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TREATMENT OF TRADE RULES IN KOREA'S FTAS

V.S. SESHADRI*

The Republic of Korea was a relative latecomer towards concluding free trade agreements. However, once its first FTA with Chile came into force in 2004, its FTA network has rapidly expanded. Its 16 FTAs in force so far cover over 70 per cent of its exports and its partner countries account for a three quarter of world GDP. It has FTAs with three of its major trade partners- China, EU and the US- and is in the process of negotiating more that will further increase the coverage. Noting this rapid growth, this paper examines the interesting differences in these FTAs in relation to rules of origin and their verification, in dealing with standards and their compliance and trade remedies. Some of them may provide clues regarding possible ways in which future FTAs may evolve or even be a way for multilateral solutions to emerge on dealing with non tariff barriers.

TABLE OF CONTENTS

*The author is a former Ambassador of India to Slovenia and Myanmar and was also earlier a trade negotiator for the Government of India.

I. INTRODUCTION

As the number of free trade agreements (FTAs) worldwide keep rising, currently at 302,[1] so does their complexity. Several recent FTAs now have disciplines relating to not only traditional areas covered by the World Trade Organization (WTO), but go far beyond including investment, competition, labour and other issues. Even where the disciplines relate to WTO-covered areas, they tend to go further than multilateral commitments under the WTO, with what are commonly referred to as "WTO-plus" commitments on them. Depending on the signatories to the FTA we can also see their signatures regarding the manner in which the rules of origin (RoO) or trade remedy measures are designed.

In this paper we seek to survey this trend in what are commonly called trade rules particularly in respect of trade remedies, sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT) measures and RoO. We shall try to get an understanding about this by looking at provisions in the Republic of Korea's (Korea) different FTAs rather than looking at all the FTAs worldwide that will become somewhat unwieldy. Korea is taken as a case study since its FTAs provide a rich variety. Although a relative latecomer to FTA making, with its first FTA with Chile coming into force only in 2004, Korea already has 16 FTAs presently in force with more in the pipeline. It is also one of the few countries which has concluded FTAs with several of its major trading partners including the EU, the United States, China and the ASEAN.

Korea's 16 FTAs (see Table 1) cover 54 countries accounting for over 75%of world GDP and span over 70% of its exports and 65% of imports.[2] Missing among leading trade partners in its FTA basket is Japan but this gap may soon be filled with Korea being part of the Regional Comprehensive Economic Partnership (RCEP) agreement that is already in its final stages of being signed.

Since Japan is not one of Korea's present FTA partners, we shall also include the most recent the Japan-EU FTA that came into effect on February 01, 2019, in addition to Korea's existing FTAs, as source material for drawing comparative

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[1] *See*, *Regional Trade Agreements,* WORLD TRADE ORG., https://www.wto.org/english/tratop_e/region_e/region_e.htm (last visited Dec. 23, 2019).

[2] Korea Republic, Trade Indicators 2018, *World Integrated Trade Solutions,* WORLD BANK, https://wits.worldbank.org/CountryProfile/en/Country/KOR/Year/2018 (last visited February 4, 2020).

inferences about the treatment of trade rules in them. In Part 2 we look at how RoO have been set for different products in the many FTAs under purview and also discuss the evolution taking place in the certification mechanism in FTAs towards making it more trade friendly. Part 3 deals with trade remedies comprising anti-dumping (AD), countervailing duty (CVD), and safeguard investigations including FTA specific safeguards. In Part 4 we take up product regulation under the FTAs and examine how SPS and TBT have been tackled. Finally, a few concluding remarks are included in Part 5.

Table 1: Republic of Korea's FTA basket

FTA partners	**Date of entry into force**	**FTA partners**	**Date of entry into force**
Korea-Chile	1 April 2004	Korea-Turkey	1 May 2013
Korea-Singapore	2 March 2006	Korea-Australia	12 December 2014
Korea-EFTA	1 September 2006	Korea-Canada	1 January 2015
Korea-ASEAN	1 September 2009	Korea-China	20 December 2015
Korea-India	1 January 2010	Korea-New Zealand	20 December 2015
Korea-EU	1 July 2011	Korea-Vietnam	20 December 2015
Korea-Peru	1 August 2011	Korea-Colombia	15 July 2016
Korea-US	15 March 2012	Korea-Honduras, Nicaragua	1 October 2019
Signed but pending ratification	**Korea's FTAs with El Salvador,**	**Finalised but pending signature**	**Regional Comprehensive Economic**

FTA partners	Date of entry into force	FTA partners	Date of entry into force
	Panama, Costa Rica and Israel	**(expected Feb. 2020)**	**Partnership**

II. RULES OF ORIGIN IN KOREA'S FTAS

RoO in FTAs spell out the minimum extent to which a product should be locally produced or processed to be eligible for the duty concessions in the partner country under an FTA. Several countries/regions have evolved different models in this regard, particularly for manufactured industrial goods. As observed by Donner Abreu,[3] in a vast majority of worldwide FTAs, a combination of methods for determining origin is used—namely a change in tariff classification (cost to company, with the change in tariff heading, or customs tariff heading (CTH), being the most used), value added and processing requirements. Alternative RoOs for the same tariff line are also present in most FTAs although not for all products. In negotiating its FTAs, Korea appears to have shown greater flexibility in largely accepting the models of partner countries[4] including on RoO rather than insisting on following a specific pattern.

Thus, in the case of the Korea-ASEAN FTA, as well as the Korea-Vietnam FTA, the most common rule adopted is a regional value content (RVC) of 40% or if the good has undergone a change in tariff classification at the four digit CTH level, although there are several items where the RVC requirement becomes higher. In the case of the India-Korea CEPA, the predominant rule is an RVC of 35% and

[3] Maria Donner Abreu, *Preferential Rules of Origin in Regional Trade Agreements*, *in* REGIONAL TRADE AGREEMENTS AND THE MULTILATERAL TRADING SYSTEM 58 (Rohini Acharya ed., 2016).

[4] *See*, *e.g.*, Inkyo Cheong & Jungran Cho, *Republic of Korea, in* ASIA'S FREE TRADE AGREEMENTS: HOW IS THE BUSINESS RESPONDING? 130 (Masaturo Kawai & Ganesh Wignaraja eds., 2010). As per the authors Korea has not based its FTAs on one consistent model agreement. The negotiations with Chile, Singapore, and the United States (US) followed the framework of the NAFTA, although the specific structure and provisions of each agreement varied. The agreement with the European Free Trade Association (EFTA) at the start of negotiation was based on the EFTA–Singapore agreement. The structure of the FTA between the ASEAN and Korea resembled those of the ASEAN Free Trade Area (AFTA) and ASEAN–People's Republic of China (PRC) FTA.

that the good has undergone a change in tariff classification in a sub-heading (CTSH) at the six-digit level.[5] There is relatively less reliance on RVC in the Korea-China FTA and more on the change in tariff classification although there are also instances of RVCs of varying percentages having been used.

