes to the U.S.–Korea Free Trade Agreement Implementation Act passed by Congress in 2011, extending the chicken tax for an additional 20 years may require congressional approval. Section 201(d)(3) of the act dictates that the 25 percent tariff will be fully phased out in 2021 and this section would need to be updated for the change to go into effect.²

The United States Trade Representative (USTR) is required to conduct consultations with Congress following the conclusion of KORUS renegotiations under the Joint Committee, but a formal vote will not take place.

Developments Advancing Free Trade

President Trump’s negotiating team achieved beneficial changes to KORUS on a number of regulatory and implementation discrepancies, especially regarding automobile exports. The first goal is simple: Making it easier for U.S. companies to export to South Korea. As the two countries finalize the new KORUS, U.S. negotiators should make the second goal equally simple: Ensuring that

This paper, in its entirety, can be found at
<http://report.heritage.org/ib4838>

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American businesses and consumers can import free of extra taxes.

Customs Processes. The USTR's fact sheet states that "Korea will address long-standing concerns with onerous and costly verification procedures...for conducting verification of origin of exports."³ This is a common-sense update that both countries should continue to monitor. In fact, the USTR also noted the creation of a working group to ensure ease of customs procedures. This working group should monitor both Korean and American customs procedures.

Automobile Parts Exports. South Korea also agreed to ease standards for U.S. automotive parts exports by "[recognizing] U.S. standards for auto parts necessary to service U.S. vehicles, and [reducing] labeling burdens for parts."⁴ The latter update will be especially helpful for automotive manufacturers as they are currently required to label each individual part rather than just the box for the parts.

Automobile Testing. U.S. negotiators achieved an agreement with South Korea allowing automobiles that have already undergone emission standard testing in the U.S. to bypass "additional or duplicative testing for the Korean market."⁵ This change, coupled with the other efforts to ease standards for U.S. automotive exports to South Korea, will benefit domestic manufacturers looking to increase their presence in the Korean market.

Developments with Little Impact on Advancing Free Trade

The following changes to KORUS may sound effective, but in practice they are either simply symbolic or serve to advance Obama Administration policies

on emission standards. The Trump Administration should focus on achieving objectives that will truly advance trade opportunities for American businesses and consumers rather than polluting agreements with liberal policies.

Automobile Exports. In 2010, President Obama reached an agreement allowing 25,000 automobiles per manufacturer per year to be exported to South Korea without meeting stricter safety standards.⁶ The Trump Administration worked with South Korea to double the number of exports per manufacturer per year under this exemption. However, the International Centre for Trade and Sustainable Development reported that "the existing threshold has not been met for six years and Ford and General Motors shipped less than 10,000 units apiece to Korea under the allowance last year."⁷ The increase in exports allowed sounds like a beneficial policy for American manufacturers, but it is unlikely to impact the actual volume of U.S. automobile exports to Korea.

Corporate Average Fuel Economy (CAFE) Standards. The USTR's fact sheet lauds the Trump Administration's work to "expand the amount of 'eco-credits' available to help meet fuel economy and greenhouse gas requirements under the regulations currently in force" in Korea. To some extent, these efforts may lower burdens for American automobile manufacturers, but they fail to address the larger issue with fuel economy standards. In April 2018, the U.S. Environmental Protection Agency Administrator Scott Pruitt announced:

The Obama Administration's determination was wrong.

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1. Executive Office of the President, Office of the United States Trade Representative, "USTR Calls a Special Session Under the U.S.-Korea Free Trade Agreement," July 2017, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/july/ustr-calls-special-session-under-us> (accessed April 10, 2018).
 2. United States-Korea Free Trade Agreement Implementation Act of 2011, Public Law 112-41.
 3. Executive Office of the President, Office of the United States Trade Representative, "New U.S. Trade Policy and National Security Outcomes with the Republic of Korea," March 2018, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/new-us-trade-policy-and-national> (accessed April 10, 2018).
 4. Ibid.
 5. Ibid.
 6. Executive Office of the President, Office of the United States Trade Representative, "Letter from Ron Kirk to Minister Kim," February 2011, https://ustr.gov/sites/default/files/uploads/Countries%20Regions/africa/agreements/korus/2011_02_10_Kirk-Kim%20Letter.pdf (accessed April 10, 2018).
 7. International Centre for Trade and Sustainable Development, "South Korea, U.S. Clinch Agreement in Principle to Update KORUS Trade Pact," *Bridges*, Vol. 22, No. 11 (March 29, 2018), <https://www.ictsd.org/bridges-news/bridges/news/south-korea-us-clinch-agreement-in-principle-to-update-korus-trade-pact> (accessed April 10, 2018).
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Obama's EPA cut the Midterm Evaluation process short with politically charged expediency, made assumptions about the standards that didn't comply with reality, and set standards too high.⁸

These residual Obama Administration standards remain both costly and ineffective and Congress and the Administration would do well to avoid ushering them along in future trade agreements.

Disappointing Outcomes

Contrary to some of the positive changes to KORUS, the Trump Administration allowed itself to become even more entrenched in the special interest swamp of Washington by advancing tariffs and non-tariff barriers on steel, aluminum, and trucks. These barriers only serve to benefit the politically connected steel, aluminum, and truck companies that spend hundreds of thousands of dollars a year lobbying the government for "protection."

