

# Shifting Strategic & Diplomatic Relations with the Koreans

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# **KOREA-U.S. ECONOMIC RELATIONSHIP WITH OR WITHOUT AN FTA: KORUS FTA AS A BETTER ALTERNATIVE TO MANAGE THE BILATERAL ECONOMIC RELATIONSHIP**

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## I. Introduction

On 1 April 2007 Korea and the United States finally completed their year-long negotiations to conclude the Korea- U.S. Free Trade Agreement (KORUS FTA), which was then signed by the representatives of the two states on 30 June 2007 in Washington, D.C. (MOFAT 2007a; 2007b). The agreement is currently waiting for ratification by the legislative bodies of the two countries. The ratification process has been delayed for more than a year, and in the middle of the U.S. election year the general perception seems to be that the ratification probably will not happen in the immediate future. Nonetheless, the two governments have repeatedly expressed positive views on the prospect of ratification within 2008 or early 2009 and confirmed that they would continue to exert best efforts to get it done as soon as possible. Once ratified, the agreement then goes into effect 60 days after the exchange of instruments notifying the other side of the completion of the domestic procedure (USTR 2007, art. 24.5).

Korea has concluded approximately 2,500 treaties since its inception in 1948, but probably none of them has caused such heated controversy and debate as we are observing with respect to this particular agreement. Opponents of the KORUS FTA in Korea have been strongly criticizing this agreement, stating it will lead to eventual eschewal of Korean sovereignty in various vital national policy areas by integrating the economic system of Korea into that of the United States. Proponents of the agreement, in contrast, argue that the KORUS FTA will offer a crucial stepping-stone to revitalizing the Korean economy by increasing the trade volume with the United States and upgrading the regulatory system and market structure in Korea. Korea has been sharply divided over this agreement. The situation in the United States does not seem to be that much different, although the national division may not be as acute as in Korea.

In this process, the prospective benefits and side-effects of the KORUS FTA have been relatively well studied and documented (McDaniel and Fox 2001, 5–9, 5–22). These studies collectively seem to indicate that both countries will enjoy economic benefits in the long run, although there may be some political repercussions and economic readjustments in the immediate aftermath of the FTA.

Setting that issue aside for now, this paper aims to discuss briefly what the bilateral economic relationship would be like without the KORUS FTA: Would the absence of the FTA better serve the bilateral economic relationship? Would the two countries be able to manage the bilateral economic relationship more efficiently but for the FTA? Would the FTA indeed make the Korean government

vulnerable to unnecessary disputes at various levels that would never arise but for the FTA? This paper then concludes that most of the problems allegedly to be caused by the KORUS FTA will probably be there anyway, regardless of the FTA, and that, although not perfect, the FTA could provide a more workable framework in which to manage these problems.

This line of inquiry would be meaningful as the controversy over the KORUS FTA has been triggered (at least in Korea) mainly by the erroneous notion that the FTA is the source of all evils. If Korea and the United States are bound to face similar problems regardless of the FTA, such a proposition could hardly stand. A more proper question then should be whether the proposed FTA would provide a better alternative than the current regime or any other viable option for dealing with or solving these problems.

## **II. Bilateral Relationship without the FTA**

Let us think about what the bilateral trade environment would be like without the proposed KORUS FTA. The point is, it is quite likely that the two countries will probably face the same problems and the same issues regardless. The specific settings and claims could be different from case to case, but the general contours of the disputes will probably be the same. For instance, the beef dispute would have presented itself anyway because both Korea and the United States are members of the World Trade Organization (WTO), and its Agreement on Sanitary and Phytosanitary Measures would have invited trade disputes anyway as long as Korea maintained its import restriction measure (USTR 2006). Korea would have lodged complaints against the United States regarding its so-called “zeroing” practice anyway at the WTO.<sup>1</sup> Both disputes were key issues discussed in the context of the KORUS FTA (MOFAT 2006).