The rules in the case of the US-Korea FTA are more diversified, product specific, and provide co-equal options involving change in tariff classification, carrying an essential process, a set of operations (specific manufacturing options are used mainly in the chemicals and textiles sectors), or having a certain minimum RVC. This is also the case in the Australia-Korea FTA even though a change in tariff classification is kept as a widely available option.

In the case of the EU-Korea FTA, the main criteria[6] is the CTH and an alternative value-added option is given for several products that sets the maximum value of non-originating inputs between 25–50% of the ex-factory price of the product. On the other hand, EU-Japan FTA has greater options incorporating the preferences/practices of Japan as well.[7]

There are certain principles/concepts that find reflection in most of Korea's FTAs even as there are exceptions to them. For example, the absorption principle—that is when non-originating materials undergo sufficient processing to acquire originating status as an intermediate product which in turn is used in the subsequent manufacture of a final product, then no account shall be taken of the non-originating material in the intermediate product in determining the origin status of the final product—is found in all of Korea's FTAs except in the FTAs with ASEAN and India. Similarly, only the FTAs with these two partners do not have another separate criterion for determining origin—the good is produced entirely in one or both parties exclusively from originating materials.

The other commonly found aspect is that of accumulation, i.e. when originating goods or materials of one party to the FTA are incorporated into the goods of the other party, the goods or materials so incorporated shall be regarded to be

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[5] Comprehensive Economic Partnership Agreement, India-S. Kor., art. 3.4(b), Aug. 7, 2009.

[6] The Protocol concerning the definition of 'originating products' and methods of administrative cooperation, (May 4, 2011) O.J.E.U. L/127/1344, https://eur-lex.europa.eu/resource.html?uri=cellar:a2fb2aa6-c85d-4223-9880-403cc5c1daa2.0022.02/DOC_4&format=PDF [hereinafter Protocol].

[7] *See* Jean-Michel Grave, Key Note Speech at the EU-Japan EPA Rules of Origin Seminar: Outline of the EU-Japan Origin Procedures (Feb. 27, 2009), http://www.jastpro.org/seminar/download/seminar31_document_01.pdf.

originating in the other party. A provision allowing accumulation is found in all of Korea's FTAs except in the EU-Korea FTA in which it is somewhat qualified. It will be originating only if the working or processing goes beyond 'insufficient operations' specified in the text.[8] A similar qualification also exists in the EU-Japan FTA text.

The value-added methodology to determine regional content in Korea's FTAs occurs with several variations. The 'build down'[9] method is based on specifying what should be the minimum RVC or maximum non-originating materials (Max NOM) using the value of the non-originating materials as the basis. The 'build up'[10] method instead uses the value of originating materials as the basis to make the determination. While Korea's FTAs with Singapore, India, EU, China and the Japan-EU FTA provide for only the 'build-down option', FTAs with Chile, ASEAN, US, Australia and Vietnam provide for both. Among the latter, while the 'build-up option' generally specifies a somewhat lower value compared to the 'build down' one, such as in the case of FTAs with Chile, the US, and Vietnam, the ones with the ASEAN and Vietnam specify the same value for both options.

The basic price of the final product used for the purposes of calculating regional content also has variations among the FTAs under study. While the Free On Board (FOB) price is the most commonly used (Korea's FTAs with ASEAN, India, China, and Vietnam), FTAs with Australia, US, and Singapore bring in the concept of 'adjusted value' that is nevertheless close to the FOB price. On the other hand, EU's FTAs with both Korea and Japan use the ex-works price (EXW) of the product as the basis and specify maximum percentage on Max NOM. But the EU's FTA with Japan provides an additional option for use of FOB price of the product as the basis that specifies minimum RVC. While both the options use a 'build-down' approach a differential of 5% threshold was established[11] in this case to reflect the gap between FOB and EXW values. There is also a third net cost[12] method available for automotive products in the Korea-US FTA. The RVC required for such products in the FTA is 35 per cent as per build-up or net cost method and 55% under build-down method.

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[8]Protocol, *supra* note 6, at art. 6.

[9] In the build-down method *RVC= Value of product-Value of non-originating materials/value of product x100*.

[10] As per build-up method RVC is defined as *RVC=Value of originating materials/Value of product x 100*.

[11]*See*, Protocol, *supra* note 6.

[12] The 'net cost' (NC) means total cost of product minus sales promotion, marketing, after sales, shipping and other costs. The RVC in this case is defined as RVC= NC of non-originating materials/NC x100.

Most of Korea's FTAs and the EU-Japan FTA also provide for a certain *de-minimis* in case of CTC requirement. A good that does not undergo a change in tariff classification is nonetheless regarded as originating if the value of all non-originating materials that have been used in the production of that good, which do not undergo the applicable change in tariff classification, do not exceed a certain percentage (normally 10%, except 8% in the case of the Korea-Chile FTA) of the value of the good. But there are also certain chapters, in particular Harmonized System (HS) chapters 1–14 that get exempted in some of the FTAs from application of the *de-minimis* provision. Also, for HS chapters 50–63, some of the FTAs specify that the *de-minimis* will be determined on the basis of weight and not value. The EU-Korea FTA also has an overall *de-minimis* provision but it allows even higher tolerance levels of 20% for non-originating materials to be from the same classification in case of certain products, particularly chemicals.

In practically all of the FTAs, however, there is the 'wholly obtained' requirement for most agricultural products in HS chapters 1 to 14, or Chapter Change (CC), as in the case of the US-Korea FTA. Processed agricultural products also generally require a CC transformation or higher RVC percentages. In the case of EU-Korea FTA, some products carry additional limiting elements such as a mandatory requirement that non-originating input from Chapter 17 (sugar and sugar confectionery) be less than 30%of value of the product. Similarly, the US-Korea FTA imposes certain limits on usage of non-originating dairy products for products in HS 19.

A glimpse of the differing RoO in certain FTAs of Korea for a few sample items may be seen in Table 2. While the table does not indicate the RoO for these items under the Japan-EU FTA, it may be mentioned that for most of the items the RoO is somewhat more liberal and with wider methodology options under this FTA compared to the Korea-EU FTA. For example, for several chemical items the CTC requirement is CTSH in the former than the more restrictive CTH in the latter. Secondly, requiring a chemical process change methodology finds inclusion in Japan-EU FTA for chemical products which is not the case in the Korea-EU FTA. Thirdly, on the value-added option, the former stipulates the maximum non-originating content as 50%whereas it ranges from 40–50% for different products in the latter. Likewise, for pneumatic tyres there is also a value-added norm specified in the Japan-EU FTA as against only the CTH option in the latter.

In respect of chemical products in HS 28 to HS 39, Korea's FTAs with the US and Australia have also prescribed certain chemical reaction processes as possible origin conferring options apart from relying on CTC or/and RVC criteria.

