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The United States- South Korea Free Trade Agreement

An Economic and Political Analysis

By Gabriel H. Sahlgren

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Executive Summary

A specter is haunting organized labor—the specter of free trade. Never mind its benefits, labor unions throughout America have entered into a holy alliance to exorcise this specter. And they may be on their way to succeeding.

Since the United States-South Korea Free Trade Agreement (KORUS-FTA) was negotiated, from the spring of 2006 through March 2007, it has met fierce resistance in both countries, with labor unions and environmental groups as its loudest opponents. These groups contend that the agreement should be accompanied by enforceable environmental provisions and labor standards based on the International Labor Organization's (ILO) core principles.

The Democratic takeover of Congress in November 2006 has resulted in a less trade-friendly atmosphere in Washington. Afraid that the new Democratic majority would scrap the KORUS-FTA, the Bush Administration renegotiated the agreement with the South Korean government, which, afraid of losing the entire deal, conceded to put in the more stringent, enforceable labor and environmental standards.

Yet the best way to improve environmental and labor conditions in developing countries is not through uniform environmental and labor standards, but by increasing productivity and economic growth, which in turn are best spurred by trade. If developing nations are forced to set higher standards than what the current level of productivity allows, their workers will eventually be penalized in the world market. The price of labor in those countries will be higher than what that labor is worth, which will drive out foreign investors, leading to increased unemployment.

When countries increase their productivity, they can afford better standards. Hourly labor productivity in South Korea increased by 157.5 percent between 1985 and 2005, which is why the country was able to increase its real GDP per capita from \$7,420 to \$22,584 during the same period. Meanwhile, America increased its labor productivity per hour by 42.3 percent, and its per capita GDP from \$29,196 to \$43,009.

Furthermore, the unions' argument that free trade has detrimental effects on American workers does not hold true. Lower wages do not compensate for the lower productivity prevalent in other countries. In 2006, hourly Korean labor productivity remained—despite the country's remarkable economic journey—\$29.49 lower than America's. The same year, hourly compensation costs for manufacturing workers in Korea were merely \$10.09 lower than in the U.S. Due to the positive correlation between productivity and wages, trade agreements have little effect on rich countries' labor markets.

Yet organized labor was not satisfied with the enforceable standards enshrined in the FTA. Labor unions are still calling for Congress to reject the agreement—which betrays their call for enforceable standards as a

mere diversionary tactic. Apparently, the unions will not give up until businesses in South Korea have the exact same standards as those in the U.S.

Besides hurting South Korea, such standards may also harm America's foreign policy interests, since it would undermine our commitment to democracy. South Korea has been a vibrant democracy for over two decades, and it is up to the Korean people, acting through their elected representatives, to decide what standards should be adopted at which stage of their country's development. Furthermore, South Korea has been a strong U.S. ally for over 50 years, and to patronize that nation by intruding in its domestic politics could worsen America's standing in East Asia.

The labor and environmental provisions are a serious flaw in the KORUS-FTA. The enforceable standards are problematic with respect to U.S. national sovereignty. Exactly what the provisions actually allow is ambiguous, which could lead to a slippery-slope situation in which international laws may trump domestic laws.

Despite its flaws, the KORUS-FTA is still worth pursuing, due to the enormous economic and political benefits it would generate in both America and Korea. Rejecting the agreement would lead to severe consequences for the U.S. The Korean government negotiated and renegotiated the FTA in good will, and to dismiss it now may lead South Korea and its neighbors to search for alternative trading partners, including possibly a fast-growing and increasingly assertive China.

