

RECENT INTERNATIONAL TRADE DEVELOPMENTS

Ed. Note: This first issue of Honigman's "Recent International Trade Developments" will focus solely on the proposed Free Trade Agreement (FTA) between the U.S. and South Korea, and related issues.

Summary:

The U.S. and the Republic of Korea (South) have negotiated a draft free trade agreement (FTA). The Bush Administration has notified Congress of its intent to sign the agreement. By law, before Congress may vote to approve or reject the FTA, the U.S. International Trade Commission (ITC) must conduct an empirical analysis of the probable economic impact on the U.S. economy of the proposed FTA, and report its findings to Congress. As part of its analysis, the ITC will invite public comment – both at a "hearing" and via written submissions.

Will my business be affected by the FTA?

Quite possibly. If the company imports goods/services, exports goods/ services, or competes with other companies that import/export goods/ services . . . then YES, this proposed FTA might well have impact on the business. From a volume of trade perspective, this proposed FTA is the largest involving the U.S. since the North American Free Trade Agreement (NAFTA).

What should my company do?

First, read through the following material. It will provide some general information about the FTA and the approval process. Second, assess whether the

proposed FTA may create risks or provide opportunities for the business; think about consulting additional sources for a similar assessment. Third, as appropriate, consider participating in the ITC review and/or voicing the company's views to elected representatives, either directly or through a business association..

Overview:

In 2006, the U.S. and South Korea announced an intention to enter into a Free Trade Agreement (FTA) – which, in dollar terms, would be the largest involving the U.S. since NAFTA.

In 2005, South Korea was the world's seventh largest exporter of goods (\$278 billion) as well as the seventh largest importer (\$248 billion), and is a similarly large importer/exporter of services. In 2005, Korea exported \$49 billion in goods/services to the U.S. and imported \$37 billion.

While each FTA has its unique stumbling blocks, it was apparent from the outset that this FTA would be particularly challenging in the areas of automobiles and agriculture. Nonetheless, on April 2, after around the clock negotiations, representatives for the two countries announced that they had struck a deal . . . And almost immediately, the proposed FTA was criticized by various interest groups in each country.

Substance of the FTA:

While the text of the proposed FTA has not been made available to the public, the Office of the United States Trade Representative (USTR) has released a detailed summary. Among the highlights:

- Duty-free trade in nearly 95 percent of consumer and industrial goods within three years of entry into force of the agreement. In other words, zero import

tariffs on virtually all goods traded between the two countries.

- Increased access to the Korean market for U.S. produced autos, as well as an expedited settlement procedure for disputes related to autos.
- However, there is ambiguity whether the expedited procedure also applies to pick-up trucks and auto parts.
- In addition, as drafted, U.S. tariffs on autos would immediately go to zero for most imports from Korea; while Korea would have three years to eliminate its tariffs.
- Stable legal framework for U.S. investors in Korea.
- Immediate duty-free treatment for half of U.S. farm exports to Korea.
- Mutual market access commitments to virtually all major service sectors.
- Improved IP protection in Korea for U.S. trademarks, copyrights, and patents.
- The entire summary of the proposed FTA may be viewed at: http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2007/asset_upload_file649_11034.pdf

Will Congress Approve the FTA?

Pursuant to what is known as Trade Promotion Authority ("TPA"; also referred to as "fast track"), Congress can only approve or reject the pact in its entirety – it cannot amend or remove sections of the proposed FTA. As of this writing, the FTA faces a very uncertain future in Congress, as well as in South Korea's National Assembly.

To digress briefly, as a general, historical statement, many Democrats have tended to

be wary of FTAs, viewing them as a “race to the bottom” in the context of assuring adequate labor and environmental standards and protections. Republicans, on the other hand, have tended to support FTAs as a logical and appropriate extension of free market capitalism. Particularly since the decline in manufacturing jobs beginning in 2000, there has been increased wariness of FTAs – both among Democrats and a diverse group of Republicans.