The textiles and garments sector have generally attracted more specific RoO and Korea's FTAs are no exception. While all these FTAs require a change in tariff

classification, there are mandatory additional process requirements such as cutting and sewing in the exporting country even in the FTAs with ASEAN and with India. In the case of the US-Korea FTA there is also an added requirement of use of fibres or yarns locally or from the other party, if the same can be made available. The Korea-EU FTA goes into a fair amount of detail about the manufacturing stages the product has to undergo in the originating country. And where an option for starting production at a more advanced stage of production is given it sets a certain limit on the value of the non-originating input in relation to ex-works price of the product. In Table 2, the differing rules in respect of men's woven shirts (HS 6205) may be seen as an illustrative example.

The automotive sector forms another area that has more specific and stringent RoO. All of Korea's FTAs rely, in so far passenger cars are concerned, on minimum RVC content even as CTC may be an additional requirement. The latter is the case in respect of FTAs with India, China, and Australia.

Interestingly, in the EU-Japan FTA, the RoO for vehicles instead of seeing progressive liberalisation, becomes more restrictive over time. For example, for vehicles under the heading HS 8703 each party has to apply the rule as per the as per the norm in Table 2,[13] demonstrating again that FTAs are evolving their own rule making norms on several aspects, as per mutual acceptance more than anything else.

Table 2: Differing Rules of Origin in Korea's FTAs: A sample

Inorganic and Organic chemicals HS28/29	Korea-Australia FTA	Korea-China FTA	Korea-Vietnam FTA	Korea-EU FTA	Korea-US FTA	Korea-India CEPA	ASEAN-Korea FTA

[13]Agreement Between the European Union and Japan for an Economic Partnership, EU-Japan, App'x 3-B-1, Feb. 01, 2019. The parties to the FTA would possibly explain it as the norm set is MaxNOM 45% (EXW); or RVC 60% (FOB) but the parties have been given a pathway to reach the target in seven years.

Inorganic and Organic chemicals HS28/29	New pneumatic tyres of rubber HS4011	Men' s/boys woven shirts of cotton HS6205
Korea-Australia FTA	CC	CTH
Korea-China FTA	RVC(45)	CC
Korea-Vietnam FTA	CC or RVC(40)	CTH or RVC(40)
Korea-EU FTA	Shrimps will have to be wholly obtained	Vegetable wholly obtd. & non-origin inputs of HS17 use <30%
Korea-US FTA	CC	Only if vegetables wholly obtained & CC
Korea-India CEPA	CTH &RVC(40)	CC &RVC(40)
ASEAN-Korea FTA	RVC(35)	RVC(45)

Inorganic and Organic chemicals HS28/29	Passenger vehicles HS8703	Wooden furniture HS94033060
Korea-Australia FTA	CTH/CTSH or specified chemical reaction process	CTH
Korea-China FTA	CTH (except CTSH for HS 2840)	CTH
Korea-Vietnam FTA	CTH or RVC(40)	CTH or RVC(40)
Korea-EU FTA	CTH but flexibility of non-origin materials up to 20% in cases	CTH
Korea-US FTA	Chemical process specified or CTH/CTSH as indicated	A change to Heading 4007 to 4017 from any other heading
Korea-India CEPA	Mainly CTH but RVC (35/30) also reqd. for some products	CTSH and RVC(35)
ASEAN-Korea FTA	CTH/CTSH or RVC(40)	CTH and RVC(55)

Inorganic and Organic chemicals HS28/29	Inorganic and Organic chemicals HS28/29	New pneumatic tyres of rubber HS4011
Korea-Australia FTA	CC	CTH &RVC(30) using build up /RVC(40) by build down
Korea-China FTA	CC or RVC(40)	CTH&RVC(60)
Korea-Vietnam FTA	CC and good cut and sewn or RVC(40)	RVC(45)
Korea-EU FTA	Weaving & making/ preceded by printing and 2 finishing optns.	Non-origin material not > 45% of ex-works value
Korea-US FTA	Cut and assembled from originating fabric	RVC- 35% as per build-up,55% as per build down or 35% by net cost
Korea-India CEPA	Manufacture from non-originating yarn	CTH and RVC(40)
ASEAN-Korea FTA	CC and good cut and sewn or RVC(40)	RVC(45)

Inorganic and Organic chemicals HS28/29	Men's/boys woven shirts of cotton HS6205
Korea-Australia FTA	CTH or RVC(40)
Korea-China FTA	CTH or RVC(40)
Korea-Vietnam FTA	CTH or RVC(60)
Korea-EU FTA	CTH or non-origin material not > 40% of ex-works value
Korea-US FTA	CTH
Korea-India CEPA	CTSH and RVC(35)
ASEAN-Korea FTA	RVC(60)

Source: Based on FTA texts.

A. RoO Compliance—Certification Mechanisms

Most of Korea's FTAs, particularly the earlier ones, required a valid certification of origin submitted by the exporter in the required format by an authorised signatory for receiving preferential treatment. But an interesting feature introduced in the Korea-EU FTA was the provision[14] for self-certification by the exporters. To benefit from this procedure, however, exporters had to apply for approved exporter status, unless they exported consignments of products whose total value did not exceed EUR 6000. The grant of this status by the respective national customs authorities would require necessary guarantees and prior verification. But once approved as an authorised exporter, the exporter then had to merely declare on the invoice or other commercial documents that the products

[14] NORA PLAISIER ET AL., ECORYS, STUDY ON THE USE OF TRADE AGREEMENTS (2018), had noted that the certification process for compliance with the rules of origin were considerably changed compared to EU's standard texts on the subject.

are of EU/Korean preferential origin together with the customs authorisation number of the exporting company. The exporter however must at all times be prepared to submit proof that the products meet the origin requirements.

In the Korea-US FTA, this aspect was handled differently. While it also did away with certification in a prescribed format, it provided for a list of essential information to be given in a written or electronic format by the importer/exporter or the producer, including information demonstrating where the good is originating, based on their knowledge.[15] In the renegotiation of the Korea-US FTA in 2018, the two sides have exchanged further letters that makes this 'knowledge based' certification more trade friendly. It even allows for errors or discrepancies to be rectified within a certain period and affirms that verification will be conducted only if the customs authority have doubts about the originating status and based on risk management principles. A working group on RoO has also been set up to, inter alia, resolve concerns relating to verification of claims of origin.

Some elements of the foregoing approaches towards easing certification requirements and their verification have been found in Korea's subsequent FTAs with Australia and Canada, but none have gone as far as the agreements with EU and the US. Here, it is noteworthy that the Japan-EU FTA has gone one step ahead by combining the approaches in the Korea-US FTA and the Korea-EU FTA by giving two options: a) importer claiming preferential treatment can do so by having a statement on origin made out by the authorised exporter on the invoice or any commercial document; or b) the importer claiming preferential treatment based on 'importer's knowledge', with the importer having supporting documents and records supplied by the exporter/producer in his possession.[16] The two sides have agreed on a mechanism for a time bound administrative cooperation in cases where it may be felt that verification of claims is necessary.