232 Tariffs. In March, President Trump announced tariffs on steel and aluminum under Section 232 of the Trade Expansion Act of 1962. South Korea, like other U.S. allies, fell victim to these broad tariffs imposed under the guise of national security. The exemption from the initial tariffs granted to the European Union and six countries—including South Korea—is set to expire on May 1, 2018.⁹ To avoid the tariffs, South Korea was forced to accept an import quota on steel products equal to 70 percent of its average steel imports for the past three years. This quota is a voluntary export restraint, limiting the amount of Korean steel that American businesses can import to manufacture goods. South Korea resorted to accepting the 10 percent tariffs on aluminum.¹⁰

Truck Tariffs. The Trump Administration is touting an extension of the protectionist 25 percent tariffs on imported trucks, known as the "chicken tax."¹¹ Contrary to the Administration's claim, the chicken tax has spelled trouble for Americans since its implementation in 1963. This tax on truck imports insulates domestic truck manufacturers from being forced to compete with the global market, while also limiting choices for Americans when purchasing a truck. A recent editorial nicely sums up the issue:

[The tax] explains why, even though trucks are the most profitable and largest-selling vehicle category, Americans have only six brands to choose from—and 30-plus brands of sedan. It explains why the VW Tanoak, a prototype pickup that wowed visitors at the New York Auto Show [last month], won't be coming to the U.S., ever.¹²

Key Trade Areas with No Significant Changes

The KORUS renegotiation did not touch several key areas, which can be separated into two categories:

1. Where further liberalization of trade is needed, and
2. Where initial U.S. proposals would have damaged the existing agreement.

The agriculture and energy sectors, as well as Section 201, fall into the former category, while rules of origin and dispute settlement fall into the latter category.

8. Timothy Cama, "Trump Admin Says Obama EPA Car Rules Should be Eased," *The Hill*, April 2, 2018, <http://thehill.com/policy/energy-environment/381292-trump-admin-says-obama-epa-car-rules-should-be-weakened> (accessed April 10, 2018).

9. The White House, "Presidential Proclamation Adjusting Imports of Steel into the United States," March 2018, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-2/> (accessed April 10, 2018), and The White House, "Presidential Proclamation Adjusting Imports of Aluminum into the United States," March 2018, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states-2/> (accessed April 10, 2018).

10. Jenny Leonard, "U.S., South Korea Reach KORUS Agreement in Principle; Announcement Expected This Week," *Inside Trade*, March 26, 2018, <https://insidetrade.com/daily-news/us-south-korea-reach-korus-agreement-principle-announcement-expected-week> (accessed April 10, 2018).

11. In 1963, President Lyndon B. Johnson implemented a 25 percent tariff on all light trucks in retaliation for an import tariff on chicken imposed by the European Economic Commission. Johnson increased tariffs on potato starch, dextrin, brandy, and light trucks, four of Europe's major exports to the U.S. While the other tariffs were eventually removed, the tariff on light trucks remains in effect and became known as the "chicken tax." See Tori Whiting, "TPP to Roast the Chicken Tax...Someday," *The Daily Signal*, November 30, 2015, <https://www.dailysignal.com/2015/11/30/tpp-to-roast-the-chicken-taxsomeday/>.

12. Holman W. Jenkins Jr., "Your Pickup Truck Takes You for a Ride: Trump's 'Chicken Tax' Extension Makes Suckers Out of U.S. Truck Buyers," *The Wall Street Journal*, March 30, 2018, <https://www.wsj.com/articles/your-pickup-truck-takes-you-for-a-ride-1522441887> (accessed April 10, 2018).

Agriculture. The USTR's 2018 National Trade Estimate includes analysis on KORUS. The USTR observed: "In 2017, U.S. agricultural products good exports totaled \$6.9 billion. While some U.S. agriculture exports to South Korea have increased since the FTA came into effect, compared to pre-FTA levels, overall U.S. agriculture goods exports to South Korea are down by 1.1 percent."¹³ This observation aside, the U.S. did not secure additional provisions to expand agriculture exports to Korea. Reducing trade barriers, not expanding domestic protectionist tariffs, is the way to achieve advancements for U.S. farmers and ranchers.

Energy. Following the announcement of the agreement in principle of the new KORUS, neither the U.S. nor Korea mentioned advancement on energy trade issues during the renegotiation. Nicholas Loris, a research fellow at The Heritage Foundation, observed that "South Korea is even more dependent on foreign sources than Japan, importing 98 percent of its needed energy supplies and is the second-biggest importer of liquefied natural gas, behind Japan."¹⁴ The U.S. began exporting liquefied natural gas (LNG) to South Korea last year, making this a critical missed opportunity for negotiators to further reduce barriers. In a 2016 report, Heritage Foundation analysts called for the U.S. and South Korea to "develop a forward-looking bilateral strategic energy trade initiative to ensure that no artificial barriers impede the development of a durable energy partnership."¹⁵

Following the inaction on energy in the KORUS renegotiation, Congress should reduce the time it takes for LNG to reach the market by reforming

environmental review and permitting processes, thereby strengthening the energy trade relationship between the U.S. and South Korea.¹⁶

Section 201. On January 23, President Trump signed two proclamations imposing tariffs and quotas on imports of solar cells and modules, large residential washers, and washer parts.

