

An Investigation into the Legal Translation Guideline: With Special Reference to the Korea-US FTA

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1. Introduction

The forces of globalization have had wide-ranging effects on translation (Cronin 2003). It is acknowledged that globalization has increased the demand for translation (translation as product) and changed the perceptions of translating (translation as behavior). The same things can be said of legal translation, a type of special-purpose translation dealing with legal texts. For example, the ever-expanding European Union currently faces the task of translating (drafting) laws in its 23 official languages. Hong Kong whose sovereignty was handed over to China in 1997 has become a bilingual jurisdiction, which involves a large volume of legal translation. In addition, when China joined the World Trade Organization, it had to change its official

translation of the WTO legal instruments due to translation errors (Cao 3).

Despite the recent developments in the field of legal translation, some theorists (and practitioners) seem to regard legal translation as one of the most restricted forms of translation. According to Cairns & McKeon (1995), Gemar (1995) and Pelage (2000) (all cited in Harvey 177), legal translation is “the ultimate linguistic challenge, combining the inventiveness of literary translation with the terminological precision of technical translation.” For such a reason, supranational and international organizations have developed guidelines aimed at enhancing the quality of legal translation and coordinating translating activities.

It is unusual, however, that a national government discloses a guideline for its legal translators (So rare that any kind of research into it deserves attention in both translation theory and practice). It is interesting, in that sense, that the Korean government recently disclosed on the internet the translation guideline for the Korea-US Free Trade Agreement (KORUS FTA), a 36-page guideline consisting of 10 translation principles and a glossary. As the KORUS FTA is a form of legal document, a detailed analysis of the guideline may provide an insight into what constitutes legal translation and translation guidelines.

Currently, the Korean government prepares for 11 FTAs (Ministry of Foreign Affairs and Trade (MOFAT) n.d.). It is widely believed that Korea’s future FTA documents will be drafted in English and translated into Korean. This means that the demand for FTA translation will go up and legal translators working for the government will have to translate in a more coordinated way. In this respect, a comprehensive analysis of the guideline may be helpful for the translator community and beyond.

This paper is aimed to examine the KORUS FTA translation guideline and explore its likely implications for translation practice and research. To that end, the relevant literature will be briefly reviewed and some important issues and perspectives associated with legal translation will be discussed in detail.

2. Translation Guideline as Research Topic

The translation guideline is issued to translators working for an institution in order to make their output more literal (or idiomatic), accurate (or readable), and so on. It takes various forms including a code of practice (e.g. "Guidelines and Procedures for the Translation of Documents for the Rhode Island Department of Health") and a style guide (e.g. "English Style Guide: A handbook for authors and translators in the European Commission"). Despite its effects on the actual practice, however, the translation guideline has been rarely mentioned in translation studies. This seems relevant to Kang's observation that "scholarly interest in institutional translation is a relatively recent phenomenon" (141).

There are of course some notable exceptions: Mossop (1990), Min (1993), Munday (2001) and Mason (2004). According to Mossop (1990), translators working for the Canadian federal government should render "not the words or the structures of the source-text but rather the message or, in other words, the author's intention" (346n.). He explores how translation is affected by the purposes (roles) of translating institutions and why the texts are translated the way they look.

Min (1993) summarizes a translation guideline issued by the Korea Bible Society. Its guiding principles are concerned with (i) register and diction, (ii) idiomatic expressions and equivalence, (iii) the purposes and uses of translation, (iv) transliteration, and (v) the word-level consistency with the previous translation. He compares the two Bible translations to discuss the effects of the guideline.

Munday (2001) introduces UNESCO's *Guideline for Translators*. This guideline requires that the translator should translate in ways that "produce the same impression on the English-language reader as the original would have done on the appropriate foreign-language reader" (31). He points out that the method of translation used by UNESCO is an "intermediate way between

something that ‘sounds’ like a translation and something which is so ‘aggressively characteristic’ of the translator’s idiolect” (ibid.).

Mason (2004) comments on institutions’ translational cultures by reviewing the relevant literature and explores whether there is evidence of uniformity of practice within institutions. It is worth noting that he acknowledges that “there is scope for a much more detailed investigation of the guidance offered within institutions to translators” (472).

For all the investigations of this particular subject, there seems no research into a guideline for translating an FTA document. This very fact emphasizes the need for analyzing the translation guideline for the KORUS FTA.

3. Analysis of the KORUS FTA Translation Guideline

3.1 Background

The Korean government has shown a keen interest in bilateral trade issues. In late 2003, it formulated a master plan aimed at cutting FTA deals with the nation’s major trading partners, especially the United States (MOFAT n.d.). After a series of preparatory talks to assess the feasibility of a Korea-US FTA, both sides entered negotiations in June 2006. Finally, the KORUS FTA negotiation was concluded on April 2, 2007 and after legal scrubbing, the FTA document was signed on June 30, 2007.¹⁾

The FTA document was made public on seven government websites²⁾ on

1) According to MOFAT (2007), the legal scrubbing by both sides brought about slight changes in the wording of the FTA document. It was designed to ensure terminological consistency and increase the clarity of diction.