Introduction

The United States has strongly supported trade liberalization since the end of World War II, mainly by the removal of trade barriers such as quotas, subsidies, and tariffs. Although the evidence of free trade's economic benefits is compelling, it remains a highly contentious issue, so the best way of promoting trade is debatable. America has, for years, pursued multilateral negotiations with a large number of countries through the General Agreement on Tariffs and Trade and then through its successor, the World Trade Organization (WTO).¹

During the last two decades, there has been an upswing in free trade agreements (FTAs) that seek to abolish trade barriers directly between America and another nation, or group of nations. Bilateral trade agreements are beneficial for America, with the impact depending on the size of the other countries' economies. Such agreements, however, serve more than just a direct economic role. They are also major foreign policy tools with which the U.S. can promote better relations with strategically important nations, and may also help stimulate multilateral trade negotiations—a crucial aim today, as the WTO's Doha Round talks remain stalled.²

On April 1, 2007, after 10 months of negotiations, the United States concluded a free trade agreement with the Republic of Korea, which is unquestionably the most important such treaty since the 1994 North America Free Trade Agreement (NAFTA). According to the Office of the U.S. Trade Representative, today South Korea is the world's 10th-largest economy and America's seventh-largest trading partner. The agreement is expected to abolish about 95 percent of tariffs on all industrial and consumer goods within three years, and remove most of the lingering 5 percent within a decade.³ According to a study by the U.S. International Trade Commission, the deal would increase U.S. GDP by \$10.1-11.9 billion, and may boost annual trade between the countries by as much as \$17.8 billion.⁴ But critics ignore those gains.

The Bush Administration was forced to renegotiate the deal to include more stringent labor and environmental standards as part of the Bipartisan Trade Deal made with the Democrats in May 2007. Furthermore, the agreement has been attacked by automakers and labor unions for not abolishing non-tariff barriers in the South Korean car market to a sufficient extent. The U.S. government was able to convince Korea to accept the provisions included in its deal with the Democrats, and

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the agreement was signed on June 30, 2007. Now it awaits Congressional ratification.

This paper will explore the future implications of the new labor and environmental provisions in the U.S.-South Korea free trade agreement (KORUS-FTA) from both a political and development perspective. It will show that the stringent labor and environmental standards will have negative effects on the U.S. and Korea for both economic and political reasons. It will argue that the only way to promote sustainable labor and environmental standards is to promote free trade with any nation that is willing to trade with us. As history has shown, the creation of wealth is the best way to improve a country's environmental and labor conditions.

Finally, it will contend that the benefits of the current agreement outweigh its flaws, and that Congress thus should pass it. This, however, should not be construed as support for FTAs with enforceable labor and environmental standards in general.

Background

Since the free trade agreement between South Korea and the United States was negotiated, from the spring of 2006 through March 2007, it has met fierce resistance in both countries, with labor unions and environmental groups in both the U.S. and Korea as its loudest opponents. In March, 2006, AFL-CIO Policy Director Thea M. Lee proclaimed that, "Increased trade with South Korea must be accompanied by substantial improvements in workers' rights and steps to promote equitable and sustainable development."⁵ In other words, the agreement must include more stringent labor and environmental provisions.⁶ Otherwise, she argued, it would not be a viable deal. Meanwhile, the Korean Confederation of Trade Unions has organized strike after strike to make its opposition to the FTA painfully known.

The KORUS-FTA negotiations took place under the Trade Promotion Authority (TPA) granted to the President by Congress under the Bipartisan Trade Promotion Act of 2002. Under TPA, which expired on June 30, 2007, Congress cannot change provisions in a trade agreement, but must either pass or reject the entire deal as negotiated. Many trade experts consider this condition a prerequisite for trade negotiations to take place, since other countries would be otherwise reluctant to even initiate discussions with the United States if Congress could unilaterally amend a FTA. As economist Jagdish Bhagwati of the Council on Foreign Relations

and Columbia University notes, “[W]e will have to pass some form of [TPA]. Otherwise we’ll be big sore losers in the world trade system.”⁷

The 2002 version of TPA also mandated for the first time that U.S. trade agreements have to include certain labor and environmental provisions and set up bureaucratic structures to monitor trading partners’ adherence to those provisions.