Table 3: RVC schedule in Korea-Japan FTA for HS 8703

From the first year until the end of the third year	From the fourth year until the end of the sixth year	From the beginning of the seventh year

[15] Free Trade Agreement Between the United States of America and the Republic of Korea, U.S.-S. Kor., art. 6.15, June 30, 2007 [hereinafter FTA US-Korea].
[16] *Id.* at art. 3.16.

MaxNOM 55 % (EXW); or RVC 50 % (FOB)	MaxNOM 50 % (EXW); or RVC 55 % (FOB)	MaxNOM 45 % (EXW); or RVC 60 % (FOB)

All these efforts indicate a trend of FTA partners willing to enter into a trust-based system of self-certification by importers/exporters subject of course to possible verification. If successful over a period these can help reduce costs and delays, bring more efficiency in FTA trade, and also promote greater FTA utilisation.

B. Outward Processing Trade

A special feature in several of Korea's FTAs is the special provision made for outward processing (OP) at the Kaesong and other industrial zones. While Korea's FTA with Chile does not include this provision (the Kaesong Industrial complex, a few miles inside the border in North Korea, was set up only in 2002 by which point the Chile FTA had almost been finalised), several others do. But the FTAs with the EU, the US and Turkey have gone only so far as to provide for the establishment of a committee to look into the issues. Since February 2016, however, South Korea has suspended its companies' operations in Kaesong complex following Pyongyang's nuclear and long-range missile tests then.

III. TRADE REMEDY PROVISIONS IN KOREA'S FTAS

A. Action Against Dumping and Subsidisation

In all of Korea's FTAs, the parties retain their rights and obligations under the WTO agreements on anti-dumping (AD) and, subsidies and countervailing duty (CVD) measures. In several of Korea's FTAs, the parties have also taken certain additional commitments regarding AD and CVD investigations. In what follows, these are serially listed below with names of the FTA partners in whose FTA with Korea they figure given in the parentheses. This is even as the precise language used or the exact level of commitment in each one of them may somewhat vary. The trade remedy provisions are however not subject to dispute settlement procedures under any of the FTAs.

1) The parties agree they will make an effort through bilateral consultations not to initiate AD procedures. (EFTA);

2) The parties agree to follow the 'lesser duty' rule. (Singapore, EFTA, India, EU, Turkey, Peru, Canada, Vietnam, Australia, New Zealand, and Colombia);

3) The parties agree to provide written notice of an application for AD/CVD measures prior to initiation of investigations. (EU, US, Peru for CVD, Turkey, Australia, New Zealand, Canada, China, Vietnam, Colombia, and EU-Japan FTA);

4) The parties agree to afford the other party a meeting or consultations or other similar opportunity or to make inquiries and representations prior to initiation of AD/CVD investigations. (the EU, Turkey, Peru and Australia for CVD only, US, Canada, New Zealand, China, Colombia and. Vietnam for both AD and CVD cases, but language more mandatory for consultations in CVD cases);

5) The parties agree to count the average of all individual margins, whether positive or negative, when dumping margins are established on weighted-to-weighted basis; also referred to as prohibition of 'zeroing'. (Singapore, India, Turkey, New Zealand, Vietnam, China, Australia and, Colombia);

6) The parties agree to give due consideration to proposals for price or quantity undertaking after an affirmative determination in an AD/CVD investigation that could result in suspension of the investigations with no duties imposed. (the US, Canada, Australia, Vietnam, New Zealand, China and, Colombia);

7) The parties agree for careful consideration of applications for AD measure on a good on which AD measures were terminated in the previous twelve months as a result of review. (the EU, Turkey, China and. Vietnam);

8) The parties agree for a *de-minimis* dumping margin threshold set out in Article 5.8 of ADA in new shipper reviews. (the EU, Turkey, and China);

9) The parties agree to set up a committee/working group on trade remedies. (the US, the EU, Canada, China, and Vietnam).

In addition to the above, in the Korea-EU FTA, the chapter on 'Competition' has a separate section on 'Subsidies' in which the two parties have agreed to remove

distortions of competition caused by subsidies. Additionally, it has identified two types of subsidies as 'specific subsidy' under Article 2 of the WTO agreement on subsidies and countervailing measures[17] and prohibited them. These relate to subsidies granted by the government or through a public body for covering debts or liabilities of certain enterprises without limitation and subsidies to insolvent or ailing enterprises without a credit restructuring plan. This section on subsidies is subject to the dispute settlement provisions of the FTA even as the rest of the competition chapter is not. Similar provisions prohibiting these two types of subsidies also figure in the EU-Japan FTA but the issue of 'Subsidies' is dealt with in a separate chapter in this FTA and is not part of the Competition Policy Chapter.

Furthermore, in the Korea-China FTA there is a confirmation that the two parties will not use a third country surrogate value methodology in determining the dumping margins.

What emerges from all the foregoing is that Korea has shown flexibility in the inclusion of such additional provisions. From a trade law evolution angle, it is also interesting to see that from a mere reiteration of AD and CVD provisions of the WTO in the first Korea-Chile FTA, the provisions in subsequent FTAs have been steadily expanding. It's more recent FTAs—such as with China and Vietnam—have greater number of such additional provisions. Of course, seeking adherence to certain provisions relating to zeroing or quantitative undertakings also depend on the national AD/CVD legislation of the concerned FTA partners.

In the recent limited renegotiation of the Korea-US FTA in 2018, Korea from its side was also able to get a new provision included that would bring about greater procedural transparency and due process 1) in the event in-person verifications of information provided by the respondents are conducted by the authorities in anti-dumping and countervailing duty investigations and 2) in the disclosure of calculations and the methodology used to determine the rate of dumping and countervailable subsidisation.[18]

Seen against the variety of additional commitments prevalent in Korea's FTAs as in the foregoing, with several of them figuring also in the EU-Korea FTA, the EU-Japan FTA is briefer on this topic. Apart from prescribing a notice period of ten days for informing the other party before initiation of investigations, it focuses

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[17] Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14 [hereinafter ASCM].

[18] *Id.* at art. 10.7(6)(7).

more on the investigations themselves and seeks 1) an opportunity for all interested parties including industrial users and representative consumer organisations to give their views including on the potential impact of the duties;[19] 2) the full disclosure of essential facts under consideration forming the basis for application of provisional or definitive measures;[20] and 3) certain due process and transparency procedures to be observed in situations when the investigating authority has to proceed with only use of facts available.[21]

The brevity in this case may be partly explained by the fact that there is only one anti-dumping measure taken in recent years by EU against Japan and Japan too has only one measure against an EU member, Spain. They have not taken any countervailing actions against each other. In comparison, Korea ranks thirteenth among all AD users and had thirty seven definitive AD measures in place against exporters from fourteen countries as of December 2018[22]. Of them, twenty eight definitive measures were against exporters of FTA partners[23] and these were on a range of items including chemicals, plastics, plywood, coated paper, ceramics, glass and metals. Korea has however not imposed any countervailing measure so far.