2) The seven websites are 대한민국정책포털 (The Republic of Korea Policy Portal) (www.korea.kr) and the official websites of MOFAT, the Ministry of Finance and Economy (the forerunner of the Ministry of Strategy and Finance), the Ministry of Commerce, Industry and Energy (the forerunner of the Ministry of Knowledge

May 25, a month prior to the signing of the trade accord. It is interesting that it was disclosed along with a translated text, a translation guideline and a reference material. This suggests that before signing the deal, the Korean government sought to promote the public's understanding of the trade pact and to inform why the document was translated the way it looks. According to a *Chosun Ilbo* article (recited in *Edaily*), Jong-Hoon Kim, Korea's chief negotiator, said that the government released the translation guideline and the reference material to help [the general public] to better understand [the KORUS FTA].

Before elaborating on the Guideline, one important question should be answered: "Who translated the FTA document?" Unfortunately, however, no obvious answer to this question could be found, so the author contacted the MOFAT, a government agency that took charge of the FTA negotiation and issued the guideline. The following response posted on a MOFAT's bulletin board provides a short and clear answer (MOFAT 2008).

FTA문서 번역은 먼저 국가별 FTA 협상담당자가 합니다. 이후 외교통상부 내의 법률전문가가 검토를 하고 마지막으로 외교통상부 조약국에서 다시 검토를 합니다.

An FTA document is translated by those in charge of the FTA negotiation concerned. The translation is reviewed by MOFAT's legal experts and then by the Treaty Department. (the author's translation)

In short, the KORUS FTA document is translated in the interplay of translators, legal experts and related government officials. The advantage of this system is that the translators are keenly aware of the negotiation and easily

Economy), the Ministry of Agriculture and Forestry (the forerunner of the Ministry for Food, Agriculture, Forestry and Fisheries), the now-defunct Government Information Agency, and the Presidential Committee on Facilitating KORUS FTA (the forerunner of the FTA Promotion and Policy Adjustment Authority).

accessible to relevant materials.

3.2 A Broad Outline of the KORUS FTA Translation Guideline

A major feature of the KORUS FTA translation guideline is that it is titled 「한미 자유무역협정 국영문본 주요 용어집 (English-Korean Glossary for the Korea-US Free Trade Agreement)」. It is assumed that the guideline is named as such because the lion's share of it is a glossary. Nevertheless, it seems appropriate to see it as a guideline in its own right because any type of glossary functions as a set of translation principles requiring the harmonization of lexical units. That is why the author will continue to call it a translation guideline in this paper.

The 36-page guideline consists of three parts: (1) The General Principles of English-into-Korean Translation (four pages); (2) Glossary (31 pages); and (3) References (one page). The first segment of the guideline is divided further into 10 translation principles to which the translators must adhere. The second segment is a glossary which lists both technical and non-technical vocabularies in an alphabetical order. And the third segment is a short list of booklets used to develop this guideline.

Now that the Guideline has been outlined, a detailed analysis of it will be conducted in what follows.

3.3 Translation Principles

The following is the gist of the 10 General Principles. (See *Appendix* for the original text.)

1. In order to avoid a mismatch between the source text (ST) and the target text (TT), the corresponding Korean words must be used in TT (even at the expense of the beauty of the target language).
 - If possible, the sentence voice and lexical repetition of ST must be

preserved.

2. It is based on the principle of equal authenticity that if a TT rendering were obscure, ambiguous or grammatically incorrect, it could be reworded in consideration of target language conventions.
 - Even so, the methods of free translation including 'arbitrary additions' should not be used.
3. To ensure textual coherence, a single match should be established within a Chapter between an ST word and the corresponding TT word.
 - A polysemous word should be translated depending on the context.
 - If the preservation of a syntactic structure is deemed to cause incomprehensibility, a translation may be done in a way that breaks the ST sentence down into its component parts.
4. In general, technical vocabulary must be translated in such a way that it is consistent with the existing relevant documents.
5. In principle, an ST plural noun must be rendered as a singular noun. However, a plural marker may be used in TT, provided that a singular-noun rendering does not faithfully reflect the meaning of ST.
6. The words pertaining to the layout of ST must be translated as follows:
 - Chapter: 장; Section: 절; Article: 조; Paragraph: 항; Subparagraph: 호; and Clause: 목
 - Annex: 부속서; and Appendix: 부록
7. The indefinite and definite articles of ST need not be translated. However, the following instances are exceptions:
 - A Party: 당사국, the Party: 그 당사국 혹은 자국, etc.
8. Whenever possible, the words of Chinese or Japanese origin should not be used in TT in accordance with the guideline issued by the Ministry

of Government Legislation. And the title of a legislative text must be translated with a space left between the two neighboring words constituting the title.³⁾

9. Performative markers (modal verbs) *shall* and *may* must be translated into *한다* and *할 수 있다*, respectively.
10. The structural link between Paragraph and Subparagraph must be expressed by using logical connectors such as *다음* (“following”), *그리고* (“and”) and *또는* (“or”).

