

# 한미FTA저지 범국민운동본부

**The Korean Alliance against the Korea-U.S. FTA**

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## **Evaluation of the Korea-U.S. FTA**

### **Report to the People's Forum**

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### **I. Overview and Position of the Korean Alliance**

1. The possibility of renegotiations for the Korea-U.S. FTA came up recently, but it is expected that the agreement will be signed as planned. However, it is not clear at all whom the FTA was for. What is clear is that the sole beneficiary of the agreement will be transnational corporations of Korea and the U.S., and the victim will be the general public of the two countries, especially the workers and farmers.

2. The Korea-U.S. FTA is an agreement that has given up on the people's right to a healthy life. It entails the weakening of sanitary standards, including the re-importation of beef with the risk of BSE, or mad cow disease, and the lowering of LMO import regulations. It neutralizes Korea's drug pricing policy and extends the patents of pharmaceuticals. And it abandons the regulation of private health insurance and threatens the universal health insurance system.

3. The Korea-U.S. FTA will accelerate the social polarization in both Korea and the U.S. The entire agreement rests on the ideology of neoliberalism, and it will bring structural adjustment of industries and enterprises through elimination of tariffs and changes to various non-tariff measures. For Korea, it will bring job loss for the farmers and workers of small businesses. Job loss will also occur in the U.S. For Korea, the rise of unemployment will lead into the increase of irregular workers and restriction of basic labor rights. Farming communities and small cities will deteriorate, and the already serious problem of population concentrating in the capital area will worsen.

4. The Korea-U.S. FTA limits the sovereign authority of both Korea and the U.S. The wide recognition of investor-state claims will restrict the functions of the state, and through the NAFTA-style reservation of the service sector, any regulation on behalf of the public will be limited. The recognition of non-compliance claims could increase the dispute between Korea and the U.S., and the authority of legislatures of both countries will come under challenge.

5. Korea-U.S. FTA is a retrogression of democracy for both Korea and the U.S. The interests of workers, farmers, and the public in both countries were not reflected. The agreement reflects only the unilateral interests of transnational corporations. In the case of Korea, even the basic process of collecting opinions was neglected, and the negotiations started without people's discussion. The people's opposition to the one-sided publicity of the Administration was suppressed throughout the negotiation process.

6. The Korea-U.S. FTA has no real economic benefit for the peoples of Korea and the U.S. It may give some benefit (though this is not certain) to a few of Korea's colossal corporations in areas of automobiles, shipping, semiconductors, telecommunication, and steel. The U.S., too, may see some benefit in service, finance, and pharmaceutical sectors. But overall, for both countries, the FTA will give rise to bias and unbalanced economic systems, and benefits will not reach the people.

7. The Korea-U.S. FTA will lead to the collapse of Korea's agriculture and farmers' lives. It is a matter of time for Korea's 3.5 million farmers to lose their livelihood. This will affect Korea's entire job market and bring about insecurity of Korean society.

8. The Korea-U.S. FTA is an unbalanced agreement that restricts Korea's sovereignty and injects the U.S. system, bringing a crisis to Korea's overall institutions and systems. Korea's institutions are historically different from U.S. institutions. The investor-state claims clause is unconstitutional, and the restriction of automobile taxation violates the constitutional jurisdiction of the National Assembly. The neoliberal content of the agreement comes face to face with the social and economic order guaranteed by the constitution.

9. The essence of the Korea-U.S. FTA does not change with the inclusion of 'New Trade Policy of America.' This agreement must be abolished, because it threatens the right of peoples of both countries to have a healthy life, ignores the interests of workers and farmers of both countries, undermines democracy, and does not provide any real economic benefits.

10. Even if the Korea-U.S. FTA is signed, the road to ratification will not be smooth. In Korea, there is a group made up of 55 members of the National Assembly who oppose the Korea-U.S. FTA. And public hearings on sections of the agreement have begun. There is a good chance that the agreement will be submitted to the National Assembly, but through opposing public opinions, social actions, and lawmakers who are against the FTA, the chance for ratification is not high. Furthermore, presidential election is scheduled in December, and because the Korea-U.S. FTA is a sensitive campaign issue, the support for a conservative party also will not be high.

11. In the case of Korea, the ratification of the agreement will be determined by the presidential election and the general election in March 2007. The Korean Alliance has led the opposition against the Korea-U.S. FTA from the start. We will continue the opposition against this agreement for the benefit and rights of the people in both Korea and the U.S.