Have signing of FTAs made any difference in Korea's usage of trade remedies? There is no perceptible trend here in terms of the number of the AD measures taken totally or against any particular country, in recent years. The total number of definitive measures against all current FTA partners have swung between twenty four measures by end 2010 to twenty in 2012, to twenty seven in 2014 and twenty eight by the end of 2018.

Korean exporters have however faced higher level of trade remedy actions in certain of their FTA partners in the face of freer access to them. The most prominent has been in the US in which the definitive trade remedy measures in force have more than doubled from twelve AD duties and three CVDs at the end of 2012, the year in which the Korea-US came into force, to twenty seven AD duties and seven CVDs at the end of 2018.[24] The number of definitive AD

[19]FTA US-Korea, *supra* note 15, at art. 5.13.
[20]*Id.*at art. 5.12.
[21]*Id.* at art. 5.12(4).
[22]*See* Committee on Anti-Dumping Practices, *Notification of Laws and Regulations under Article 18.5 of the Agreement,* G/ADP/N/1/KOR/6 (Mar., 23, 2011).
[23]They comprised China(11), ASEAN countries (7), India (4), EU countries (3) and US (3).
[24] *See* Simon Lester et al., *Trump's first trade deal: The slightly revised Korea-US Free Trade Agreement*, CATO INSTITUTE FREE TRADE BULLETIN, no. 73, Jun, 2019. It has been observed that the recent renegotiated terms for promoting greater transparency in

measures against Korean exporters in India also rose from nineteen in 2010, when the FTA came into force, to twenty one in 2018. Similarly, the AD measures of the ASEAN countries collectively against Korean exporters numbered five in 2010 but rose to eleven in 2018.[25]

B. Safeguards

Apart from reaffirming their rights and obligations under the global safeguards regime under the WTO relating to Article XIX of GATT (1994), several of Korea's FTAs provide for additional bilateral safeguards. This is in case a tariff concession under an FTA for a particular good cause or threatens to cause serious injury to the domestic industry in the importing country. In most of Korea's FTAs, the investigations to be undertaken in this regard are akin to those in the global safeguards' agreement.

There are also certain standard clauses in all of them such as that the safeguard duty cannot exceed the base rate or applied MFN duty for an item and there will be no simultaneous application of the global safeguard and bilateral safeguard on the same item. Further, upon termination of the safeguard measure the customs duty shall be the same rate which would have been in force but for the safeguard measure. Most of the FTAs also provide for progressive liberalisation if the safeguard measure is imposed for more than one year. All these features figure in the EU-Japan FTA as well.

Where there are differences, they relate to 1) the maximum duration permitted for a safeguard measure on a product; 2) the provision for compensation in such an event; and 3) for how long the safeguard mechanism may be applied for any product. Table 4 presents the situation in respect of certain of Korea's FTAs in this regard. In the Japan-EU FTA, the maximum duration permitted for a safeguard measure is two years with a possible extension of up to another two years.[26] Compensation is mandatory if the safeguard period exceeds twenty four months.[27] Safeguard measure is available for a product for a period of ten years after the completion of tariff reduction or elimination on that product.[28]

AD/CVD proceedings in Korea-US FTA was a direct response to the frequent use of these trade remedy measures.

[25]All these numbers have been compiled based on statistics given in the WTO website featuring semi-annual reports of members giving details about the measures in force.

[26]FTA US-Korea, *supra* note 15, at art. 5.3.

[27]*Id.* at art. 5.6.

[28]*Id.*at art. 5.3.

Further, in Korea's FTAs with India, the US, Peru, Canada, New Zealand, Australia, Vietnam and Colombia, a party taking a global safeguard measure may exclude imports of an originating good of the other FTA partner (selective safeguard) from its application.

Apart from having bilateral agreement-wide safeguards, there are also certain sector specific safeguards in a few of Korea's FTAs. An agriculture specific safeguard mechanism is included in the FTAs with Chile, US, EU and Australia. In the last three FTAs, the mechanism, considering the list of products in the schedules, basically provides Korea (and not the other FTA partner) the possibility imposing a safeguard measure when the aggregate volume of imports of certain identified agricultural products exceeds a trigger quantity set out in the agreement that further provides the maximum safeguard duty and applicable duration. This is possibly the case since Korea has undertaken substantial liberalisation in agriculture in its FTAs with these three partners. A similar agriculture specific safeguard provision also features in the EU-Japan FTA, available for Japan.

In the Korea-US FTA, there are separate safeguard measures for the textiles and the automotive sectors. In the textiles safeguards, an emergency measure can be taken for two years that will be extendable by another two years (in the bilateral agreement wide safeguard in this FTA the measure can be extended only by a year).[29] Moreover, emergency actions can be taken up to ten years after customs duties are eliminated on that item.[30]

The automotive safeguards in the Korea-US FTA applies to vehicles under HS 8703 and 8704 and in this case, the safeguard measure will also be extendable by two years and the special safeguard mechanism will be available for ten years beyond full elimination of tariffs on that vehicle. Additionally, parties are not subject to any retaliation for up to two years after a particular auto safeguard is applied, there is no restriction on repeat application and no requirement to progressively liberalise auto safeguard tariff.

[29]ASCM, *supra* note 17, at art. 4.1.
[30]*Id.*

Table 4: Timelines in the bilateral safeguard measure under the different FTAs

	Maximum period of initial application of safeguard measure + extension allowed	**If compensation for safeguard measure not bilaterally agreed any limitation on withdrawal of concessions by exporting**
Korea-Australia FTA	**2 years+1year**	**No restriction**
Korea-Vietnam FTA	2 years+1 year	Not before 2 years
Korea-China FTA	2 years+2 years	Not before 2 years
Korea-EU FTA	2 years+2 years	Not before 2 years
Korea-US FTA	2 years+1 year	No restriction
Korea-India CEPA	2 years+2 years	Not before two years but when measure taken as a result of absolute increase in imports it will be 3 years
Korea-ASEAN FTA	3 years+ 1year	No restriction

	Period for which safeguard provision on any product is available under the FTA
Korea-Australia FTA	**Date of completion of tariff reduction for that item + 5 years**
Korea-Vietnam FTA	Ten years from entry into force of FTA or date of tariff elimination for the good whichever is later
Korea-China FTA	Ten years from entry into force of FTA or date of tariff elimination for the good whichever is later
Korea-EU FTA	Date of completion of tariff reduction for that item + 10 years
Korea-US FTA	Ten years from entry into force of FTA or date of tariff elimination for the good whichever is later
Korea-India CEPA	Date of completion of tariff reduction for that item + 10 years
Korea-ASEAN FTA	Date of completion of tariff reduction for that item + 7 years

There is no readily available information about the cases where Korea had to invoke bilateral safeguard measures under its FTAs. But safeguard trigger volumes have exceeded in respect of beef imports from Australia.[31]

Korea has however not launched any global safeguard investigation after 1999. The only two safeguard measures it has taken under WTO relate to dairy products (1996), and fresh or peeled garlic (1999). Korea has however invoked more

[31] *See, e.g., Korean beef safeguard to be triggered imminently*, MEAT & LIVESTOCK AUSTRALIA (Oct. 10, 2018), https://www.mla.com.au/prices-markets/market-news/korean-beef-safeguard-to-be-triggered-imminently/. As per the agricultural safeguards provision in Korea-Australia FTA the safeguard trigger gets activated once beef imports exceed a certain tonnage that was 154,584 tons in 2014 and which went up to 203,970 in 2028 beyond which the MFN duty of 40 per cent will apply. Australia's exports have crossed the trigger levels in 2016, 2017 and 2018. It is interesting to note that in the case of US the corresponding safeguard trigger tonnage was much higher and went up from 270,000 tonnes in 2012 to 354,000 tonnes in 2025.

regularly special safeguards[32] (SSG) under the WTO agreement on agriculture on some of the products in which it has reserved the right to take SSG action such as grains, potatoes, ginseng and soybean.