These ten principles cover a variety of issues in which both legal translators and researchers have shown a great interest. Principles 1 and 2 are concerned with the degree of literalness, which is one of the most important (and controversial) matters in the field of legal translation. Principles 3 and 4 govern the translation of lexical units (legal terminology), which many perceive as the basis of legal translation. And the remaining principles determine how to translate plural nouns, articles, modal verbs, etc.

It is observable that the principles in general are numbered in order of priority. By “in general” is meant the existence of some anomalies in numbering. For instance, a question may be raised about the relative status of Principle 5 (a principle related to a grammatical category). Moreover, there may be doubts as to the relatively low status of Principle 8 (a principle governing the style of the whole text) and the *raison d’être* of Principle 10 (a principle that can be integrated into Principle 6).

All in all, it may be argued that despite some question marks hanging over the principle numbering, the Guideline consists of important translation

3) Until recently, the title of a legislative document was written with no space left between any two neighboring words, as shown in '배타적경제수역에서의외국인어업 등에대한주권적권리의행사에관한법률 (Act on the Exercise of Sovereign Rights on Foreigners' Fishing, etc. within the Exclusive Economic Zone)' (Korea Legislation Research Institute 2004)

principles, some of which are very essential for the English-Korean legal translation. As some of the principles merit emphasis for the purposes of the present study, they will be elaborated on in the following pages.

3.3.1 Principles 1 and 2 (Literalness)

In the field of legal translation, the debate over the dichotomy between the “letter” and the “spirit” is a long-standing one (Harvey 180). Traditionally, however, legal translators were required to keep slavishly close to the source text. According to Šarčević (24-25), legal translators under the rule of Roman Emperor Justinian had to follow his translation directive, which stipulates that all the texts be translated literally and even grammatical forms and word order be retained. She also notes that in the early 20th century, Zurich attorney Cesana harshly criticized professor-cum-translator Rossel for altering the letter of law and proposed three principles—*literalism*, *no paraphrases*, and *no deletion* (36-37).

However, literalism does not seem as strong as in the past since bi- and multi-lingual jurisdictions started to 'co-draft' legislative texts. For example, in supranational organizations like the EU and multilingual countries such as Switzerland and Belgium, the parallel texts are drafted simultaneously as if there is no source text. For the reason, translations in the EU are no longer regarded as such, but as “language versions” (Koskinen 2000).

Then, it is worth discussing the KORUS FTA translation guideline in relation to literalism. Is the FTA translation bound by the source text? If so, how much? In answering these questions, a continuum on legal translation suggested by Šarčević (1997 24)⁴ may be useful.

4) Although Šarčević explains the continuum from a diachronic perspective, it also holds true from a synchronic perspective.

Strict literal	Literal	Moderately literal	Near idiomatic	Idiomatic	Co-drafting
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Figure 1: Degree of literalness in legal translation

Based on Figure 1, it may be stated that the translation directive declared by Emperor Justinian was oriented towards the STRICT LITERAL level, while a translation policy preferred in Switzerland or the EU is near CO-DRAFTING, the right end of the cline. The large area between the two extremes is occupied by a varying degree of literalness.

With this in mind, Principles 1 and 2 should be revisited. According to Principle 1, translation must be faithful to the original text. Principle 1 requires that lexical units in ST must be kept intact in TT, even if a literal rendering may reduce readability. In addition, the syntactical spirit of ST (e.g. the frequent use of passive voice) and the redundancy of lexical units in ST must be retained. It follows, therefore, that the translation strategy recommended by the Guideline is near the STRICT LITERAL point.

The telling evidence can be found in Paragraph 2 of Article 4.1 of Chapter Four.

ST: 2. In determining serious damage, or actual threat thereof, the importing Party:

- (a) shall examine the effect of increased imports of the good ... on the particular industry, as reflected in changes in such relevant economic variables as output, ... profits and investment, none of which is necessarily decisive; and
- (b) shall not consider changes ...