- Solar cells and modules have a tariff of 30 percent after the first 2.5 gigawatts.
- Washers have a tariff of 20 percent for the first 1.2 million units, and then at 50 percent for all additional imports.
- Washer parts have a tariff of 50 percent after 50,000 units.¹⁷

In the case of washers and washer parts, the tariffs were primarily intended to harm Samsung and LG, two South Korean manufacturers. The U.S. and South Korea have not announced changes to or elimination of the tariffs for South Korea following the KORUS renegotiation, a disappointing outcome given the recommitment to strong bilateral trade ties.

Investor-State Dispute Settlement. Despite the Administration criticizing investor-state dispute settlement (ISDS) chapters in free trade agreements, no significant changes were made to the process in KORUS. The U.S. and South Korea did, however, "agree to clarify rules aimed at ensuring 'frivolous claims are deterred' and to prevent parallel claims from being filed."¹⁸ Heritage Foundation

13. Executive Office of the President, Office of the United States Trade Representative, "2018 National Trade Estimate Report on Foreign Trade Barriers," March 2018, <https://ustr.gov/sites/default/files/files/Press/Reports/2018%20National%20Trade%20Estimate%20Report.pdf> (accessed April 10, 2018).

14. Nicolas Loris and Tom Wilson, "Trump Can Use Liquefied Natural Gas to Bolster Key Alliances. Here's How," Heritage Foundation *Commentary*, December 13, 2017, <https://www.heritage.org/energy-economics/commentary/trump-can-use-liquefied-natural-gas-bolster-key-alliances-heres-how>.

15. Ambassador Terry Miller and Anthony B. Kim, "Three Promising Areas for Greater U.S.–South Korean Economic Cooperation," Heritage Foundation *Issue Brief* No. 4605, August 22, 2016, <https://www.heritage.org/global-politics/report/three-promising-areas-greater-us-south-korean-economic-cooperation>.

16. Nicolas D. Loris, "Right Reforms for Accessing U.S. Outer Continental Shelf Resources and Unleashing U.S. Energy Production," Heritage Foundation *Background* No. 3297, March 26, 2018, <https://www.heritage.org/energy-economics/report/right-reforms-accessing-us-outer-continental-shelf-resources-and-unleashing>.

17. Tori K. Whiting, "5 Ways Trump's New Tariffs Will Hurt Americans," Heritage Foundation *Commentary*, January 29, 2018, <https://www.heritage.org/taxes/commentary/5-ways-trumps-new-tariffs-will-hurt-americans>.

18. Jack Caporal, "KORUS Currency Deal Will Be Non-Binding, Lays 'Groundwork' for NAFTA," Inside Trade, March 29, 2018, <https://insidetrade.com/inside-us-trade/korus-currency-deal-will-be-non-binding-lays-groundwork-nafta> (accessed April 11, 2018).

analysts have long supported strong ISDS chapters in free trade agreements. James Roberts, a research fellow at The Heritage Foundation, emphasizes that “ISDS protects Americans by enshrining the principles of U.S. rule of law in each investor dispute, extending to those investors essential private property protections under U.S. law that include fairness and due process, compensation for foreign government seizure of property, and non-discrimination.”¹⁹ The Administration was right to uphold ISDS in the agreement and should maintain this policy in future trade agreements.

Rules of Origin. The Trump Administration was reportedly pursuing stronger rules of origin, particularly on steel and automotive products, within the KORUS renegotiation. The goal was to prevent Chinese trans-shipment of steel products and to increase the content requirement for automobiles.²⁰ However, no such changes have been announced by the U.S. or South Korea. Vehicles are currently required to have 35 percent KORUS content to be traded freely between the two countries.²¹

One of the best pro-growth policies for manufacturers in America is ensuring that inputs are free of extra taxes and are available at the most competitive prices. This allows U.S. manufacturers to produce competitively priced, high quality finished goods that they can export around world.

Conclusion

By reaching a renegotiated KORUS, the Trump Administration has achieved an admirable in principle but flawed in practice victory. As the details of the agreement are finalized, U.S. negotiators should make their primary goal the increase of freedom for Americans to buy *and* sell around the world with the fewest barriers possible.

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19. James Roberts, “NAFTA’s Investor Dispute (ISDS) Provisions Are Good for Americans,” Heritage Foundation *Issue Brief* No. 4772, October 13, 2017, <https://www.heritage.org/economic-and-property-rights/report/naftas-investor-dispute-isds-provisions-are-good-americans>.

20. Isabelle Hoagland and Jenny Leonard, “KORUS Talks Held in DC; Section 232 Process Discussions Expected,” Inside Trade, March 15, 2018, <https://insidetrade.com/inside-us-trade/korus-talks-held-dc-section-232-process-discussions-expected> (accessed April 10, 2018).

21. Ibid.