
New Frontier in Asia US Korea Trade Agreement

In our international community, one of the highlights of Spring 2007 was watching the negotiation of United States - Republic of Korea Free Trade Agreement. It is so new that there is no official copy of the proposed agreement, as of this day of writing, on May 22, 2007. The final proposed agreement (“Proposed Agreement”) is being drafted by the United States Trade Representative and its counterpart in the Republic of Korea (“Korea”). Once available, it will be submitted to both countries’ legislative body for its approval.

In the United States of America (“USA or US”), both Congress and Senate have to approve the Proposed Agreement in its entirety prior to July 1, 2007; when the US President’s Trade Promotion Authority (“TPA” or “Fast Track Authority”) will expire. According to the current TPA, a request for US bilateral trade agreement approval under the Fast Track Authority must be made 90 days prior to the expiration of the authority. This US imposed deadline, the midnight of March 31, was well known; and, it motivated both parties to expedite the negotiation process.

After eight successful rounds of the negotiation, a historical U.S. Korea Free Trade Agreement (“KORUS FTA”) framework was completed as of April 1, 2007. The following topics are covered in the Proposed Agreement.

1. New Market Access for U.S. Consumer and Industrial Products;
2. Increased Access for U.S. Autos;
3. Expanded Markets for U.S. Farmers and Ranchers;
4. Textiles and Apparel - Promoting Cooperation and Benefits;
5. Important New Protections for U.S. Investors;
6. Open Services Markets;
7. Improved Financial Services;
8. A more open broadcast market for U.S. audio-visual products;
9. An open Competitive Telecommunications Market;
10. E-Commerce - Free Trade in the Digital Age;
11. Pharmaceuticals and Medical Devices; A Shared Commitment on Access to Innovative Medicines;
12. State-of-Art Protection for U.S. Trademarks;
13. Protection for Copyrighted Works in a Digital Economy;
14. Patents & Regulated products;
15. Tough Penalties for Piracy and Counterfeiting;

16. Protection and Promotion of Worker Rights;
17. Commitments and Cooperation to Protect the Environment;
18. Expanded Access to Government Procurement Contacts;
19. Increased Transparency;
20. Strengthened Protection against Technical Barriers to Trade; and,
21. Customs Procedures and Rules of Origin.

As it is true with all trade agreements, a main purpose of the KORUS FTA is to increase the trade between US and Korea, and remove those apparent trade barriers. It is an opportunity for many corporations in both countries to review the existing market and consider a potential new or expanded market within US and Korea.

As for the legal services community, there will be a three step approach to open the Korean legal market in Five (5) years. Once KORUS FTA becomes effective, a licensed US attorney with three (3) or more years of legal experience can be licensed as “Foreign Legal Consultant” in Korea, and a qualified US firm can establish branches in Korea, to handle U.S. and international matters. In 2009, a U.S. firm may co-counsel with Korean law firms to represent individual cases and share the legal fees. Finally, starting in 2012, a U.S. law firm can enter into a partnership with Korean law firms and be able to hire Korean licensed lawyers, and compete in the fully open Korean legal services market.

It’s an example of opening of a long awaited professional services industry. However, one should be mindful that a free trade agreement itself does not open and remove all the industrial trade barriers. If there exists a license or regulatory compliance requirement in the US industry, for consumer protection or any other public benefit reason, one should also expect the host country will have a similar regulatory restriction. If the industry is so new and the rest of world hasn’t caught up with the US standard, one should expect that the host country may impose its own regulatory requirement.

With the annual US-Korea trade volume in excess of seventy two (72) billion US dollars in 2005, the KORUS FTA is the most significant US trade agreement since the North American Free Trade Agreement (“NAFTA”). It is also a significant bench mark for US government in Asia as it will visit the free trade issues with other nations in the region. One can only speculate the effect this will have on US industries, and on US North Korea relationship. Will the separation of commercial issue from human rights issue succeed in the Korean Peninsula? Will the Korean discount in Global equity market disappear?

When the legislative bodies approve KORUS FTA, one should anticipate a sustaining increase in commercial activities by and between US and Korea. This also will afford a new frontier for US law firms to conquer in the Asia. Will you be ready?