TT: 2. 심각한 피해 또는 그에 대한 실제적 우려를 결정함에 있어, 수입 당사국은 (In determining serious damage ..., the importing Party) 가. 수출 당사국으로부터 그 상품의 증가된 수입이 ... 특정 산업

에 미치는 영향을 생산량, ... 이윤 및 투자와 같은 관련 **경제적 변수**의 변화에 반영된 대로 심사한다. 이 변수 중 어떠한 것도 반드시 결정적인 것은 아니다. 그리고

- (a) shall examine the effect of an increased import of the good ... on the particular industry, as reflected in the changes of relevant economic variables such as output, ... profits and investment. None of these factors are not necessarily decisive.

And (Emphasis added)

나. ... 변화는 ... 고려하지 아니한다.

As suggested in the example above, the translators retained the format of ST (or the layout of Common law) at the cost of the elegance of the target language. For example, the qualificational insertion of ST (“none of which is necessarily decisive”) is rendered as an “independent sentence” (the underlined part above), thus creating syntactic discontinuities. It seems reasonable to argue that such a rendering is aimed to preserve the sequential order of the ST clauses, in view of the fact that a more natural format could have been chosen. One of the possible syntactic choices is that right after “경제적 변수” (the boldfaced phrase above), a parenthesis can be embedded in which the ST clause in question (i.e. “none of which is necessarily decisive”) is translated appropriately. In addition, the location of conjunction “그리고” (the italicized word above) in TT testifies to the strict observance of the ST format. The reason is that in Korean legislative documents, the conjunction is hardly used between two neighboring subparagraphs and even if it were used, it would be placed at the very start of the latter subparagraph (in this case, Subparagraph 나).

While Principle 1 emphasizes a word-for-word mentality, Principle 2 moderates literalness to some extent. It should be borne in mind, however, that concessions to the target language are *limited*: Principle 2 additionally requires that the translators must avoid adding what the source-text producers do not intend. The upshot is that the Guideline in general aims at a LITERAL (or

MODERATELY LITERAL) translation.

3.3.2 Principles 3 and 4 (Terminology)

It is generally accepted that terminology is fundamental in the translation of LSP (Language for Special Purposes) texts, including legal texts. Although lexicographers and terminologists tend to place too much emphasis on vocabulary, terminological issues in law seem to be the starting point for legal translation. In what follows, Cao (2007) emphasizes the importance of and difficulty in translating legal vocabulary:

Words are the building blocks of language. It is commonly acknowledged that one distinctive feature of legal language is the complex and unique legal vocabulary. Legal terminology is the most visible and striking linguistic feature of legal language as a technical language, and it is also one of the major sources of difficulty in translating legal documents. (53)

It is natural therefore that terminology should be dealt with as an essential category in any legal translation guideline. With regard to the KORUS FTA translation guideline, Principles 3 and 4 determine the way terms are translated. Principle 3 requires that a term should be translated consistently at least within a Chapter, and Principle 4 suggests that terms should be translated in the way they are described in the other legal documents. In other words, the former emphasizes the importance of the consistency of terms within a text (i.e. intra-textual consistency), while the latter is targeted at the consistency of terms with the existing laws (i.e. inter-textual consistency).

According to Šarčević (1997: 202), “harmonization is the process of ensuring internal consistency of terminology and presentation within a given text,” while “concordance is the process of ensuring consistency of terminology and presentation between each and all the authentic texts” (originally cited in Rosenne 1983: 775-76). It is based on this definition that Principles 3 and 4

are considered the principles of harmonization and concordance, respectively.

Harmonization and concordance have one thing in common: The two processes prevent terminological incongruity, thereby increasing the reliability and understanding of the legal text. This is not irrelevant to the fact that the bulk of the KORUS FTA translation guideline is devoted to the definition and explanation of terms.

3.3.3 Principle 5 (Plural Marker)

The plural marker is sometimes a nuisance to Korean translators. The reason is that unlike Indo-European languages where the plural marker affects the forms of verbs, articles and adjectives, the emergence of *deul* (a Korean plural marker) is arbitrary or redundant (Ramstedt 35). The dual interpretation of a noun with the suffix *deul* has been discussed by many Korean linguists. According to J. J. Song (1997),

Korean lacks dual, trial or paucal marking, but as has already been shown, it uses the suffix *-tul* [*deul*] to signal plurality ... As in many other languages, however, plural marking is not always obligatory. For instance, when not marked by the definite article *ku*, nouns without plural marking, e.g. *salam* 'person', can be interpreted either as singular or plural. (206)

The problem is that in legal translation, such an ambiguous interpretation may cause legal disputes. As a matter of fact, the Korean government seems to have a stake in the translation of *deul* in a handful of cases. The following are an extract from *Annex 22-B COMMITTEE ON OUTWARD PROCESSING ZONES ON THE KOREAN PENINSULA* and the corresponding translation. In TT, the suffix *deul* is added to clarify plurality.

