THE LONG AND WINDING ROAD - CANADA-KOREA FREE TRADE AGREEMENT SIGNED

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After a ten year rollercoaster negotiation, Canada and South Korea ("Korea") signed the *Canada-Korea Free Trade Agreement* ("**CKFTA**") on March 11th, 2014. Korea is the third largest economy with whom Canada has signed a free trade agreement ("**FTA**")[1] . This Agreement should help Canadian businesses by leveling the playing field with other economies, such as the US and the EU, that are actively pursuing the growing Korean economy.

From the Canadian perspective, the agricultural industry likely stands to benefit significantly from increased market access. Korea appears to be most pleased with improved market access for automobiles.

Background of the Agreement

Korea has recently become a very popular trading partner. In July 2011, the *EU-South Korea Free Trade Agreement* ("**EUSKFTA**") came into force. In March 2012, the *Korea-US Free Trade Agreement* ("**KORUS**") came into force. Australia concluded negotiations on its FTA with Korea in December 2013, and signature is expected in the coming months.

Given the state of Korea's economy, these FTAs make good sense. Korea has a gross domestic product of $1.1 trillion USD[2], making it the 15th largest economy in the world and the 4th largest in Asia (behind only China, Japan and India). It is also growing. Over the last 30 years, Korea's economy has grown six-fold, with an impressive average annual growth rate of 6.5%.

There is a widespread belief that these recent FTAs (particularly KORUS) have had a negative impact on Canadian exporters compared to competitors from the US or EU. Canadian exports to Korea dropped by approximately one-third, from $5.03 billion to $3.37 billion[3], in the two years since KORUS came into force. The Canadian government expects that the *CKFTA* will allow Canadian producers to regain lost markets as well as providing new opportunities. In particular, the Canadian government believes the Agreement will facilitate the inclusion of Canadian inputs into Korean products as part of their global supply chains.

There are a number of procedural and drafting issues that will need to be resolved before final ratification of the Agreement; nevertheless, there are reports that the CKFTA could be in force in as little as one year from now.

Improved market access

Once the Agreement is fully implemented, Korea will remove tariffs from 98.2% of tariff lines that cover virtually all of its imports from Canada. In exchange, Canada will remove tariffs from 97.8% of tariff lines. Korea's average tariffs are currently 13.3%, while Canada's are 4.3%. Tariff removal will take some time to materialize, and will be asymmetrical, with each party's particular interests reflected in the timing of tariff reductions.

To Korea, the removal of Canadian duties on Korean automobiles was a very important goal. In 2013, approximately one-third of Korean's exports to Canada ($2.3 billion of $7.3 billion) were passenger motor vehicles4. Canada currently imposes a 6.1% MFN duty rate on such imports.

The Canadian tariff on Korean automobiles will be stepped down in three phases: the first reduction when the Agreement enters into force, with the second and third cuts in each subsequent year. By contrast, Korea will remove its 8% tariff on Canadian automobiles immediately upon the Agreement entering into force.

Tariff protection for the politically sensitive Korean agriculture sector will be phased out over a longer term than tariffs applied to Canadian manufactured goods. Once fully implemented, 86.8% of Korean tariffs on agricultural products will be eliminated. Key agricultural exports from Canada include beef and pork. In 2013, Korea's total imports of these products from all sources was approximately $2.4 billion, The opportunity for Canada to supply a larger share of these imports is seen as beneficial for Canadian producers. Duties on beef (fresh, chilled or frozen) currently stand at 40-72% and will be eliminated over 15 years. For pork (fresh, chilled, frozen), current duties of up to 25% will be eliminated over 5 to 13 years. Korea will maintain tariff protection on most dairy products, poultry and poultry products, ginseng and related products, rice and rice products, refined sugar and most tobacco products.

On the Canadian side, 87% of Canadian agricultural tariffs will be eliminated. Duties will remain in place to protect supply managed industries (i.e. dairy, poultry and eggs).

Other notable tariff reductions of benefit to Canadian producers include the elimination of duties on Canadian wines and spirits, including Canadian whisky (currently 20%) and ice wine (currently 15%). Korea has also agreed to protect "Canadian whisky" and "Canadian rye whisky" as geographical indications under its intellectual property laws.

Turning to metals and minerals, Korea will remove tariffs on 98.7% of metal and mineral tariff lines upon the Agreement's entry into force. The remaining tariffs will be eliminated within five years. Until such time, current duties ranging up to 8% will remain in place. Canada currently imposes virtually no tariffs on metal imports.

Any existing duties will be removed upon mutual ratification of the *CKFTA*.

Provisions other than market access for goods

In addition to tariff reduction, the *CKFTA* also addresses:

- Trade in Services and Investment;
- Government Procurement;
- Intellectual Property;
- Dispute Settlement; and
- Environment and Labour.

Korea has committed to providing improved access to its financial services sector. Given the strength of Canada's banking industry, this may represent a substantial opportunity. In regards to e-commerce, the parties have agreed that on entry into force, no duties will be charged on digital products that are transmitted electronically.

While the *CKFTA* has provisions relating to government procurement, they largely affirm the parties' commitments under the WTO Agreement on Government Procurement (including the amended version currently expected to come into force in April 2014). The *CKFTA* government procurement provisions do not apply to sub-national procurement, so no consultation with the Provinces or Territories was required.

In addition to the protection of certain geographical indications relating to Canadian wine and spirits, the *CKFTA* also provides that Canada will recognize and protect terms such as "Korean red ginseng", "Korean white ginseng" and "Korean fresh ginseng".

Canada and Korea have agreed on a flexible dispute resolution mechanism. The system will rely on the appointment of ad hoc panelists, rather than a fixed roster of candidates. An expedited process is also available for two classes of goods: automobiles and perishable goods (e.g. certain agricultural goods). The *CKFTA* hopes to promote openness and transparency in the dispute resolution process by allowing public attendance at hearings, and allowing intervener submissions from interested parties.

The *CKFTA* provisions relating to the environment and labour largely re-affirm the parties' existing obligations in multilateral agreements and under international standards. The *CKFTA* also contains provisions that ensure that parties not derogate from their environmental and labour obligations to promote trade or investment.

Conclusion

The recent signing of the *CKFTA* opens a significant international market opportunity for Canada, both because of the size of the Korean economy, and its continuing rapid growth. The *CKFTA* will remove disadvantages Canadian exporters have experienced in competing with US and EU producers who already benefit from preferential market access. The CKFTA will similarly provide advantages for Canadian exporters over foreign competitors from other jurisdictions that do not benefit from a free trade arrangement with Korea.

New Canadian exporters interested in the Korean market should be aware that they should not expect instant results from the *CKFTA*. Entry into Asian markets generally requires an appreciation of cultural sensitivities that must be respected in order to take advantage of business opportunities. Canadian exporters should be prepared to invest some time and effort into developing relationships and building trust with potential Korean buyers.

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1 Behind the US and Mexico through NAFTA, and given that the Comprehensive Economic Trade Agreement with the EU has not yet been ratified.

2 Per IMF, based on Gross Domestic Product by PPP.

3 Source: Statistics Canada – Canadian International Merchandise Trade Database.

4 Per Statistics Canada, based on goods classified under Harmonized System heading 87.30.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.