IV. PRODUCT REGULATION IN THE FTAS

A. Sanitary and Phytosanitary (SPS) Measures

Korea's FTAs generally reaffirm the rights and obligations of parties under the WTO SPS agreement. Several of them also go further and in separate chapters devoted to SPS issues provide for a more detailed framework for addressing them. In all of Korea's FTAs however, the SPS provisions are not subject to dispute settlement under the FTA itself.

The FTAs appear to broadly fall into three categories in so far as specific SPS provisions in them are concerned. Korea's FTAs with Singapore, EFTA countries, the ASEAN and Vietnam could be placed in the first category in which the SPS provisions are quite brief and apart from affirming the parties' commitments towards the WTO SPS agreement, provide for contact points for exchange of information for implementation purposes. While a working group will further review implementation of SPS (& TBT) aspects in the Korea- ASEAN FTA that recognised the importance of transparency of such regulations, Korea's FTA with Vietnam, that also has provisions for technical cooperation, has a Committee set up for this purpose. All the additional aspects in these FTAs are however somewhat general in nature or couched in discretionary language.

A second category of Korea's FTAs, such as with Chile, India and the EU goes into greater detail on SPS aspects that are typically covered—harmonisation with international standards, equivalence and mutual recognition, risk assessment, regional conditions, transparency, control inspection and approval and technical assistance and cooperation. Korea's first FTA that was with Chile had a separate chapter covering most of these aspects even as it was clearly stated that it provided for a regulatory framework deemed consistent with the WTO SPS agreement.

Chapter 5 in the Korea-EU FTA that addressed SPS measures also covered aspects relating to transparency, harmonisation, regional requirements and technical cooperation. Among Korea's FTAs, it is perhaps the most detailed in

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[32] *See, e.g.*, WTO Secretariat,*Trade Policy Review: Republic of Korea,* WTO Doc. WT/TPR/S/346 (Sept. 6, 2006), at 66.

terms of specific commitments and procedures apart from the WTO SPS agreement. The regionalisation provision for example required both parties to not only recognise the concept of pest or disease free areas and areas of low pest or disease prevalence in accordance with the WTO SPS agreement and other international standards, but the two parties are required to identify such areas within a time period of two years from the entry into force of the agreement in the form of "Confidence building cooperation". If a party does not accept the determination by the other party then valid reasons are also to be given[33]. A Committee on SPS to review implementation was also set up to inter alia develop procedures for approval of establishments for products of animal origin and, where appropriate, of production sites of plant origin.

A report assessing the progress made under the Korea-EU FTA in 2016[34] stated that the policy dialogue under the FTA resulted in finding a mutual recognition approach for certification of organic products. Moreover, it has led to a change in Korean regulations which recognised that ripening of cheese can have equivalent effects to pasteurisation even as significant issues arose with the Korean restrictions on unpasteurised cheese. The dialogue has however not resolved all pending issues. As per a recent EU documents,[35]there are several including the Korean ban on EU beef that is still in effect (on account of bovine spongiform encephalopathy, or the 'mad cow disease'), EU regionalisation system not being recognised by Korea with respect to animal disease outbreaks, procedures for registering production establishments for animal products and those for pest risk assessment to enable exports of fruits and vegetables that are deemed as burdensome, etc.

The provisions in the Korea-India FTA were relatively brief but did dwell upon transparency, equivalence of each other's measures, and also about consulting (with the use of the word 'shall') on a broad range of SPS issues. It further provided for technical cooperation, training and joint research and on the institutional side established a joint working group to address both SPS and TBT issues.

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[33]*See* Lee Ann Jackson & Hanna Vitikala, *Cross cutting issues in regional trade agreements: Sanitary and phytosanitary measures*, *in*REGIONAL TRADE AGREEMENTS AND THE MULTILATERAL TRADING SYSTEM 316 (Rohini Acharya ed., 2016).

[34]*See* IBF INTERNATIONAL CONSULTING & ECORYS,ASSESSING THE RESULTS OF EU-KOREA FREE TRADE AGREEMENT (2016).

[35]*See* Commission Staff Working Document, *Evaluation of the Implementation of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part*, at 38, SWD(2019) 102 final, (Mar. 7, 2019) [hereinafter Commission Staff Working Document].

A third category of Korea's FTAs such as with the US, Australia and China are stylistically somewhat different. While they too reaffirm the parties' existing rights and obligations under the WTO SPS agreement, they do not spell out further commitments on specific aspects in any detail. Rather these aspects are listed more as implementation points, but with more mandatory language, that are to be taken up by a committee under the respective FTAs that will have oversight on SPS matters (referred to as 'technical meetings' in the Korea-Australia FTA). Additionally, all the three FTAs also provide for technical cooperation activities in varying measure in relation to development, implementation and application of SPS measures.

A US Congressional Research Report[36] has noted that the SPS Committee under the Korea-US FTA has been the venue for addressing plant pest and disease concerns that could prevent Korean imports of fruits and vegetables and Korea's new maximum residue levels (MRLs) for pesticides and animal drugs on imports. Korea adopted a Special Act on imported food safety management[37] which came into force on August 2016 that put in place new registration and inspection requirements for imported food products and foreign businesses that produce and export food products to it. Korea also started a complete overhaul of its pesticide and veterinary drug maximum residue level system.

At a time of such substantial regulatory revisions, FTA partner countries, particularly those that have more specific provisions in their SPS chapters, do have an edge by having an additional platform to raise their bilateral concerns in a more mandated manner even as none of the FTAs guarantee a time bound outcome or offer recourse to dispute settlement.

