

Rulings, New Agreements, and Advisory Committee Assessments Alter the Course for the KORUS FTA

by Troy Stangarone (ts@keia.org)

May brought several significant developments for the KORUS FTA. On May 10, the Bush Administration and Congress announced an agreement on a new trade policy, focusing in particular on labor and environmental issues pertinent to FTAs. In mid-May, the World Organization for Animal Health (OIE) issued its formal ruling on the safety of U.S. beef, a significant sticking point in bilateral trade relations. At the end of the month, the United States and Korea formally released the text of the agreement, while USTR published the assessments of the U.S.-Korea FTA by the 27 trade advisory committees.

Now that the text of the agreement has been released, along with the advisory committee assessments, the significant milestones that lie ahead include the formal signing of the agreement on June 30; the release of the ITC assessment of the economic impacts of the agreement; and the administration's submission of implementing text to Congress, most likely in the fall. While these are some of the key events for the KORUS FTA, its long-term prospects for passage and implementation will also be affected by issues relating to the new trade policy agreement and the OIE ruling. The following is a brief look at these issues and some of the key provisions in the FTA text and the advisors' assessments:

New Trade Policy Agreement: On May 10, Congressional leaders and the administration announced a new agreement on U.S. trade policy. The agreement calls for the United States to include enforceable labor and environmental standards in its FTAs. This will likely clear the way for the passage of the pending FTAs with Peru and Panama, but the pending FTAs with Korea and Colombia still face other substantive objections in Congress.

The agreement, along with prior comments by some members of Congress, has led to a significant amount of speculation in the Korean press that the United States will seek to renegotiate parts of the KORUS FTA. Korean officials have been adamant that they will not renegotiate the deal they arduously reached with the United States only two months ago but have left the door open for additional negotiations. The *Korea Times* quoted Kim Jong-hoon, South Korea's chief negotiator, as saying that "The government's basic position is that any renegotiation is unacceptable. But if the demands from the U.S. fit the interests of both sides, a thorough review will become necessary." Korea is keeping the door of additional negotiation open due to the importance of incorporating these labor and environmental standards into the FTA for its passage on Capitol Hill. However, it is likely that Korea's adamant stance against renegotiation is based on a desire to avoid renegotiating the FTA with Congress, which is what TPA was designed to avoid. Further, to do so would invite members of the National Assembly to seek revisions as well. Jung Tae-in, a former aide to President Roh for economic affairs, already suggested as much when he was quoted in the *Korea Times* as saying "If the renegotiation is inevitable, Korea should also actively demand something more." The *Chosun Ilbo* also reports that a U.S. law firm has advised Korea to renegotiate the labor and environmental provisions to gain additional concessions in areas of importance to Korea. It quotes a governmental official as saying that Korea would seek a guaranteed number of visa quotas for professionals.

It should be noted that Korea is already a party to all of the environmental treaties that the United States is seeking to include in the FTA and practices the International Labor Organization principles outlined in the agreement.

Beef: The OIE officially voted in mid-May to place beef from the United States into the category of "controlled" risk. Under the OIE's guidelines, countries with the controlled risk classification can export all of their beef without restriction, except for specific risk materials such as skulls, brains and vertebrae. Kwon Okyu, Korea's Minister of Finance and Economy, was quoted by the Associated Press as saying that "Our government will sincerely hold negotiations on revising the terms of importing (U.S. beef) by respecting the recommendation of the World Organization for Animal Health." He also said that Korea would conduct a review of U.S. safety procedures before revising the trade rules. If all goes well, it is expected that U.S. bone-in-beef could return to Korea by September. In the long term, this may no longer be an issue as the Advisory Committee for Trade Policy and Negotiations' assessment notes that the two sides reached an agreement on sanitary and phytosanitary measures under which Korea will recognize the equivalence of the U.S. food safety inspection system for meat and poultry.

FTA Text and Advisory Committee Assessments: The Advisory Committee for Trade Policy Negotiations (ACTPN) report fully endorses the agreement, stating that the KORUS FTA is in the best interests of the U.S. economy and achieves the negotiating objectives set out under TPA. It also concludes that the agreement will help to reduce the disadvantages the United States faces from the proliferation of intra-Asia FTAs. Several issues discussed in the different committee assessments are worth noting.