Thus, a strong argument can be made that to some extent the key issues being discussed in the context of the KORUS FTA have not been simply caused by the FTA or the outcome of the FTA; rather, they would have been raised in any event under the circumstances. To put it more bluntly, most of the issues

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1. Many countries have lodged formal complaints with the WTO Dispute Settlement Body against the United States for its zeroing practice. Korea has been participating in almost all zeroing-related disputes at the WTO as a third party to make an argument against the United States. These disputes (which can be accessed at the WTO Web site [www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm)) are United States—Continued Existence and Application of Zeroing Methodology (DS350), United States—Anti-Dumping Measure on Shrimp from Ecuador (DS335), United States—Measures Relating to Zeroing and Sunset Reviews (DS322), and United States—Laws, Regulations and Methodology for Calculating Dumping Margins (DS294).

actually do not have much to do with the FTA at all, other than that they were sometimes the bargaining chips on the negotiating tables. Such being the case, it would not be reasonable to attribute major pending problems and upcoming disputes at the bilateral level simply to the negotiations and conclusion of the KORUS FTA. The situation is apparently more complex than that. As a practical matter, of course, it would be difficult to determine which issues are to be raised anyway and which not, but by taking this aspect of the matter into consideration one could have a more realistic sense of the impact of the KORUS FTA. Several factors—ROK-U.S. bilateral trade continuing, increasing, and being regulated; trade disputes continuing; FTAs with other countries continuing; political repercussions occurring—need to be considered.

### ***Bilateral Trade Will Continue and Increase***

In 2007, Korea was the seventh-largest trading partner of the United States, and the United States was the second-largest trading partner of Korea (MOFAT 2008b). In fact, in terms of the global trade volume, the United States is the largest trading country and Korea is the twelfth-largest trading country in the world. There certainly will be fluctuations in the volume of bilateral trade, but it is almost certain that the bilateral trade between Korea and the United States will continue to take up a significant portion of the total trade volumes of the two countries (Census 2008, exhibit 14).<sup>2</sup> So, even without the FTA, Korea-U.S. bilateral trade will remain at a significant level, probably at least at the current level.

If that is the reality, then the burden and pressure flowing from the reality will remain. For instance, continued negotiation, explanation, consultation, and confrontation between the two countries will be inevitable. With this level of trade volume, disputes of all sorts would be a monthly, not if daily, routine. It is recommended that any discussion should always start from the recognition of this reality.

### ***Bilateral Trade Will Continue to be Regulated***

In addition, the significant volume of bilateral trade is not unregulated at this point. It is already extensively regulated by various norms of the WTO and other relevant international norms. Also, as is well known, the WTO has been

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2. Although there are some fluctuations, the bilateral ROK-U.S. trade volume in absolute numbers has been steadily increasing. Note that, although the bilateral trade volume in relative numbers seems to be decreasing somewhat recently, this is mainly because of the “Chinese diversion” effect, namely, that Korean products made in China and destined for the U.S. market are not accounted for in Korean statistics.

extending its reach into various domestic sectors over during recent years to the extent where some members are seriously challenging its legitimacy (WTO 2008a, paras. 7.120–7.129). Unless and until there is an amendment to the WTO agreements, the two countries are strictly subject to the WTO norms whether we like them or not (WTO 1994, art. 16.4).

So, basically what we have here, even in the absence of the FTA, is a “significant” volume of trade subject to the “extensive” regulation of the WTO, which these days does not seem to enjoy as wide support from its constituents as it used to. The remaining question then becomes whether the two countries would be better off with a special regime that governs the significant level of bilateral trade or whether they would fare better under the current multilateral regime of the WTO.

As indicated in the recent suspension of the Doha Development Agenda (DDA) negotiations, it is not entirely clear whether the WTO would be able to establish a new framework that would somehow satisfy all the members (WTO-TNC 2008). It is not entirely clear either whether the WTO would be able to provide a regime that could effectively manage the Korea-U.S. bilateral relationship in the years ahead. In fact, it is not clear at all whether the DDA will indeed come through in the near future.

Again, the two countries have a significant volume of bilateral trade no matter what. The two countries will have to make a decision as to what they will do with that: Do they entirely rely upon the WTO, hoping that it recovers its dwindling support in some remarkable fashion? Or do they explore by themselves a mechanism that can manage this significant bilateral trade? They could certainly go either way, but the better alternative seems to be the second path because the two countries would have more leeway in devising a trade regime that is specifically tailored to the needs of the two countries. Regulation of trade under that alternative then would be more predictable and manageable.