The Democratic takeover of Congress in November 2006 resulted in a less trade-friendly environment in Washington. Backed by labor unions, Democratic leaders started to push for more stringent and enforceable labor and environmental provisions to be included in all trade agreements. On February 13, 2007, Democratic leaders, including House Speaker Nancy Pelosi (D-Calif.) and House Ways and Means Committee Chairman Charles Rangel (D-N.Y.), sent a joint letter to President Bush, in which they called for enforceable labor provisions to share the benefits of trade more broadly.⁸

Negotiations between the White House and Congress resulted in the Bipartisan Trade Deal on May 10, 2007, which was extolled by U.S. Trade Representative Susan C. Schwab as “an historic opportunity to restore the bipartisan consensus on trade with a clear and reasonable path forward for congressional consideration of Free Trade Agreements with Peru, Colombia, Panama, and Korea.”⁹

Organized labor won a huge victory with the agreement, which made the International Labor Organization’s (ILO) “Declaration on Fundamental Principles and Rights at Work” a part of any future FTA. (The ILO Declaration includes five core labor standards: the right to organize, prohibitions on forced labor, right to bargain collectively, protections against child labor, and freedom from discrimination.)¹⁰ In addition, there is another provision in the Bipartisan Trade Deal that obligates governments “to effectively enforce... acceptable conditions of work.”¹¹ Violation of this could result in trade retaliation against either country.

In the original agreement, the KORUS-FTA included the provisions that each country is committed “to effectively enforce its own domestic labor laws. This obligation is enforceable through the agreement’s dispute settlement procedures.”¹² In this agreement there is no provision to *enforce* ILO labor standards but only that both countries “shall *strive* to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor rights [emphasis added].”¹³ Since

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the Democratic majority in Congress made clear that it will not pass the KORUS-FTA if it does not include enforceable labor provisions, the agreement was renegotiated and signed on June 30, 2007, and now contains those extra clauses.

U.S. automakers are divided on the FTA, but the agreement has no vocal champion in Detroit. Ford Motor Company and Chrysler concluded that the Korean auto market is heavily restricted due to non-tariff barriers.¹⁴ General Motors claims that the agreement addresses the auto industry's concerns, but remains "neutral" on the trade deal, since the company contends that, "Given the current imbalance in trade between the two countries the benefits will skew, for the near term, to Korea."¹⁵ Congressman Sander Levin (D-Mich.), a leading critic of the FTA, has argued: "While South Korea continues to enjoy wide-open access to our automobile market, the United States faces tall barriers to South Korea's automobile market."¹⁶

Why the Hostility from Labor?

Why is organized labor so hostile to FTAs? The primary reason given by the unions is that countries would weaken their labor laws to obtain a comparative advantage. Thus, they argue that FTAs only benefit big business instead of workers and their families. The unions contend that because capital is more mobile than labor, and because it seeks the highest profits possible, it will flow to wherever the standards are the lowest.

Yet the unions ignore the wealth-creation potential of trade, something on which most economists agree. The same goes for the environment. Environmental groups argue that poor countries will use lax environmental regulation as a comparative advantage, which would force American companies to weaken their own standards in the U.S. to keep up. Thus, to avoid this "race to the bottom" in labor and environmental standards, the critics contend, we need labor and environmental regulations in FTAs to mitigate such ruthless competition.

U.S. Organized Labor's Tactics

What is the unions' goal? Despite the enforceable labor standards enshrined in the KORUS-FTA, they continue to oppose the agreement. AFL-CIO president John Sweeney proclaimed that:

The proposed trade agreement with Korea is one-sided and decidedly against the interests of manufacturers and workers in the U.S. Our battered manufacturing sector

simply cannot withstand another flawed trade deal that purports to open foreign markets, while instead serving to exacerbate the current imbalanced and unequal trading relationship. If the president sends this flawed deal to Congress, it should be rejected.¹⁷

The unions have joined Chrysler and Ford in contending that the agreement does not sufficiently deal with “unfair” competition from Korean auto manufacturers, which the unions think will lead to job losses in the U.S. And they are pressing the Democratic majority in Congress to reject it.