ST: The Committee shall identify geographic areas that may be designated outward processing zones.

TT: 위원회는 역외가공지역들(deul)로 지정될 수 있는 지리적 구역들을 결정한다. (Emphasis added)

According to the Ministries Concerned of the Republic of Korea (2007 81), the KORUS FTA document states that goods produced in the Outward Processing Zone (OPZ) may receive the same preferential tariff treatment as goods made within South Korean territory. The Ministries also report that not only the Gaeseong Industrial Complex⁵⁾ but other North Korean areas may be designated as the OPZ. Interestingly, this interpretation is made possible by the translation of the plural marker, as shown in the above example. If the meaning of the plural marker is not shown clearly in TT, it should be construed that only one area, probably the Gaeseong Industrial Complex, may be designated as the OPZ. (Note that the Korean government wants more OPZs because it thinks they will contribute to improving inter-Korean relations.)

3.3.4 Principle 8 (Plain Korean Movement)

For years the translations of EU institutions have been criticized as incomprehensible and unnecessarily convoluted. The words “eurospeak,” “eurojargon” and “brouillard linguistique” were synonymous with translations which do not get across to the public. To cope with this problem, the EU has recently conducted a campaign for clear writing, known as *Fight the FOG*. Its goal is to dissipate FOG—an acronym for farrago of Gallicisms, frequency of gobbledygook, full of garbage, etc. (Wagner, Bech, & Martinez 74).

In Korea too, the effort to use plain words in the legal text has been made for years now. For example, the Ministry of Government Legislation (MOLEG) leads the Plain Korean Movement through a website <http://moleg.go.kr/jsp/>

5) The Gaeseong Industrial Complex is a special administrative industrial region within North Korea. It was established in 2002 as part of the effort to improve inter-Korean relations.

/easylaw/) titled “알기 쉬운 법령 만들기 (Making Law Easy to Understand).” There, the MOLEG recommends that antiquated diction (the use of phrases of Chinese or Japanese origin) be avoided, that long technical vocabulary be pared down, and that complex syntax be simplified.

It was in this social milieu that the MOFAT developed the KORUS FTA translation guideline in which Principle 8 states that the translators should follow a new rule of spacing when translating the titles of laws and refrain from using antiquated diction. For instance, the following two translations about intellectual property rights provide a revealing comparison:

TTa: 각 당사국은 자국 영역 내에서 타방(他方: the other side) 당사국의 국민들에게 ...

TTb: 당사국은 다른 쪽 (the other side) 당사국의 ... 다른 쪽 당사국의 영역에서 ... (Emphasis added)

In the example above, TTa is an extract from the Korea-Chile FTA, Korea's first bilateral trade agreement (signed on Feb. 15, 2003) and TTb from the KORUS FTA. This shows that the word of Chinese origin “타방” has been replaced by “다른 쪽,” a purely Korean expression which does not smack of legalese anymore.

It should be noticed, however, that the rule of spacing is not strictly followed, as shown in TT2.

TT1 (an extract from *Chapter 18*): 산업디자인의 ~ 국제 ~ 등록에 ~ 관한 ~ 헤이그 ~ 협정, 상표법에 ~ 관한 ~ 싱가포르 ~ 조약

TT2 (an extract from *Annex I: Schedule of Korea*): 마약류관리에 관한 법률, 여객자동차운수사업법

3.3.5 Principle 9 (Performative Auxiliary Verbs)

One of the most salient features of legal texts is the presence of illocutionary force, an issue of great significance discussed by Bowers (1989),

Trosberg (1997) and Cao (2007), to name but three researchers. Many of them agree to adopt Coode's (1848) three classification of illocutionary forces (cited in Trosberg 129): (1) the facultative language which confers a right, privilege or power; (2) the imperative language which imposes an obligation to do; and (3) the prohibitive language which imposes an obligation. The forces of the three languages are realized by the performative verbs of *may*, *shall* and *shall not*, respectively.

As Cao points out, "the importance of legal texts as speech acts goes to the very heart of the nature of law, legal language and legal translation" (117). In this sense, how to translate performative auxiliary verbs should be stated clearly in any kind of legal translation guideline. The guideline being investigated for this paper also displays the Korean phrases corresponding to *must*, *shall*, *should*, *will* and *may*. In relation to *shall*, among others, Principle 9 emphasizes the intertextual consistency of terms. It states that even though modal verb *shall* means a compulsory obligation, its Korean translation should be expressed with a 'simple present tense' (without the meaning of obligation) because it is the norm in Korean laws. That is why *shall* is translated into '한다' rather than '하여야 한다.' This is similar to some European languages where performative auxiliary verbs are not required or used and instead the simple present tense is employed (Cao 116).