### ***Trade Disputes Will Continue***

More important, even if the KORUS FTA somehow falls through, this would not necessarily mean that the bilateral economic relationship is free of disputes or that there would be a fewer number of disputes in the future.<sup>3</sup> The pending

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3. A report by the Congressional Research Service (Manyin 2004, 9–17) states that the two countries were struggling with multiple trade frictions owing to the increased economic interaction when the idea of the FTA was being floated in mid-2004.

disputes will remain pending: the automobile dispute will be there and the beef dispute will be there as well. The moment the KORUS FTA fails to be ratified, Korea, following in the footsteps of the European Communities and Japan, may well bring legal action against the United States at the WTO for the U.S. zeroing practice (WTO 2006b; 2007);<sup>4</sup> and the United States may well bring a legal action against Korea for Korea's beef import restriction as it has done similarly vis-à-vis the European Communities in a related dispute (WTO 2006a).

During only on the 2007–08 period, there have been eight disputes at the WTO dispute settlement procedure that involve various legal frictions between the two countries, either as direct parties or as indirect parties.<sup>5</sup> In the same time period, there have been five separate investigations by the U.S. government into various government policies of Korea for various subsidy allegations. These bilateral disputes will continue to appear in various forums, forcing the two countries to face this reality.

The situation for disputes that are expected to present themselves for the first time as a result of the KORUS FTA is not that much different. For instance, the investor-state dispute (ISD) settlement procedure adopted by the investment chapter of the KORUS FTA has caused significant controversy in Korea (Chun 2007).<sup>6</sup> This is a unique dispute settlement mechanism exclusively applicable to bilateral investment disputes between an investor from one party and the government of the other party under the FTA framework (USTR 2007, arts. 11.16, 11.17). This mechanism, however, is not actually new and has been consistently contained in other FTAs and bilateral investment treaties that Korea has concluded so far.<sup>7</sup> So, even if that particular chapter had been removed from

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4. Korea actively participated in these proceedings as a third party against the United States.

5. These disputes are United States—Continued Existence and Application of Zeroing Methodology (DS350), United States—Measures Affecting Trade in Large Civil Aircraft (DS353/DS317), Japan—Countervailing Duties on Dynamic Random Access Memories from Korea (DS336), United States—Anti-Dumping Measure on Shrimp from Ecuador (DS343), United States—Measures Relating to Shrimp from Thailand (DS335), United States—Measures Relating to Zeroing and Sunset Reviews (DS322), European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft (DS316/DS347), and United States—Laws, Regulations and Methodology for Calculating Dumping Margins (DS294). In these disputes, Korea and the United States have shown sharply divided opinions on key trade issues (WTO 2008b).

6. Also, on 6 April 2007, *Dong-a Ilbo* published an editorial, “Government Should Clear All Misconceptions and Puzzles Regarding FTA Negotiations,” <http://english.donga.com/srv/service.php3?biid=2007040607538>.

7. See, for example, Article 10.2 of the Korea-Chile FTA and Article 10.19 of the Korea-Singapore FTA.



the KORUS FTA or if the KORUS FTA fell apart, this would not mean that the unexpected headache for the Korean government from this sort of new dispute would instantly disappear; it would be simply a matter of time for the Korean government to encounter ISD disputes in one way or another with respect to other trading partners, if not the United States.

At the same time, trade disputes will become more complex each year because the recent disputes do not simply remain in the trade area per se, but go beyond it. Recent bilateral trade issues now involve trade issues that touch upon other nontrade national sovereignty issues as well, as we have seen in the beef dispute and the ISD controversy. These nontrade areas include national security, environment, public health, economic stabilization policy, taxation, and the like.

