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# U.S.-South Korea Special Measures Agreements (SMAs): Legal and Policy Issues for Congress

## Overview

The United States and South Korea (officially the Republic of Korea, or ROK) forged a military alliance in the wake of the Korean War (1950-1953). Under the U.S.-ROK Mutual Defense Treaty, which entered into force in 1954, the United States bases troops in South Korea to help South Korea defend itself, particularly from North Korea. Approximately 28,500 U.S. troops—known as U.S. Forces Korea (USFK)—are identified as stationed in South Korea (**Figure 1**). Over the decades, as South Korea's economy grew, the two allies negotiated 12 "Special Measures Agreements" (SMAs) under which South Korea defrays the cost of stationing U.S. troops.

**Figure 1. U.S. Military Bases in South Korea**



**Source:** Created by CRS using data from U.S. Department of Defense and U.S. Marine Corps.

On November 4, 2024, the United States and South Korea signed the 12<sup>th</sup> SMA, which entered into force on November 29. This SMA covers the years 2026-2030 and increases the ROK's 2025 contribution by 8.3% in 2026, to roughly \$1.19 billion. Under the SMA, subsequent annual increases are tied to South Korea's inflation rate and "shall not exceed" 5%. In a break from previous patterns, the two allies concluded the 12<sup>th</sup> SMA more than a year before the 11<sup>th</sup> SMA expired. Some observers speculated the Biden Administration and South Korea negotiated the 12<sup>th</sup> SMA earlier than usual to insulate the U.S.-ROK alliance from possible policy shifts if President Donald Trump were reelected to office. During his first term, President Trump stated that South Korea should contribute "substantially more" for hosting U.S. troops and reportedly proposed a "complete withdrawal of U.S. forces from South Korea." A Biden Administration official stated that the 12<sup>th</sup> SMA would "strengthen our Alliance and our shared defense."

Debates over cost-sharing may represent an important feature of U.S.-ROK alliance relations during the second Trump Administration. Congress may find some legal and

policy considerations relevant in determining whether and how it may want to respond.

## History of U.S.-ROK SMAs

U.S. budget concerns largely generated momentum for the first SMA in 1991. In the late 1980s, growing U.S. budget deficits, coming amid South Korea's emergence as a middle-income country, seemed to prompt calls for South Korea to pay more to support USFK. These calls coincided with a gradual reduction of U.S. troop levels on the Korean Peninsula. Some Members of Congress asserted that South Korea should offset more of the direct costs incurred by USFK and take more responsibility for its own security. Since the late 2000s, U.S.-ROK SMAs have typically addressed party contributions over five-year periods. ROK payments—a combination of cash and in-kind contributions—fall into three categories: labor (salaries for ROK citizens who work on U.S. bases), logistics, and construction (by ROK firms for U.S. facilities).

U.S.-ROK SMAs contain "special measures"—or exceptions—related to Article V of the U.S.-ROK Status of Forces Agreement (SOFA), which provides a legal framework for how U.S. military personnel operate in South Korea. Article V stipulates that the United States will cover all costs for maintaining its military presence in the ROK, except costs associated with facilities. (The SOFA was concluded pursuant to Article IV of the U.S.-ROK Mutual Defense Treaty, which states that the ROK grants to the United States "the right to dispose United States land, air and sea forces in and about the territory of the Republic of Korea as determined by mutual agreement.")

Although burden-sharing talks have been contentious since the 1991 SMA, some reporting suggested that they became more divisive during the first Trump Administration as ROK officials reacted to U.S. requests for steep increases in ROK contributions. In 2019, President Trump reportedly asked South Korea to increase its contribution by roughly 400%. After a one-year stop-gap SMA that raised South Korea's annual contribution by around 8% expired in December 2019, about 4,500 ROK citizens who worked on U.S. bases were furloughed. At the time, some Members of Congress expressed concerns about the impasse, warning of potential negative impacts on U.S. military operations and readiness in the Indo-Pacific region. In March 2021, the Biden Administration concluded a new five-year SMA. Under that 11<sup>th</sup> SMA, South Korea agreed to pay roughly \$1 billion in 2021, a 13.9% increase from the 2019 SMA. The 11<sup>th</sup> and 12<sup>th</sup> SMAs permit the payment of ROK workers on U.S. bases for up to a year after the agreements expire upon the request of the United States.

## Legal Analysis of the 12<sup>th</sup> SMA

Both international and domestic legal requirements inform United States adherence to the 12<sup>th</sup> SMA.