Automobiles and Capital Goods. The combined committee on automobiles and capital goods produced a divided opinion on the agreement, while also attaching assessments by Ford and GM. Ford expressed concerns about the failure to include the light truck tariff in the “snapback” provision of the dispute mechanism, as well as the overall threshold that a U.S. producer must meet to compel the United States to utilize the mechanism. Under this provision, if one of the parties were found to be in violation of its automotive commitments in the FTA, the aggrieved party would be able to reimpose its tariff at the most favored nation level. In addition, Ford was not satisfied with the gains made on non-tariff barriers such as Korea’s engine displacement taxes and environmental standards for automobiles, but it did acknowledge that there was some progress in these areas. The Ford assessment also pointed out that U.S. hybrid vehicles are not included in the immediate tariff phase-out for cars. GM was more positive in its assessment of the agreement, stating that it addresses many of the auto industry’s concerns and describing the dispute settlement’s “snapback” provision as “an innovative approach that has the potential to discourage the creation of new non-tariff barriers or the reinstatement of old ones.” One further note on the dispute settlement body for automobiles is that, if neither side has been found to be in violation of their commitments after ten years, the panel will be terminated. Finally, Ford and Chrysler have released statements expressing their inability to support the KORUS FTA, while GM has taken a neutral position.

Agriculture. The ANTCP assessment concluded that nearly \$2 billion in current farm exports to Korea will become duty free upon the agreement’s coming into force. Currently, Korea offers duty free access to only \$14 million worth of U.S. agricultural products. Further details on the previously announced “in” season and “out of” season tariff on oranges indicate that over time the “in” season tariff will be eliminated as the duty free tariff rate quota, starting at 2,500 metric tons, will increase 3% annually in perpetuity. The Agricultural Technical Advisory committees (ATAC) were for the most part positive about the agreement (though the Animal and Animal Products Committee’s report was not available). However, the ATAC on processed foods issued no opinion due to its strong concerns over rice being excluded and concerns that the tariff benefits achieved in the agreement could be nullified by issues not addressed in the chapter on technical barriers to trade.

Technical Barriers to Trade (TBT). The industry committee covering TBT provided only conditional support for the agreement. While it stressed that the chapter provided for considerable improvements, the industry committee expressed concern over how the chapter will be implemented. Some items the committee would like clarified by USTR and the Korean government include: an understanding that the TBT Committee established by the FTA will assist in resolving TBT disputes; assurance that the Committee will meet in a timely manner; allowance for the formation of a special working group to address specific issues such as transparency and national treatment; and clarity that the Committee’s mandate is to resolve TBT disputes.

Safeguards. Under the trade remedies provisions of the FTA, either party may implement a safeguard measure if a substantial increase in the importation of a good leads to serious injury of the domestic industry. Under these provisions, a safeguard can be applied during the transition period of the FTA, the first ten years, to a good for the adjusting industry for up to two years, or three years if the competent importing authority determines that the extension is needed to prevent serious injury and foster adjustment and if the industry is adjusting. For any good with a longer tariff phaseout period, the transition period is the tariff elimination period for that good. A safeguard measure may not be applied to a good more than once.

North Korea: The text of the agreement defines a Korean for the purposes of the FTA in terms of the meaning of the Nationality Act in Korea. However, the agreement also contains a footnote stating the following: “A natural person who is domiciled in the area north of the Military Demarcation Line on the Korean peninsula shall not be entitled to benefits under this agreement.

The text of the agreement provides for establishment of a committee on “outward processing zones” on the Korean peninsula. This committee will assess the potential future inclusion of any such zones in the agreement based on

“progress towards denuclearization of the Korean peninsula; the impact of the outward processing zones on intra-Korean relations; and the environmental standards, labor standards and practices, wage practices, and business and management practices prevailing in the outward processing zone, with due references to the situation prevailing elsewhere in the local economy and the relevant international norms” —and potentially other criteria. However, any recommendations reached by the committee would have to be approved by both countries’ respective legislatures before they could take effect.