## II. Evaluation of the Agreement by Sector

### A. Pharmaceuticals and Public Health

1. The Korea-U.S. FTA will have negative impact the peoples of both countries, especially those with low-come. This FTA, which is considered by transnational corporations as an exemplary agreement, will have an unjust effect on other FTAs and international agreements, in the end threatening the health of the people all over the world.

2. The agreement on pharmaceuticals and pharmaceutical instruments is disaster for Korea's public health system. With this agreement, the authority to determine drug pricing, which is 30% of Korea's national health insurance budget, has been turned over to transnational corporations; the Korean people must bear the increase in the cost of over \$1 billion a year.

- The public cost for health insurance is bound to go up, because patents are seen as standards for innovation and the average drug price of advanced nations is applied to Korea.
- The agreement related to drug patents (in Chapter 18) strengthens patents at an unprecedented level. By recognizing patent extension and data exclusivity, the agreement delays the production of generic drugs and extends patents even on drugs that are produced as generic.
- By including transnational corporations in the process of determining drug prices, including an independent board regarding insurance drug coverage, drug pricing policy is made ineffective.
- It has become difficult for the Korean government to regulate multinational drug and pharmaceutical instrument companies, because the committee made up of these companies are determined to execute the agreement and discuss with the government on drug pricing policy.

3. The Korea-U.S. FTA has determined Pusan, Inchon, Kwangyang, and Jeju Island, where the medical market is already being liberalized, to be targets for opening (Appendix II). The foundation of the public health system will be shaken, because the national health insurance law, which requires all health facilities to accept the national insurance and remain as non-profit, will not apply in these cities.

4. The elimination of tariffs on tobacco and alcohol is a retrogression of the public health policy and will have unwanted consequences. The decrease in the price of tobacco through the elimination of 40% tariff will make 'price barrier,' which is the core of non-smoking policy, ineffective. Article 2.10, which prohibits the imposition of fees and charges for fiscal purpose, poses to have a negative effect on the health fund related to tobacco.

## **B. Food Safety**

1. The Korea-U.S. FTA will worsen the problems of food safety in Korea and the U.S., because it ignores the precautionary principle for food safety. The agreement is directly related to problems of BSE beef, GMO, avian influenza regionalization, and meat inspection.

2. The issue of U.S. beef importation has become the measuring stick of public health and food safety in Korea. Before the start of FTA negotiations, as a precondition, Korea agreed to re-import U.S. beef, which has the risk of BSE. The agreement has thus come to be seen as harmful to the health of the population. The obvious truth that people's health comes before trade was ignored from the start: health was determined by trade.

3. The 'big-deal' between GMO (a sanitary issue) and textiles (regulation of origin) threatens health and food safety of the people. It drastically weakens legislative authority to enact the LMO law that follows the ratification of the Caragena Protocol on Biosafety.

4. The acceptance of both avian influenza regionalization and U.S. meat inspection results—through documents 'Understanding LMOs' and 'Understanding Animal Health and Livestock Sanitation'—is bringing dangers to people's health and food safety.

5. The Standing Committee on SPS will lower the sanitary standards of both countries. Instead of protecting people's health, the SPS Committee will speak on behalf of large agricultural producers and exporters. In 'Understanding LMOs,' it was agreed that "communication channels will be used in order to deal with barriers to trade" and the scope would include "all sanitary measures that can directly or indirectly affect bilateral trade." This agreement can debilitate all government measures developed for the health and food safety of the people.

6. Through the conclusion of the Korea-U.S. FTA, people's health and food safety are under threat, and the authority for inspection has been weakened. For the health and food safety of the people of both countries, the agreement must not be signed or ratified.

## **C. Agriculture**

1. The Korea-U.S. FTA will affect U.S. family farmers, but for the Korean farmers, the agreement is a death sentence. There has never been liberalization as extensive as this FTA, and it will leave a disastrous mark in the history of Korea.

2. Most of Korea's 3.5 million farmers are family or small farmers; this number is 8% of the population. Since the Uruguay Round, the importation of agricultural products has accelerated, the price of agricultural products has decreased, farmers' debt has increased, and the farming population has dramatically decreased. Currently, Korea's food self-sufficiency is 25.6%.

3. The Korea-U.S. FTA includes all agricultural products except for rice. Korea's agriculture may disappear in 10 to 15 years. Korea's farmers who till the limited amount of land simply

cannot compete with U.S. agribusinesses.