In 2006, South Korea exported more than 695,000 passenger cars to the United States, while the U.S. exported 4,344 to South Korea, which allegedly is evidence of non-tariff barriers on the Korean market.¹⁸ Yet European car manufacturers sold 23,769 cars in South Korea the same year despite their being subject to similar regulation as American manufacturers, which indicates that there are other reasons why American producers perform poorly in Korea.¹⁹

In fact, the FTA would significantly level the playing field: It abolishes the 8-percent tariff that South Korea currently imposes, gets rid of the unfair parts of a tax that punishes larger American cars, and brings South Korean safety standards more in line with the rest of the world’s.²⁰ Thus, the KORUS-FTA would alleviate most of the obstacles for American car manufacturers, which is why General Motors “believes that the KORUS Agreement...has addressed the auto industry’s concerns.”²¹ If U.S. labor unions were interested in competition, they would support an agreement that would make it easier for American manufacturers to sell cars on the South Korean market.

But the unions’ call for enforceable labor and environmental provisions is merely a diversionary tactic. The unions will not give up until businesses in South Korea have the exact kind of labor standards as those in the U.S. Otherwise, they will not support any agreement at all.

However, this view of FTAs is not only misguided, but dangerously wrong as well. Free trade is one of the best tools to improve labor and environmental standards in the long run, a goal that unions should support.

Protectionism in Disguise

Laxer environmental and labor standards are not the result of corporate greed or malfeasance. As Johan Norberg of the Cato Institute notes, it is

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impossible for companies in the developing world to improve standards and raise wages without the necessary increase in productivity. Wages and standards simply cannot be any higher in developing nations because of low worker productivity, which is common in countries in the early stages of industrial development. Thus, increasing productivity is a prerequisite for improving labor and environmental conditions.²²

Both South Korea and the U.S. have done very well in that respect during the last decades. Hourly labor productivity in South Korea increased by 157.5 percent between 1985 and 2005, which is why the country was able to increase its real GDP per capita from \$7,420 to \$22,584 during the same period. Meanwhile, the U.S. increased its labor productivity per hour by 42.3 percent, and its GDP per capita increased from \$29,196 to \$43,009.²³

It is true that wages are lower in many countries with which the U.S. trades, but organized labor's doomsday predictions of a "race to the bottom" are inaccurate. As American Enterprise Institute Resident Scholar Philip I. Levy observes:

For the kind of labor impact that is commonly feared, a large trading partner would have to have not only lower wages, but also comparable productivity. If another country's workers are half as expensive but half as productive at producing a particular type of good, there is no cost advantage.²⁴

Lower wages do not compensate for the lower worker productivity prevalent in other countries. In 2006, hourly Korean labor productivity was, despite the country's remarkable economic journey, still \$29.49 lower than in America.²⁵ The same year, the hourly compensation costs for manufacturing workers were \$13.56 in Korea and \$23.65 in the U.S., a difference of only \$10.09.²⁶ Due to the positive correlation between productivity and wages, trade agreements have little effect on rich countries' labor markets.

This holds true in the case of the highly debated North American Free Trade Agreement. According to the Bureau of Labor Statistics, the U.S. unemployment rate after the enactment of NAFTA fell from an annual average of 6.9 percent in 1993 to 4 percent in 2000. Total employment was at 120.26 million in 1993; in 2000 that number had increased to 136.89 million. Furthermore, manufacturing jobs increased from 16.77 million in 1993 to 17.26 million in 2000.²⁷ The number of U.S. manufacturing jobs

did decrease after that, but that was due to a recession, as well as higher productivity, not because of trade.

In 2005, hourly compensation costs in the U.S. for manufacturing workers were \$23.65 while in Mexico they were a mere \$2.63.²⁸ If the doomsday predictors were right, we would have seen either a gigantic job loss to Mexico following NAFTA's enactment, due to the lower wage costs prevalent there, or weakened labor and environmental standards in the U.S. Neither occurred.

Trade critics often argue that manufacturing jobs as a percentage of total employment has fallen, which is true. But what does that prove? The economy is not static. In 1930, 21.5 percent of the American workforce was employed in agriculture. In 2000, that number had dropped to 1.9 percent.²⁹ Does the decline in agricultural employment mean that the U.S. population today has less access to food or is worse off in some other way? Of course not. That just means that America has more efficient farmers, and that the economy has shifted to other economic activities.