Under these circumstances, it does not seem to be fair to describe, as some scholars argue in Korea, that the FTA will open the door to a situation in which the Korean government is forced to face endless legal actions by the U.S. government and businesses. The disputes have been steadily increasing over the years and will continue to do so in the future as long as the current level of trade volume and exchanges is maintained. At the same time, Korean investors in the United States will be able to resort to the provisions of this agreement when they receive discriminatory treatment in their business operations in the United States.<sup>8</sup>

### ***The FTAs of and with Other Countries Will Continue***

The world has been observing an explosion of FTAs. The pace will probably quicken in the days ahead, given the less-than-optimal development at the DDA. Other countries will probably continue to negotiate and conclude their respective FTAs with Korea. Korea is entering a final stage of FTA negotiations with the European Union, another major trading partner. The United States signed an FTA with Australia in 2004, the United States has finished negotiations with Korea, and Australia is negotiating with Korea. So, it appears that Korea and the United States will also try to conclude FTAs with various trading partners down the road, regardless of the KORUS FTA and even if the KORUS FTA somehow does not come through.

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8. It is noteworthy that the Energy Independence and Security Act of 2007, a statute recently passed by the U.S. Congress, is phrased in a way that limits the financial support under the statute to the U.S. automobile manufacturers, excluding Korean-invested automobile manufacturers in the United States.

Thus, again, for the United States and Korea, the absence of the KORUS FTA does not necessarily mean that all the headaches are cured for good and problems solved instantly. The headaches and problems would simply sit there, though in a briefly dormant phase, waiting for the next wave of FTAs with other trading partners to make them reappear on the stage. The two countries may be able to buy some time, but they will have to face the same or similar problems sooner or later.

This situation exists at the same time that these other competitors are getting benefits from their multiple, respective, overlapping FTAs among themselves, taking full advantage of the FTA exception clause under Article 24 of the General Agreement on Tariffs and Trade and Article 5 of the General Agreement on Trade in Services, while Korea and the United States are completely bound by their “multilateral” obligation under the WTO with respect to their bilateral trade.

We have to ask again: What benefit would be there for the two countries even if we eliminate the KORUS FTA factor? It seems to be the case that nonexistence of the KORUS FTA effectively translates into the following: The trade volume will continue to increase, the trade disputes will continue to increase, similar problems will continue to pose themselves in other negotiations, and other countries will enjoy full benefit from their FTAs.

### ***Political Repercussions in Case of Failure***

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.<sup>9</sup> This failure would signal that (1) the gaps and discrepancies between the two countries are so wide as to make them unable to conclude a free trade agreement when everybody else does, and (2) the two countries are sometimes unable to complete their domestic procedure at the last minute when it comes to critical trade agreements. Either could seriously damage the bargaining positions of the two countries in their future FTA negotiations with other countries. It is indeed doubtful whether the two countries are ready to accept these consequences.

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9. Joseph A. B. Winder (2007) of Winder International stated:

A failure of the KORUS FTA negotiations would represent a serious setback to the overall U.S. relationship. . . . If agreement cannot be reached in an area, which is so clearly win-win for both sides, then how are the two countries to deal with the difficult political/security issues where a mutually satisfactory resolution of many issues is less clear-cut?

### **III. KORUS FTA as a Framework for Managing the Bilateral Economic Relationship**

Thus, trade friction between the two countries seems to be destined to rise, both in quantity and quality, given the volume of the bilateral trade and the changing nature of the disputes. This would basically mean that the two countries must encounter these multiple and complex disputes anyway, whether there is an FTA or not. As long as the two countries are engaged in trade between each other and as long as they remain major trading partners, trade disputes are simply inevitable. The question then is whether the KORUS FTA could provide a mechanism better than the one under the current regime in which to effectively manage these disputes so as to create a better environment for the maintenance of bilateral trade.

A fair argument can be made that, although not perfect, the current version of the KORUS FTA, if implemented in good faith and through reasonable implementation, stands ready to provide a framework for the two countries to deal with these issues.<sup>10</sup> Two advantages can grow out of passage of the KORUS FTA.

#### ***Enhanced Understanding of the Other Side***

The fundamental nature of the KORUS FTA basically forces the parties to look into, examine, and learn the domestic policies and regulations of the other side in a more in-depth manner. The agreement is designed in a way that requires each party to be more accurately apprised of the domestic systems and policies of the other party. The agreement certainly does not require policy coordination or cooperation, let alone integration, at the domestic levels, but it does require a better, fuller, and more accurate understanding of the other side in order for the agreement to be implemented as it has been designed.