- Beef tariff (40%) will be eliminated in 15 years. Beef makes up the majority of Korea's livestock industry.
- Tariffs on vegetables and fruits such as tangerine oranges, apples, and pears, which are crucial to the livelihood Korea's farmers, will also be eliminated. Tariffs on apples and pears will be eliminated in 20 years, port and chicken in 10 years.

4. The safeguards that can soften sudden collapse are only recognized at a very limited level.

- Items that are covered by agricultural safeguard are limited to 20 items including barley, corn, starch, beef, port, and apples.
- Other important items such as chicken, duck, and turkey meats; dairy products such as powdered milk, condensed milk, cheese, milk, cream, and butter; and fruits and vegetables such as oranges, tangerine oranges, apples, strawberries, tomatoes, and cucumber are limited to only 1 safeguard activation.

5. Korea's National Policy Institute reported that when tariffs on 20 or more sensitive agricultural items are eliminated in 10 to 15 years, Korean farmers' production will decrease by 1 to 2 billion dollars a year. However, when farmers are forced to produce non-special items, overproduction will lead to the decline in price and profit. The lives of Korea's farmers will deteriorate in a chain-reaction fashion. Serious social problems witnessed in Mexico since NAFTA will occur in Korea.

#### **D. Investment**

1. The Korea-U.S. FTA gives investors extensive power by widely recognizing the investor-state dispute clause and by expanding the scope of indirect expropriation. This is a signal that the rights of people all over the world are close to being lost.

- Rather than promoting universal values in environment, safety, culture, and welfare in both Korea and the U.S., national policy will change for the benefit of investors.
- This agreement shows that an extensive investor-state claims system will also be recognized in future bilateral and multilateral agreements. The rights of the people of the world are being transferred to multinational corporations.

2. The Korea-U.S. FTA's investment chapter is greater than NAFTA's.

- Although it claims limited application, public policy related to public health, safety, environment, real estate, and taxation are areas of indirect expropriation and thus targets of lawsuits.
- Areas of dispute are expanded; even investment contracts are areas of dispute, unlike NAFTA.

3. In the case of Korea, investor-state dispute clause is expected to cause serious problems.

- Since the economic crisis of 1997, Korea has carried out liberalization of the market and privatization of public enterprises at a massive scale. Except for one, all commercial banks are controlled by foreign capital; and around 50% of stocks of majority corporations are foreign owned. Foreign ownership of the stock market has also reached 50%. There is a high possibility of numerous disputes, because all these corporations have the authority to make claims.
- The state authority to construct and execute state systems will become restricted according to the risk of dispute and its cost. The investor-state dispute clause provides investors the space to incorporate their interests in policy-making, because the claims clause gives bargaining power to foreign and domestic capital in the decision making process of national policy.

4. The investor-state dispute clause is also dangerous for the U.S. The capital holdings of Korea's large corporations are increasing, and investment in the U.S. is also on the rise.

- Korea's capital market flow is \$400 billion, and corporate reserve holding is \$160 billion. On the other hand, the national pension fund is over \$200 billion and increasing fast. Through the opening of Korea's financial market, such capital funds will flow abroad including the U.S. The Korean government is already reviewing the construction and opening hedge funds.
- According to one survey, many corporations are considering investing in the U.S. since the conclusion of the Korea-U.S. FTA.

## **E. Finance**

1. Korea experienced a financial crisis 10 years ago and carried out structural adjustment and economic restriction based on the IMF conditional loan. The Korea-U.S. FTA limits the financial safeguard that the state can activate in economic crisis and restricts the state's capacity to cope with economic disasters.

- The financial safeguard in current transactions cannot be activated without the approval of the U.S.
- Safeguards cannot be used against payments and remittances related to foreign direct investment (against foreign investors who own more than 10% of the quota).

2. The Korea-U.S. FTA goes beyond financial liberalization: it brings mergers and abolition in the financial industry and removes regulations that benefit the public.

- The Korea-U.S. FTA entails 1) the negative system of financial service, 2) the enforcement of the 2<sup>nd</sup> level of bankassurance regulation, and 3) liberalization of capital

holdings in insurance service.

- The agreement also allows free exchange of financial products, entrusts funds to foreign capital firms, and permits qualifying full banks, which can handle all finance matters.
- Once such measures are enacted, finance sectors such as banks, insurance, and asset management will undergo major structural adjustments and M&As; the control of Korea's finance market by foreign capital will rise, and Korea's capital will transform into speculative capital aimed at foreign corporations.