It is important to note, however, that in Principle 9, *may* is lumped together as the modal verb for imperative operation. It states "obligation-related modal verbs such as *must*, *shall*, *should* and *may* must be translated as follows." It might be a mistake or inattention to detail, but the diction should have been made more carefully because it is part of a translation guideline.

4. Glossary

So far the principles of the KORUS FTA translation guideline have been

discussed from the standpoint of legal translation. Among the 10 Principles, however, only seven have been addressed in detail because the remaining three are lists of corresponding word pairs or simple directions aimed to achieve uniformity. Now we should move on to the Glossary, the second part of the Guideline.

What is striking in the Glossary is that it includes a large number of words commonly used in the non-legal sphere. They are verbs like *allow*, *create*, *describe*, *ensure*, *indicate*, *offer*, *transmit* and *view*; nouns such as *category*, *difference*, *employee*, *harm*, *loan*, *threat* and *welfare*; and adjectives like *adequate*, *comparable*, *efficient*, *full*, *legitimate*, *practical* and *rural*.⁶⁾ It may be argued that their presence in the Glossary helps to ensure both intra- and inter-textual consistency of terms.

Contrary to expectations, however, there are few legalese and purely technical vocabulary in the Glossary. This is hardly surprising in that 「한미 FTA 용어집 (Korea-US FTA Glossary)」 was published in August 2006, about 10 months before the Guideline was released. The 96-page glossary provides not only a detailed explanation of technical terms but also the English index. It seems, after all, that the government built the Glossary in a way that supplements 「한미 FTA 용어집」.

Another feature of the Glossary is the frequent appearance of functional vocabulary. Here the functional vocabulary refers to “grammatical words or phrases that have no direct referents either in reality or in the universe of concepts, but which serve to bind together and order those that do” (Varó & Hughes 16). The functional items found in the Glossary include limiting clauses (e.g. *provided that* and *subject to*), adverbial clauses (e.g. *in accordance with* and *pursuant to*), demonstratives (e.g. *that*), determiners (e.g.

6) The everyday vocabulary may be used in a legal context, but with different meanings. However, the words enumerated here "have neither lost their everyday meanings nor acquired others by contact with the special medium" (Varó & Hughes 18).

any and *such*), and even prepositions (e.g. *for*, *through*, *concerning* and *under*). Again, the functional vocabulary supplements 「한미 FTA 용어집」.

A final comment about the Glossary is that explanatory notes are added wherever appropriate. The use of glosses in the Glossary seems designed to provide the definition of the terms; to explain why the terms should be translated the way they were; and to inform that the meanings of the terms are context-dependent. Some examples are illustrated below (The asterisk signifies a gloss):

- *cashing*: 캐싱
 - * 캐싱이란 사용자의 요청이 많은 데이터를 별도 서버에 저장하여 전송하는 방식으로 빠른 전송을 가능하게 함
 - This gloss provides the definition of a technical word.

- *amicus curiae*: 외부조언자
 - * 실제 의미는 “friend of the court”이나 투자 협정문에서 사용시 법정 은 아니므로 적절치 않음.
 - This gloss explains why the term was translated the way it looks.

- *to grant*: 1. 수락하다, 2. 인정하다, 3. 무상교부, 4. 허여하다
 - * 특허(patent)와 사용시는 “허여하다”로 사용
 - This gloss explains that the translation of this verb varies from context to context.

5. The Significance of Guideline

In the preceding section, the translation guideline for the KORUS FTA was explored from the viewpoint of legal translation. It was demonstrated that the Guideline addresses some fundamental concepts underlying legal translation, including literalness, terminology, plain wording, and performative auxiliary verbs. However, the significance of the Guideline should be examined further

in order to keep it all in perspective.

It is argued that the Guideline has a wide significance in three aspects. First of all, as mentioned at the outset of the present study, it promotes the understanding of the KORUS FTA and justifies the particular modes of translation. If it had not been made public, many would have called into question the way the FTA document was translated. In fact, the author presented a portion of the translated document to more than 20 student translators, all of whom were unaware of the existence of the Guideline at that time, and then asked them what they thought about the translation. Understandably enough, almost every student said something to the effect that they do not understand why the translation is the way it looks. However, after they were advised to read the Guideline, they started to see the translation from a positive viewpoint, saying that they could accept the translation.

It is no exaggeration to say that the Guideline was inevitably issued in light of the extent to which Korea depends on the US market. If the KORUS FTA document is ratified in the legislatures of both countries, the trade deal will have significant implications for the Korean economy. That is why Korean people look at the trade document with a critical eye and raise a question of the translation as they see unfit. For instance, immediately after the KORUS FTA document was disclosed, K. H. Song (2007 149) argues that the noun 'review' was erroneously translated in some instances. In addition, ordinary Koreans expressed their opinions about what they regarded as translation errors on the Q&A bulletin boards dedicated to the KORUS FTA. It was found, however, that all the doubts were cast on lexical choices, not on the method of translation.