This latter shortfall is perhaps where the EU-Japan FTA has made a further advance by restricting the non-application of dispute settlement provisions to only a few articles of the SPS chapter (Chapter 6 in the FTA) that concern 1) risk assessment;[38] 2) checking and ensuring fulfilment of SPS measures including for approval and clearance;[39] and 3) determination of equivalence of SPS measures and possible consultations if required.[40] All other articles including those relating to adaptation to regional conditions, audit visits to exporting parties, transparency

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[36] *See* JENNY HOPKINSON, CONGRESSIONAL RESEARCH REPORT OF US-SOUTH KOREA AGRICULTURAL TRADE, (Aug. 08, 2018).
[37] Special Act on Imported Food Safety Management, Act No. 13201, Feb 3, 2015, *amended by* Act No. 15940, Dec 11, 2018 (S. Kor.).
[38] FTA US-Korea, *supra* note 15, at art. 6.6.
[39] *Id.* at art. 6.7, ¶¶4(b)-4(d).
[40] *Id.* at art. 6.14, ¶¶1, 2.

requirements, procedures for listing of establishments and technical consultations are subject to dispute settlement. There is also a separate annex in the text on food additives — especially about the transparency and predictability of approval procedures — which is also subject to dispute settlement. The FTA, in addition, has a Committee on SPS measures responsible for effective implementation.

B. Dealing with Technical Barriers to Trade (TBT)

Molina and Khoroshovina[41]have analysed close to 240 FTAs concluded globally regarding the manner in which they have addressed TBT issues. They conclude that in a vast majority of FTAs the parties basically affirm their rights and obligations under the TBT agreement and in several of them, select provisions from the TBT agreement are also incorporated into the FTA text. This is also the case with Korea's FTAs.

In most of Korea's FTAs, TBT issues are dealt with in separate chapters in the FTA text. They also have provisions on harmonisation/equivalence of technical regulations, conformity assessment procedures and transparency. Disciplines on marking and labelling are however found in fewer agreements—with Australia, China and the EU (and the Japan-EU FTA). In certain cases, there are also references to how TBT related issues will be approached in select sectors. A higher level of commitment on acceptance of conformity assessment procedures/certifications from authorised bodies in the other party is also found in some of them. Most of Korea's FTAs have established separate co-ordination mechanisms or working groups or committees to conduct oversight on TBT related issues. Some of Korea's FTAs—such as those with India, China and Australia—however, explicitly rule out TBT related aspects from being subject to dispute settlement provisions of the FTA. Table 5 gives a snapshot of coverage of different TBT related aspects in a number of Korea's FTAs.

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[41] A.C.Molina&V.Khoroshovina, *Technical Barriers to Trade Provisions in Regional Trade Agreements: To What Extent They Go Beyond the WTO TBT Agreement, in*REGIONAL TRADE AGREEMENTS AND THE MULTILATERAL TRADING SYSTEM 371 (Rohini Acharya ed., 2016).

Table 5: Nature of coverage of TBT issues in certain FTAs of Korea

	Separate chapter or confined to a few articles?	**Provisions on harmonisation/equivalence of technical regulations of each other**
Korea-Vietnam FTA	Separate Chapter 6 on TBT	Positive consideration to be given for equivalence or reasons to be given
Korea-China FTA	Separate Chapter 6 related to TBT measures	Positive consideration to be given for equivalence or reasons to be given
Korea-EU FTA	Separate Chapter	Where no international standards exist to cooperate to align/converge tech. reqmts.
Korea-US FTA	Separate Chapter	Detailed, also providing more mandatory cooperation for vehicle standards
Korea-India FTA	A detailed article on TBT & SPS measures	Yes
Korea-ASEAN FTA	Articles 7 & 8 covering WTO disciplines including TBT issues	-
Korea-Chile FTA	Separate Chapter 6 on standards related measures	Yes for promoting compatibility/equivalence

	Conformity Assessment procedure-on the lines of WTO TBT agreement	**Sector Specific provisions**
Korea-Vietnam FTA	Specific reference to APEC MRA for conformity assessment of telecom eqpmt.	Action points on Consumer product safety, MRAs for testing labs of food, cosmetics
Korea-China FTA	To also negotiate possible implementing arrangements at the earliest.	Exchange info. on regulatory systems for consumer product safety
Korea-EU FTA	More specific sectoral commitments in separate Annexes	Separate Annexes on electronics, motor vehicles, chemicals and pharmaceuticals
Korea-US FTA	Reference also to Phase II of APEC MRA for conformity assessment of telecom eqpmt.	Separate provisions on automotive sector and pharmaceuticals and medical devices
Korea-India FTA	Urges framing guidelines for accepting suppliers' declaration	Provides for mutual consultations on telecom and electrical and electronic eqpmt
Korea-ASEAN FTA	-	-
Korea-Chile FTA	Specifies detailed procedure & urges positive consideration for MRAs	On telecom in Chapter 12 of FTA and reference to APEC MRA on telecom

	Separate Committee or Working Group to monitor implementation	**Does FTA provide for dispute resolution on TBT issues?**
Korea-Vietnam FTA	A separate Committee on TBT set up	It is not ruled out
Korea-China FTA	A separate Committee on TBT set up	Explicitly ruled out
Korea-EU FTA	A coordination mechanism of all TBT Co-ordinators	Yes
Korea-US FTA	1. Ctee on TBT; 2. Ctee on medicines and medical devices; 3. Wkg.Gp. on automotives	Yes
Korea-India FTA	Established a Joint Working Group on SPS & TBT	Explicitly ruled out
Korea-ASEAN FTA	Established a Working Group on SPS & TBT	It is not ruled out
Korea-Chile FTA	A committee set up on standards-related measures	Yes

In Korea's FTA with the US, the Chapter on TBT has a separate Annexure setting out the terms of an automotive working group that will address TBT related issues concerning vehicles. Somewhat uniquely, a side letter was exchanged between the two sides which specified that vehicles built to US standards will be deemed to meet Korean standards up to a numerical ceiling for each US automaker (the so-called low volume seller exemption). In 2007, this limit was fixed at six thousand five hundred vehicles per year that was raised to twelve thousand in 2010, which has been further increased to fifty thousand in 2018 following the latest

renegotiation of the US-Korea FTA under the Trump administration. Korea has also agreed[42]to harmonise relevant testing procedures and methods for gasoline-powered vehicles with the US Federal regulations as long as they were consistent with California's emission standards.

Further, Korea's FTA with the US included a separate chapter on pharmaceuticals and medical devices which inter alia provided for regulatory cooperation apart from pricing and reimbursement issues. It foresees the possibility of negotiations of an agreement on good manufacturing practices, good laboratory practices and marketing approval for generic drugs. Subjects covered under this chapter were also subject to oversight by another separate committee under the FTA, apart from a TBT committee.

But Korea's FTA with the EU perhaps went the farthest in respect of sector specific WTO plus commitments on TBT issues. In a separate annex in the FTA on motor vehicles they commit to regulatory convergence on standards and regulations for vehicles and auto parts using in particular WP 29 within the framework of United Nations Economic Commission for Europe (UNECE). The implementation of this Annexure is overseen by a working group under the FTA and it is also subject to dispute settlement with a more robust timeframe for resolution.

Similarly, in another annex on electronics Korea and the EU commit themselves to a time bound agreement for acceptance of supplier's declaration of conformity with the required standards or technical regulations. In the Annexure on pharmaceuticals and medical devices they have agreed that each party's rules regarding pricing, reimbursement or regulation in relation to these products will be promptly published or otherwise made available at an early stage. In the Annexure on chemicals they have agreed on ensuring transparency as well as cooperation in the areas of good laboratory practices and test guidelines towards seeking a more harmonized approach.