3. The Korea-U.S. FTA possesses the danger of turning Korea's finance companies into branch offices, because it allows foreign consignment of financial back offices. The expansion of outsourcing will not only decrease Korea's finance jobs but also will send U.S.'s finance work abroad.

4. The Korea-U.S. FTA eliminates the preferential treatment for Korea's cooperatives (for example, agriculture, fishery, credit union, Saemaeul, and the post), which exist for ordinary people, to sell insurance. The agreement foretells the end of Korea's finance and credit institutions set up for ordinary people.

#### **F. Post Office and Other Public Services**

1. The Korea-U.S. FTA aims at Korea's post office. It does not recognize the special nature of the post office insurance provided for the common people, restricting public benefit of such services. The agreement prohibits the subsidy for special mail services made from the profit of post service. Korea's Administration has promised to 1) end the monopoly of international mail service and 2) reduce the scope of regular mail within 5 years.

2. Such an agreement poses to impede the benefit of the people by inducing profit-driven accounting and avoiding services that do not produce a profit.

3. By imposing changes on public enterprises and monopolies, the agreement's chapter on competition will have the effect of increasing the cost for public service and limiting subsidies for the public.

4. Many public enterprises have become privatized since the IMF economic crisis, but there are still around 300 public enterprises in Korea. The chapter on competition is vague on such enterprises, but indicates much change.

- Once the Administration acts upon its authority, public enterprises must comply with the FTA, end differential treatment, and stop receiving subsidies.
- The agreement states that public services must follow commercial interests when it comes to the price, quality, practicality, and transportation. This is a vague notion, but it gives the U.S. the authority to challenge the entire public service enterprises.

- The agreement also states that public service enterprises will not participate in non-competitive actions that will negatively impact investment, whether directly or indirectly, within a competitive market, by using the monopoly status, on parent companies or other public enterprises. Such a provision prohibits public enterprises from doing various businesses.

6. In the long-run, such restrictions on public enterprises can only lead to the decrease of public service quality and increase of public service fees. Although the number of U.S. public enterprises is small compared to Korea, such provisions will also restrict the activities of U.S. public enterprises.

## **G. Telecommunication**

1. The Korea-U.S. FTA restricts the state authority to select telecommunication technology. Because Korea's market is smaller than the U.S.'s, the introduction of plural telecommunication technology standard will bring 1) redundant investment on research, development, and equipment, 2) problems in mutual interchangeability, and 3) technology dependency by following foreign technology in order to avoid risks.

2. U.S. telecommunication companies have recently expressed disagreements on the use of Wireless Internet Platform for Interoperability (WIPI) and Wireless Broadband Internet (WiBro). And the FTA chapter on telecommunication has met the demands of U.S. telecommunication companies.

- The plural technology standard restricts the state's authority to select technology for the public aim, including 1) the guarantee of efficient and effective use of frequency, 2) the maintenance of available international network and service for consumers, 3) smooth legislative execution, and 4) the promotion of technology development that is safe for the human body.
- Furthermore, the chapter states that even the technology in common use must allow plural standards if competitive technology is created.

3. Such unprecedented restriction on technology selection will accelerate the monopolization of world's telecommunication technologies and take away the benefits for consumers.

## **H. Automobiles**

1. The Korea-U.S. FTA reduces Korea's automobile tax and weakens environmental and technology standards. It also entails unprecedented dispute mechanisms including speedy dispute resolution procedures, snap-back mechanism, and non-compliance dispute claims. In particular, the agreement seriously limits Korea's legislative, administrative, and local authorities by 1) changing rates on Korea's special consumption tax and local tax, 2) preventing the increase of public debt, and 3) prohibiting new or changes to current taxes related to engine displacement standards. Furthermore, it states that the low-income class shall bear the burden of the loss of tax revenue due to lowering taxes on large cars.



2. Despite such measures, the Korea-U.S. FTA promises little chance of increasing export.

- Korea's transportation setting and geographic conditions are different from the U.S.'s. The small size of the country, short traveling distance, and difficulty of parking make large cars unrealistic. Also, large cars are unlikely to become popular since Korea produces no petroleum.
- Some members of the high-income class favor large or luxury cars, but because they prefer European or Japanese makers, there is a high possibility for the rise of European or Japanese imports.
- In the case of small or medium sized cars, Japanese makers are also favored by Korean consumers. If U.S. export to Korea increases, this will likely be due to the export of Japanese cars that are made in the U.S.