Some Democratic leaders, namely Nancy Pelosi (D-CA), Speaker of the House, and Charles Rangel (D-NY), Chairman of the House Committee on Ways and Means (which oversees trade issues in the House), have reportedly indicated to the Bush Administration that they might support the Korea FTA (as well as pending FTAs with Colombia, Panama, and Peru) if the agreements were to include stronger labor and environmental protections.

[Note: the nuances and specifics of the proposed labor protections could be the subject of doctoral theses. The Rangel proposal would require FTA partners to adopt certain International Labor Organization (ILO) standards. However, it is unclear whether imposing these standards on FTA partners may subject U.S. labor law to additional ILO scrutiny. Active debate continues surrounding this not so subtle issue.]

In the Senate, Max Baucus (D-MT), Chairman of the Senate Committee on Finance (which oversees trade issues in the Senate), has indicated that he will neither support nor “move” the FTA unless Korea lifts most all imports restrictions on U.S. beef (Korea allows entry of boneless beef, but not “beef on bone,” for issues related to mad cow disease). Montana, of course, is a substantial beef producing state.

To date, the Bush Administration has not formally accepted or rejected the Pelosi/Rangel offer, but has indicated that it expects progress on the beef issue before the end of June. Significantly, South Korea has indicated that it will not reopen FTA negotiations – that the draft agreement is the final agreement – thus calling in to question whether the Bush Administration can ameliorate the labor,

environmental, and beef issues, in any event.

Support for the FTA Among the Michigan Delegation:

The FTA is not faring too well with Michigan’s elected representatives. Reps. Dingell and Levin, and Sen. Stabenow, have reportedly vowed to oppose the FTA in its current form; Sen. Levin and Reps. Kildee, Knollenberg and Ehlers want to see the full text but, by varying degree, are said to be skeptical.

Other Support for/Opposition to the FTA: Business and advocacy groups are staking generally expected positions on FTA, with some surprises:

- For the first time, Ford and Chrysler are not supporting a proposed U.S. FTA. The Automotive Trade Policy Council is similarly critical.
- GM, on the other hand, has reportedly offered a preliminary positive assessment, though it has not seen the entire agreement. Toyota has not taken a public position on the FTA.
- The National Association of Manufacturers, the U.S. Chamber of Commerce, the Business Roundtable, the Electronics Industries Association, and Semiconductor Industries Association, all express general support for the FTA.
- Labor groups in both countries have expressed opposition, as have certain farm and agriculture groups.

International Trade Commission Assessment of the Economic Impact of the FTA:

Pursuant to law, the ITC must assess the probable economic impact of the proposed FTA on the U.S. economy as a whole, and on various sectors within the economy. The ITC effectively has 180 days to conduct this assessment, and will employ a variety of tools, including: econometric modeling; review of empirical literature; and solicitation of data from interested parties, both in writing and in testimony at a public hearing. (Dates for the hearing/submitting information have not yet been set). The ITC’s confidential

report will be provided to Congress and, presumably, will have some impact on whether Congress approves or rejects the pact.

President Bush to Lose TPA?

As noted above, the FTA will be considered pursuant to Trade Promotion Authority . TPA generally permits a President to negotiate FTAs and submit them to Congress for approval or rejection, without amendment or filibuster. The theory behind TPA is that by eliminating the threat of Congressional “tinkering,” a President can negotiate with more certainty.

TPA, in fact, is delegated by Congress to the President; it is not a right of the Presidency. TPA was first authorized in the 1970s, but lapsed in 1994. Congress “reauthorized” TPA in 2002; it expires in June 2007.

As many Democrats, labor and environmental groups, and even some business organizations, blame FTAs, at least in part, for the decline in various U.S. industries, particularly manufacturing, renewal of TPA by the Democratic Congress is at best uncertain.

About Honigman:

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