By way of example, some of the issues posed in the KORUS FTA have led the Korean government and scholars to look into the U.S. domestic system more

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10. Ambassador Kathleen Stephens (2008) stated in a recent speech at AMCHAM Korea general membership meeting on 10 October 2008:

And of course, the strategic importance of the FTA goes beyond that. This Korea-U.S. Free Trade Agreement will establish a privileged economic partnership between our two countries, and create a strong, binding reciprocal economic pillar for our bilateral relationship, standing right alongside our security alliance.

See also Claude Barfield (2007):

The bottom line is that the deep and comprehensive substance of the agreement will have a great impact on future trade flows between the two nations and their major trading partners.

carefully, at a level unprecedented in terms of both quantity and quality. It is indeed interesting to note how much study has taken place recently about the constitutional system, legal system, and political system of the United States as a result of the KORUS FTA negotiations. There have been 200 bilateral treaties concluded by Korea and the United States since 1948,<sup>11</sup> and only the KORUS FTA has prompted all these inquiries into the U.S. system. The reason is obvious: to fully understand the impact of a particular provision and to get a general glimpse of the provision in actual application, such a study has turned out to be indispensable. Following are some of the interesting recent examples:

- There have been serious discussions on the holding and reasoning of major decisions of the U.S. Supreme Court on “taking” of private property based on Article 5 of the U.S. Constitution. One of the key issues raised during the KORUS FTA was the so-called indirect expropriation, which is extensively based on the jurisprudence about the taking issue by the U.S. Supreme Court.
- Serious studies and discussions have also taken place concerning the role of the U.S. Congress in the negotiation and conclusion of trade agreements. One of the issues posed has been how much authority the U.S. Congress has when it comes to the negotiation and the ratification of a trade agreement such as the KORUS FTA.
- The treaty-making process in the United States has also been extensively reviewed. The question was raised with respect to the legal validity of the documents negotiated and signed by the United States Trade Representative (USTR) on the basis of its own authority and that do not go through the treaty-making process, or the executive agreement-making process for that matter, in the United States.
- Serious discussions have also been prompted by the KORUS FTA regarding the division of authority between the federal government in Washington, D.C., and the respective state governments. These discussions were triggered by the claim of the USTR that there are some issues that are not within the purview of the federal government under the U.S. Constitution, and Korea needed to confirm what those issues were.
- Also examined in this context was the reason why the United States needs to adopt implementing legislation for the KORUS FTA. Having to adopt

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11. Currently 227 treaties are in force (MOFAT 2008a).

implementing legislation is unique in the Korean context because usually in Korea any agreement becomes a part of Korean domestic law the moment it is promulgated.

These are simply examples, and the list could go on and on. Again, this seems to be the first time in the 60-year bilateral relationship that scrutiny at this level has been conducted into the key laws and regulations, governmental structure, and policy operating mechanisms of the United States. One could easily assume that similar scrutiny has also been conducted by the United States if it had not been done before.

All in all, for better or worse, this enhanced two-way understanding could probably reduce the total number of disputes by helping avoid unnecessary ones. The term “reduce” here basically means “reduce in relative terms.” As noted, the total number of disputes in absolute terms seems to be destined to rise, with or without the KORUS FTA, owing to the increase in trade volume, but the increase of the number of disputes in relative terms may slow down once the KORUS FTA produces its expected effect. This function of the KORUS FTA could be called a “dispute containment effect.” Rather than increased market penetration in the goods and services sectors, the benefit of which can be immediately measured in a quantifiable yardstick, this dispute containment effect seems to be a more important, longer-term benefit flowing from the KORUS FTA when it comes to the bilateral economic relationship. It appears likely that this aspect has not been adequately taken into account.