Secondly, the Guideline (and the resulting translation) will serve as a yardstick with which to translate future FTA documents and possibly other legal texts. As seen in the third part of the Guideline, the translations of previous FTA documents (Korea-Chile FTA, Korea-Singapore FTA and Korea-EFTA FTA) were used as a building block for the development of the Guideline. Similarly, the Guideline and the KORUS FTA translation will

certainly be revisited by MOFAT's translators when they are required to translate other FTA documents. In all likelihood, the Guideline will keep individual translators from putting a personal imprint on their translation and the KORUS FTA document will haunt them as the "ghosts of translators past" (Wagner et al. 56). It is also conceivable that the Guideline will be updated, as evidenced by the "European Commission's English Style Guide."

Thirdly, the Guideline has a wide significance for translation theorists. As mentioned before, the institutional translation guideline is one of the least researched fields within translation studies. It is all the more unfortunate that Korean researchers have paid little attention to special-purpose translations like legal translation. Against this background, the publication of a government translation guideline may arouse the scholarly interest of translation theorists.

6. Conclusion

This study has explored the translation guideline for the Korea-US Free Trade Agreement from the perspective of legal translation. In the section where the translation principles of the Guideline were analyzed, a wide array of issues associated with legal translation such as literalness, terminology, plural marking, plain Korean movement and performative auxiliary verbs have been addressed, with relevant examples cited wherever appropriate. The analysis finds that the Guideline puts great emphasis on the fidelity to ST; seeks to ensure the consistent use of terms; pays particular attention to the translation of plural markers; reflects the trend in using plain words in legal texts; and highlights the illocutionary force of a legal document. In addition, this paper has briefly assessed the significance of the Guideline in terms of the justification of translation, institutional practices and scholarly interest.

The present study, however, has limitations in two respects. First of all, it is centered on "describing" the Guideline, so the "diagnostic" and

“explanatory” levels are largely missing. Secondly, the scope of this study is limited to the Korea-US FTA translation guideline, so a general account of the translation of FTA documents is absent. For these reasons, there is considerable scope for further investigation into this particular academic field. Potential research topics related to this study include the translation quality assessment (TQA) of an FTA document and the changes in translation styles found in successive FTA documents. The author believes that research of that type will help identify a “missing factor in translation theory” (Mossop 1988), thereby filling a void in translation studies.

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Appendix: The General Translation Principles of the Guideline

1. 국문본과 영문본 사이의 해석상 오해를 방지하기 위해, 다소의 어색함을 감수하더라도 영어에 상응하는 한국어를 모두 기입하도록 노력
 - 능동태와 수동태의 차이도 가급적 살리고, 단어나 문구가 중복되는 경우에도 국문 해석상 문제가 없으면 모두 표현되도록 노력

2. 국문본도 정보임을 감안, 우리말 문법에 맞지 않거나 관용상 이해하기 어려운 경우 및 문맥상 오해의 소지가 있는 부분은 상황에 맞게 국문화
 - 이 경우에도, 영문본상 없는 의미를 추가하는 등의 의역은 가급적 지양
 - 영문본상 용어에 상응하는 국내법령상 용어가 있거나 담당하는 부처에서 통용하는 용어가 있는 경우, 해당 용어 사용
 - 특히 양허표와 유보목록의 경우, 국내법 내용을 포함하는 경우가 많으므로, 명확성을 위해 국내법상 용어 및 통용되는 용어를 사용

3. 일관성 유지를 위하여, 하나의 장에서 동일한 영어 문장 및 단어는 가급적 동일하게 국문화
 - 다음의 경우에는, 상황에 맞게 적절한 단어 사용
 - 여러 의미를 가지고 있는 단어는 협정문 내용에 적합하게 사용
 - 단어 단독으로 쓰일 때와 다른 단어와 조합하여 사용시 상응하는 국문이 달라지는 경우에는 각각 적합한 단어 사용
 - ※ 예: **establish**는 ①창설하다, ②이론 등을 설립하다 등 **prevailing**은 ①우세한, ②(이자율 등) 일반적인 등 사용
 - 하나의 영어 표현이라 할지라도, 국문이 어색하거나 하나의 문장으로는 너무 긴 경우, (예: with due reference) 내용을 분리하여 번역
 - 영어단어가 다르더라도 국문상 동일한 의미를 가지고 있을 경우 동일하게 사용
 - ※ 예: set out, set forth, provide는 모두 법령에 규정된 사항을 다룰 경우는 “규정하다”로 통일

4. 전문용어의 경우, 특별한 경우를 제외하고는 종전에 사용하여 오던 용어를 계속 사용하였으며 아울러 관련부처의 유권적 해석을 우선적으로 반영.
 - 그동안 WTO 상 “Safeguard”를 “긴급수입제한조치”로 사용하여 왔음을 감안, 계속해서 “긴급수입제한조치”로 사용

5. 영문상 복수로 표현된 경우라도 국문에서는 원칙적으로 단수로 국문화 함.
 - 단, 단수로 번역하는 경우 원문의 의미가 불충분한 경우에는 국문에서도 복수로 표현.