### International Law

Under the 12<sup>th</sup> SMA's Article VII, the agreement entered into force on November 29, 2024, when the parties notified each other that their requisite domestic legal processes had taken place.

Although the new ROK contributions provided in the 12<sup>th</sup> SMA are to begin in 2026, the agreement is in effect and binding on both parties under international law. Consistent with its international legal obligations, a party may lawfully withdraw from or modify the agreement only pursuant to its terms or under other limited circumstances. The terms of the 12<sup>th</sup> SMA do not provide for withdrawal from the agreement. Instead, it terminates automatically on December 31, 2030, unless both the United States and the ROK agree in writing to extend. Article IX of the 12<sup>th</sup> SMA permits the parties to modify the SMA by written agreement. Under this article, any such amendments would enter into force in the same way as the SMA itself—that is, as outlined in Article VII.

### U.S. Domestic Law

Under U.S. domestic law, binding international agreements may take the form of treaties—which are ratified with the advice and consent of the Senate—or executive agreements. Although Congress enacts laws approving some executive agreements—including, for example, the free trade agreement with the ROK—the President concludes and provides the United States' formal consent to most executive agreements without submitting them to Congress for approval. The 12<sup>th</sup> SMA was concluded as an executive agreement that the President did not submit to Congress for approval.

Since 2023, the State Department has been statutorily required to provide Congress and the public a list and the text of international agreements concluded and a “detailed description of the legal authority” on which the President relied in concluding the agreement. The State Department did not identify an authorizing statute or an underlying, ratified treaty as providing legal support for the United States' concluding the 12<sup>th</sup> SMA. According to the State Department, the President invoked his authority under Article II, Section 2, of the Constitution as “Commander in Chief” and to conduct foreign relations as the legal basis for entering the 12<sup>th</sup> SMA on the United States' behalf.

There is no directly controlling judicial precedent regarding whether the President has unilateral Article II authority to conclude an executive agreement such as the 12<sup>th</sup> SMA. The Supreme Court has upheld the President's authority to conclude an executive agreement on criminal jurisdiction over U.S. troops stationed in another country, basing its reasoning, in part, on the Senate's approval of the underlying mutual security treaty. The Court has also held that the President has unilateral authority to conclude executive agreements settling foreign claims.

There is also no controlling judicial precedent addressing the circumstances in which the President has unilateral authority to modify or withdraw from international agreements. The Department of Justice's Office of Legal Counsel (OLC) has argued that the President has independent authority to withdraw from international agreements that Congress approved absent congressional restriction and that the President has exclusive authority to withdraw from treaties that received Senate advice and consent. The OLC has also claimed that the President has some unilateral authority to modify international agreements.

To the extent the executive branch claims that the President's Article II authorities are exclusive, it may potentially assert that, according to Supreme Court precedent, Congress is constitutionally prohibited from directly restricting the President's ability to exercise those authorities. At least in the absence of controlling judicial precedent upholding such exclusive presidential authority, however, Congress may adopt a different interpretation. In 2023, for example, Congress enacted legislation prohibiting the President from withdrawing from the North Atlantic Treaty without prior congressional approval.

### Considerations for Congress

Congress may consider a variety of means to influence the executive branch's actions under the 12<sup>th</sup> SMA. Congress could, for example, exercise its spending power to encourage the executive branch to pursue Congress's preferred posture toward the SMA. Congress could also increase or decrease funding for the bilateral alliance to advance its policy toward the 12<sup>th</sup> SMA.

Further, there are at least two potential sources of leverage implicating congressional authorities the Trump Administration may use if it seeks to modify or withdraw from the 12<sup>th</sup> SMA: (1) troop withdrawals from the Korean Peninsula and (2) tariffs on South Korean imports into the United States. While the allocation of presidential and congressional war powers authority is a subject of long-standing debate raising questions that courts have generally declined to resolve, Congress has in the past asserted its war-related powers to, for example, set conditions on the executive branch for troop minimums or maximums on the Korean Peninsula. Congress may also exercise its powers over tariffs and foreign commerce to authorize or limit the imposition of tariffs or other trade restrictions on South Korea. (The imposition of such tariffs or restrictions could potentially place the United States in violation of its free trade agreement with the ROK, noted above, or obligations under multilateral trade agreements.) Congress could also use its oversight authority to conduct hearings on the executive branch's implementation of the 12<sup>th</sup> SMA or to establish congressional notification and reporting requirements.

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