### ***Customized Dispute Avoidance and Settlement Procedure***

After a dispute arises, the KORUS FTA seems to offer a more effective mechanism to deal with it than the WTO does. The KORUS FTA could facilitate resolution of a dispute by helping the parties focus on the core issues and by leading the parties to reach a mutually acceptable conclusion. There are multiple committees in various fields where pending issues can be raised and discussed in a prompt manner. Discussions in these committees could dispel misunderstanding and thus assist the two parties in reaching a quicker solution in various fields, as has been well illustrated by the effectiveness of the Quarterly Bilateral Trade Issue Review Meeting between the directors-general of the two governments during the past couple of years.<sup>12</sup> In Korea, it is generally perceived that the quarterly

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12. This is a dialogue channel between the two governments in which a wide range of pending trade issues is discussed. The meeting was agreed upon in March 2001, and the first meeting was held in June 2001 (MOFAT 2001). The most recent meeting was held on 28–29 October 2008 in Washington, D.C.

meetings with the United States have been particularly productive and pivotal in addressing various pending issues, which may have paved the way for the FTA negotiations.<sup>13</sup> The KORUS FTA could effectively offer an extended version of this kind of meeting. This could be called a “dispute management effect” of the KORUS FTA.

The FTA also contains a bilateral dispute settlement mechanism where a legal claim can be lodged by one party to the other party (USTR 2007, chap. 11). The two countries have already actively utilized the multilateral dispute settlement mechanism at the WTO (WTO 2008b), and the WTO regime is the only available dispute settlement avenue for the two countries at this time (USTR 2007, art. 23). Now the KORUS FTA is scheduled to introduce a dispute settlement mechanism that is applicable only to the two countries. This new mechanism does not exclude the multilateral track, so the two countries will have two routes to address the trade disputes as opposed to a single avenue as of today. Thus, the two countries will have an alternative dispute settlement mechanism for future disputes.

Generally speaking, this system under the FTA is more streamlined and subject to the parties’ control. The procedures under the FTA are designed to obtain a decision in a shorter time frame than its WTO counterpart, and the parties have more control over the reviewing panel. This is particularly meaningful as the WTO dispute settlement mechanism has been criticized for the lengthy amount of time required for the procedure and the lack of standing panels to evaluate ever more complex trade disputes.<sup>14</sup> These issues are indeed on the negotiating table for a possible amendment at the DDA negotiations (WTO 2008c).

More important, a more targeted selection of experts to deal with a dispute is possible during the FTA dispute settlement procedure. This would translate into the general proposition that the reviewing panel under the FTA has the ability to reach a decision that is more tailored to the specific nature of the bilateral dispute than a multilateral dispute settlement system offered by the WTO. Given the fact that the trade disputes between the two countries sometimes require

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13. The Korean government notes the usefulness and effectiveness of the meeting (MOFAT 2007c). *Dong-a Ilbo* on 22 March 2005 reported in “United States Sets Screen Quota as a Precondition for the KORUS FTA Negotiation [in Korean]” that the two governments also discussed various preconditions for the initiation of the KORUS FTA at these meetings.

14. Note that the KORUS FTA does not introduce a standing panel either, but the FTA will introduce a roster of experts from which panelists can be selected for a particular dispute (USTR 2007, art. 22.9). Although the WTO also has a roster of national experts, most of the time the panelists are not selected from the roster, so it is more difficult to predict the selection process and who will be selected for a particular dispute in the WTO setting.

awareness of and insights into the overall bilateral relationship that may include nontrade consideration as well, this new mechanism may provide a useful setting in the particular context of the Korea-U.S. trade relationship. Again, the two countries still possess the option of going to the WTO dispute settlement mechanism, which may be preferred sometimes depending on the nature of the dispute.

So, all in all this would basically mean that bilateral trade disputes can be better managed under the FTA framework; unnecessary disputes can be avoided early on, and inevitable disputes can be more reasonably and quickly resolved. It is recommended that the discussion of FTA benefits not skip the dispute containment effect and the dispute management effect of the FTA.