3. A recent news article reports that some U.S. auto parts companies, after considering the benefits of the FTA, intend to set up factories in Korea or form M&As. In this light, U.S. workers face jobloss in the already difficult U.S. auto industry.

4. There is a concern that the U.S. Administration will make unreasonable demands by using dispute settlement mechanisms in order to increase the Korean market share of stagnant U.S. auto sales.

- Another concern is that the U.S. Administration will make further demands to lower other automobile taxes and the oil tax that is enacted in order to conserve energy.
- Such measures worsen the budget of the Korea's central and local governments and accelerate energy consumption, thus reversing environmental protection.
- However, the end result will be an export increase of not U.S. cars but European and Japanese cars.

## **I. Intellectual Property**

1. The concluded agreement on intellectual property (IP) is unbalanced in the use and protection of IP. Because Korea's IP system is completely different in origin and law from the U.S., many problems are expected to arise in Korea. It will also have serious effect on the TRIPs agreement.

2. By extending copyright period from 50 to 70 years, the 'Mickey Mouse law' is introduced to Korea. Instead of promoting creativity through incentives, such an extension only increases the profit for dead.

3. Temporary storage is recognized as reproduction. According the Korea's current copyright law, reproduction applies only to concrete objects. New services by ISP and personal use will

likely be restricted.

4. Measures for technology protection are expanded. Korea's current copyright law protects technology through controlling use: bypassing technology protection is itself not illegal; only providing bypassing instruments and services are illegal. While restricting fair use, research, and development, only the protection of technology has been strengthened.

5. Systems that cease items whose copyright is infringed and inform the copyright holder are recognized. Extreme protection of copyright holder is in place, even when it is difficult to determine that the copyright of an item is infringed.

6. A system that determines the amount of legal compensation for infringement is introduced. The amount is "enough to prevent future infringement and compensate the copyright holder," rendering legal compensation much more than actual damage. This measure comes face to face with Korea's copyright law, which has as its principle compensation for actual damage at the level of civil law.

7. Criminal proceedings and punishment are enforced for counterfeit items at a commercial scale, but the definition of commercial scale is vague, and numerous people could become targets.

8. The immunity of ISP is based on U.S. copyright law, but according to the report by the U.S. advisory board, the scope of immunity is a narrowly crafted exception, making the effectiveness doubtful.

9. Relief without Hearing the Other Party is introduced. Such exclusion is only beneficial to the copyright holder when the complexity of IP is taken into account.

10. The agreement allows ISP to provide personal information. Personal information can be provided to the copyright holder with only an accusation, without the need for a warrant.

11. The Korea-U.S. FTA includes an unprecedented provision that allows a website to be closed if IP is violated. Thus all portals and websites that allow reproduction and sharing—but unauthorized from the copyright holder—have become targets.

## **J. Dispute**

1. Non-compliance dispute is widely recognized, thus expanding the scope of dispute between Korea and the U.S. Sectors where non-compliance dispute is possible are automobiles, consumer goods, agriculture, textiles, service, government procurement, and IP. These sectors are of high interest to the U.S. Non-compliance dispute mechanism on IP has been postponed until multilateral agreement can be reached.

2. The non-compliance dispute mechanism of WTO was allowed only at a very limited level. It was not widely accepted because substantiation is difficult and because member countries did not want the expansion of non-compliance mechanism. However, in the Korea-U.S. FTA, the non-compliance dispute is expanded in scope and possibility for winning a lawsuit.

- According to the agreement, the implementation of agreement and even interpretations are targets of the non-compliance dispute mechanism. Panels are formed according to interpretation, and the agreement widely recognizes expected profit and human connection that are different from WTO's unilateral decision.
- By making compliance and non-compliance disputes to have the same process, rather than granting the state the responsibility for proof, unlike the WTO system, which has no need to eliminate attributes of non-compliance dispute, such measure have to be eliminated.

3. The non-compliance dispute mechanism will be easy to activate, and the scope of dispute between Korea and the U.S. will increase; this mechanism will also affect the WTO standard.

4. Swift dispute mechanism is introduced for automobile disputes; non-compliance dispute mechanism has been recognized in relation to tax, standards, and environment; and the recognition of the snap-back will affect the formation of international standards in the future.