In contrast, the Japan-EU FTA has a sector specific annex relating to TBT matters only in respect of motor vehicles and parts which is however also subject to accelerated dispute settlement under the FTA, as in the case of Korea-EU FTA. But unlike the latter, the chapter 7 of TBT issues in EU-Japan FTA is subject to dispute settlement under the FTA itself only in part. If issues arise in

[42] Jeffrey J. Schott & Euijin Jung, *KORUS amendments: Minor adjustments fixed what Trump called 'Horrible Trade Deal'*, Policy Brief 18-22, PETERSEN INSTITUTE FOR INTERNATIONAL ECONOMICS (Nov., 2018).

respect to interpretation of Articles 2 to 9 of WTO TBT agreement and its Annexes 1 and 3, which have been incorporated in full and made part of Chapter 7, then any alleged violation of them can only be taken up under the WTO dispute settlement mechanism.

A report of the EU Commission on Trade and Investment barriers[43] has indicated that the FTA implementation structure with Korea provided an effective vehicle to address trade barriers and referred in particular, to how Korea agreed to amend its unique seat size and clearance requirements and certain other harmonisation concerns in the FTA automotive working group. An EU staff working document[44] has analysed the reduction in non-tariff trade costs in several sectors as a result of the FTA that shows the electronics sector in EU to have benefitted the most with a 25% reduction. This is even as the same report also outlines several pending unresolved issues in respect of automotive and electronics. It also bemoans the lack of inclusion of truck-tractors in the equivalence tables of the automotive annex in the FTA since Korea is not accepting the EU standards here to be equivalent to Korean standards; demonstrating that comprehensive sector specific chapters in FTAs do help in highly regulated sectors like autos but it also depends on coverage.

Likewise, the annual report on Foreign Trade Barriers of the office of US Trade Representative for 2019 has listed some of its concerns regarding the Korean market in the areas of motor vehicles, pharmaceuticals and chemicals, while also indicating how provisions of KORUS and its institutional mechanisms were being used to address them. These are all clear indications how future FTAs may evolve, or existing FTAs may be revised, by having sector specific mechanisms to address standards and technical regulations.

To get an idea of the impact that sector specific provisions in Korea's FTAs with the EU and the US have had on trade, Table 6 looks at Korea's imports from these partners of passenger cars and pharmaceuticals that shows a sharper increase in Korea's imports in these sectors from all sources, significantly beyond the overall rise in imports. The EU has managed to more or less retain its large market shares in these two areas in Korea despite the sharp rise in Korea's overall imports in them. For the US, there was also a significant accretion in market shares in both

[43] *See* European Commission, *Report from the Commission to the European Parliament and the Council on Trade and Investment Barriers*,(2016) at ¶ 27.
[44] *See* Commission Staff Working Document, *supra* note 35, at 36.

the sectors. For Korea too, it was able to significantly increase its exports[45]both to the EU and the US in these two sectors during this period.

Table 6: Trade impact: imports of select items from US and EU (in million US$)

HS 30 Pharma products	HS 8703 Passenger cars
Percent rise in import from EU 2016-18 versus 2009-11	63
Korea's annual average imports from EU in 2016-18	2945 (50.1%)
Korea's annual average imports from EU in 2009-11	1806.8 (52.1%)
Percent rise in import from US 2016-18 versus 2009-11	96.2
Korea's annual average imports from US in 2016-18	1197.8 (20.4%)
Korea's annual average imports from US in 2009-11	610.5 (17.6%)
Percent rise in overall imports in 2016-18 versus 2009-11	69.5
Korea's annual average imports from all sources in 2016-18	5877.2
Korea's annual average imports from all sources in 2009-11	3467.7

[45] During the period 2009-11 to 2016-18, Korea's annual average exports of passenger cars (HS 8703) sharply rose from US$ 6.88 bn to US$ 14.6 bn to US and from US$ 3.9 bn to US$ 7.05 bn to the EU market. Similarly, its exports of pharmaceuticals (HS 30) to US shot up from only US$ 52 mn to US$ 283 mn and to EU from US$ 51 mn to US$ 916 mn.

HS 30 Pharma products	All products (in billion US$)	HS 30 Pharma products
Percent rise in import from EU 2016-18 versus 2009-11	257	44.8
Korea' s annual average imports from EU in 2016-18	7035.3 (69.9%)	57.2 bn
Korea' s annual average imports from EU in 2009-11	1969.1 (70.2%)	39.5 bn
Percent rise in import from US 2016-18 versus 2009-11	550	34
Korea' s annual average imports from US in 2016-18	1685.9 (16.7%)	50.9 bn
Korea' s annual average imports from US in 2009-11	253.5 (9%)	38 bn
Percent rise in overall imports in 2016-18 versus 2009-11	269	11.6
Korea' s annual average imports from all sources in 2016-18	11071.1	558 bn
Korea' s annual average imports from all sources in 2009-11	2804.4	473.3 bn

Source: Trade figures given have been computed from statistics made available by Korea Customs at www.unipass.customs.go.kr. Figures in parentheses indicate percentage share in relation to Korea's total imports in that sector.

Finally, it is somewhat unique that for automotive, the TBT chapter of the Korea-Canada FTA makes an explicit reference to provisions of another FTA,[46] the Korea-EU FTA. The chapter gives Canadian automakers access to the Korean market for cars built compatible to key U.S. safety standards or the European Union safety standards and are not subject to any numerical limits.

V. CONCLUSIONS

Since its first FTA with Chile coming into force in 2004, Korea has rapidly expanded its network to sixteen FTAs that cover over 72% of its exports. Its FTA partners together now account for over 75 per cent of world GDP. If RCEP were to be signed, it will also add Japan into its fold, bringing its FTA coverage closer to 80% of exports and 75% of imports.

Working to preserve and promote trade with its principal partners through FTAs, showing flexibility to accept FTA templates of its partners, be it related to RoO or to comprehensiveness of the FTA, and trying to gain an early mover advantage wherever possible have all been the driving elements of Korea's FTA strategy. It is evident that Korea's FTAs carry a wide variety in scope and in depth of commitments across trade rules studied in this paper. There is also a perceptible move towards further elaboration of regulatory provisions in later FTAs similar to a worldwide trend.

Those FTA partners who were able to conclude more sector specific provisions in highly regulated areas like autos, electronics or pharmaceuticals are reaping some trade benefits. Even in respect of SPS measures, having a bilateral forum under the FTA to redress concerns is acknowledged as a plus by some of Korea's FTA partners, even as this chapter is not subject to dispute settlement under the FTA in any of Korea's FTAs, though a beginning is seen in the EU-Japan FTA. All such provisions may provide guidance in the design of future FTAs and even could be a way for multilateral solutions to emerge on dealing with non-tariff barriers in the future.

[46] Canada-Korea Free Trade Agreement, Can.-S. Kor., art. 6.7, Mar. 11, 2014.