### *A Caveat*

Noted, also, that there are risk factors as well. As a framework, the KORUS FTA will also be a new challenge for the bilateral relationship. As much as the KORUS FTA stands ready to operate as a new paradigm for the bilateral economic relationship, wrong steps, intended or unintended, could also cause a far-reaching negative impact. Korea and the United States have been good economic partners for a long time. As with a human relationship, ratcheting up the state relationship would also require willingness to make a good-faith effort on a continuing basis to make the relationship work and to accept a short-term loss for a long-term gain. An attempt to create a closer partnership could ruin an existing partnership if two countries are not prepared to take on the challenges in a positive manner.

Under the new paradigm, daunting tasks await the two countries: (1) they will face new issues that they have not dealt with before, (2) they will have to establish specific norms and guidelines in many sectors as they go along, (3) they will have to accommodate the increased presence and penetration of the goods and service providers from the other side despite sometimes fierce domestic opposition, and (4) they will have to take various measures to implement the agreement domestically. A high expectation level may easily turn into a high disappointment level if the intended (or pronounced) result is not delivered in time. Such being the case, unless the two countries fully cooperate in good faith over the years, the agreement may turn out to be a source fomenting further mistrust and misperception. Unless managed well, the FTA could cause the bilateral relationship to deteriorate quickly.

The beef import restriction provides a good example. A seeming breakthrough for the bilateral economic relationship somehow turned into one of the most

embarrassing incidents. This clearly evidences the importance of the leadership in the two countries when it comes to the KORUS FTA. The beef incident may be just the tip of the iceberg. Similar issues will come up over and over again in the FTA setting. In fact, the leadership factor will be all the more important after the KORUS FTA does go into effect and various provisions are put into operation. The ability, willingness, and determination of the two countries to develop the bilateral economic relationship under the new paradigm will then be truly tested.

#### **IV. Conclusion: A Proper Approach for Evaluating the KORUS FTA**

So far, it appears that the discussions about the KORUS FTA in the respective domestic interest groups have been mainly focused at a micro level: trying to figure out how open the other party's market will be under the FTA and how much economic benefit a party can get if the market opening happens. As we have now reached the final stage of the procedure to validate the treaty—waiting for the legislatures of both countries to ratify the agreement—maybe it is time for us to pause and contemplate some macro issues related to the agreement as well. One such macro issue seems to be what it would be like without the FTA and what viable alternatives to the FTA the two countries would have at this particular juncture.

Viewed from such a standpoint, it does not seem to add much value to this analysis to merely argue that the FTA contains problems or is bound to create problems. Searching for a perfect treaty would never be feasible in the real world, particularly in a trade agreement that is all about *quid pro quo*. In fact, such an endeavor is not only infeasible but also misleading. A more accurate inquiry would be to look into the problems to be posed by the bilateral economic relationship and see whether they are FTA-unique problems that can be raised only by the KORUS FTA or whether they are simply an inevitable outcome of bilateral trade and would be raised anyway as long as trade volume continues to rise. If the latter is a more objective description of the situation, then the inquiry should focus on whether the FTA provides a better framework to institutionalize and manage these upcoming problems.

More fundamentally, a meaningful discussion of the KORUS FTA can be achieved only when both positive and negative aspects from the agreement are adequately taken into account. A balanced approach is critical in this process as the FTA basically embraces almost the entire economic areas of



the two countries. Neither focusing on the positive sides nor exaggerating the negative sides would help interest groups in each country accurately evaluate the full consequences and impact of the KORUS FTA. Recent debates on the KORUS FTA, particularly in Korea, appear to have lost this sense of balance in approaching these issues. Critics list the problems to be caused by a change triggered by a particular provision in the KORUS FTA, but they usually fail to talk about a better alternative and the looming problems regardless of the FTA. Neither have the proponents of the FTA made much of an effort to address these issues.

The KORUS FTA at this juncture seems to be a double-edged sword for the bilateral relationship. It could cut both ways. As a framework, it could provide the two countries with an opportunity to enhance the bilateral relationship, but, also as a framework, it could pose a threat that would potentially undermine the bilateral relationship. A lot depends on how the two countries apply this unprecedented tool to manage the bilateral economic relationship.

On balance, the KORUS FTA as it currently stands is expected to provide a better framework than the one we have now to address a wide range of trade issues occurring between the two countries. This agreement will help further expand and increase the bilateral trade from which both countries will get significant benefit.

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