6. 협정문상 체계는 아래와 같이 국문화 함.
 - Chapter는 장, Section은 절, Article은 조, Paragraph는 항, Subparagraph는 호, clause는 목으로 국문화
 - Section A, B, C는 1절, 2절, 3절로, Paragraph (a), (b), (c)는 가항, 나항, 다항으로, Subparagraph i), ii), iii)은 1호, 2호, 3호로 명기
 - Annex는 부속서, Appendix는 부록으로 국문화
 - Annex와 Appendix상 A, B, C 및 I, II, III은 각각 가, 나, 다 및 I, II, III으로 명기
 - 미국법의 경우 act*는 법률, App.는 부록, §(Section)은 조로 국문화
 - * Jones Act처럼 사용시는 act를 “법”(존스법)으로 함
 - 「통일 상품명 및 부호체계(HS code)」에서 Section은 부, Chapter는 류, Heading은 호, Subheading은 소호로 국문화

7. 관사 및 정관사 등은 일반적으로 국문화하지 않으나 다음의 경우는 용례에 따름.
 - Party: 당사국
 - a Party 당사국 혹은 어느 한 쪽 당사국
 - the other Party 다른 쪽 당사국
 - each Party 각 당사국
 - non-Party 비당사국
 - both Parties 양 당사국

- the Party는 그 당사국 혹은 자국

※ 대문자 Party는 당사국으로, 소문자 party는 당사자로 국문화

• Person: 인(人)*

* person은 자연인과 법인을 포함하는 법률상의 인격자 뿐만 아니라 조합 등 그 밖의 법적 실체를 포함하는 광범위한 개념임. 협정문 총칙에 정의 되어 협정문 전체에 걸쳐 사용되므로 동일한 단어로 표시할 필요가 있으므로 아래 모든 경우에 사용이 가능한 ‘인’으로 사용함 (조약번역의 관행 상 한-칠레 자유무역협정을 포함한 과거 자유무역협정문에도 ‘인’이라고 표현)

- any other person 그 밖의 인

- juridical person 법인

- natural person 자연인

• such 그러한

• that 그, this 이, the 그

8. 법제처 지침에 따라 가급적 한글을 사용하며 범명은 띄어쓰기함.

※ 예: 일방당사자, 타방당사자 등은 어느 한 쪽 당사자, 다른 쪽 당사자 등으로 사용.

※ 단, 일반적으로 널리 사용되는 영문의 경우에는 그대로 사용(commission → 커미션)

9. 법적 의무 관련된 조동사(must, shall, should, may 등)의 경우아래와 같이 국문화

- must는 “하여야 한다”

- shall은 “한다”

※ “하여야 한다”의 의미이나 그간 모든 대한민국 조약에서 “한다”라고 번역 하였기 때문에 그렇게 함.

- should는 “하여야 할 것이다”로 함. ※ shall보다는 약한 당위

- will은 “할 것이다”

- may는 “할 수 있다”

10. 하단의 호나 목과 연결되는 경우,
- 다음 각호, 각목 등으로 하는 대신 “다음”으로 통일시키고 호나 목간의 관계를 “그리고”, “또는”으로 명확히 기술함.

[Abstract]

**An Investigation into the Legal Translation Guideline:
With Special Reference to the Korea-US FTA**

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The translation guideline (institutional translation) as a research topic has been overlooked for so long. The under-representation of this line of enquiry in Translation Studies (TS) seems attributable largely to lack of research subjects, i.e. translation guidelines. It is very interesting, in this respect, that the Korean government unveiled a translation guideline for the Korea-US Free Trade Agreement (KORUS FTA) in 2007 in order to promote the public's understanding of the trade accord. This study examines the KORUS FTA translation guideline from the viewpoint of legal translation.

The KORUS FTA translation guideline is comprised of three parts: (1) General Translation Principles; (2) Glossary; and (3) References. The discussion in this paper is centered around the first part (General Translation Principles) that contains some important aspects of legal translation. They are 'literalness,' 'legal terminology,' 'plural marking,' 'plain Korean movement' and 'performative auxiliary verbs,' to name but a few. After analyzing the guideline from the standpoint of legal translation, this paper explores the implications of the guideline for both TS and translation practices.

▶ Key Words: translation guideline, legal translation, Korea-US Free Trade Agreement

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