Manufacturing is no different. The decline in manufacturing's share of U.S. employment simply means that American productivity is increasing. Between 1993 and 2006, manufacturing output per hour increased by 73.8 percent.³⁰ Instead of protecting manufacturing jobs by force, the economy can develop and become more innovative, which can then lead to the creation of new jobs in other sectors of the economy.

The practical results of enforcing more stringent labor and environmental standards would be to condemn the workers in developing countries to poverty and destitution. The price of labor in those countries will be higher than what that labor is worth, which will drive out foreign investors, leading to increased unemployment. If developing nations are forced to set more stringent standards than what the current level of productivity allows, their workers will eventually be penalized in the world market. In some developing countries, the alternative to low-wage jobs is not jobs with improved working conditions, but simply no jobs at all.³¹ As Columbia University economist Arvind Panagariya notes: "Developing countries do not support including labor provisions in trade agreements. In fact, of all the bilateral agreements between developing countries, not one contains labor regulations."³²

The same can be said of child labor, which organized labor regularly decries. Nobody wants children to be forced to work instead of getting an education, but that is not the question. The question is: What *alternative* do those children and their families have? In 1992, Sen. Tom

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Harkin (D-IA) introduced a bill to prohibit imports made by children under the age of 15. That scared the Bangladesh garment industry. (60 percent of the industry's exports went to the U.S. in 1994.)³³ What were the results?

UNICEF reports:

Poor environmental standards are the result of bad economic performance, not trade.

Child workers, most of them girls, were summarily dismissed from the garment factories. A study sponsored by international organizations took the unusual step of tracing some of these children to see what happened to them after their dismissal. Some were found working in more hazardous situations, in unsafe workshops where they were paid less, or in prostitution.³⁴

The Harkin bill was never passed, but the mere threat of its passing was enough to harm the very children it was supposed to help.

In its 2006 report on the state of child labor in the world, the International Labor Organization contends “that poverty reduction and mass education are important prerequisites for moving countries to the transition point in child labour elimination.”³⁵ The report argues that economic growth alone will not eliminate child labor, but that it is a requisite for that goal. It states: “Economic growth is important, and progress has been slower where economic progress has lagged behind.”³⁶

Environmental Standards

Poor environmental standards are the result of bad economic performance, not trade. Jeffrey Frankel of Harvard University and Andrew Rose of the University of California, Berkeley, studied the relationship between trade and environmental quality and found “no evidence for the pollution haven hypothesis, which claims that trade encourages some countries to specialize in dirtier environments.”³⁷

Instead, they found that trade actually has a direct *beneficial* effect on air pollution, such as leading to lower levels of sulfur dioxide. They further argue that trade has an indirect beneficial effect on the environment since trade spurs economic growth, which can improve environmental conditions in the long run.³⁸

Environmental problems tend to follow an inverted U-curve, which has become known as the “Environmental Kuznets Curve.” During the early stages of development, pollution increases, but as countries get richer, the state of the environment improves. The reason is that increased wealth allows for more environmental concern, while also yielding new

technologies that can contribute to a healthier environment. As World Bank economists Susmita Dasgupta, Benoit Laplante, Hua Wang and David Wheeler argue, there is some evidence “that the level of the curve is actually dropping and shifting to the left, as growth generates less pollution in the early stages of industrialization and pollution begins falling at lower income levels.”³⁹ They found that:

After decades of increasing capital mobility and economic liberalization, the race to the bottom should already be underway and pollution should be increasing everywhere... Instead of racing toward the bottom, major urban areas in China, Brazil, Mexico and the United States have all experienced significant improvements in air quality, as measured by concentrations of fine particulate matter (PM-10) or suspended particulate matter (SPM). Further research is necessary before any definitive conclusions can be drawn, because similar comparisons are currently unavailable for other pollutants. At present, however, the available evidence strongly suggests that the pessimism of the race to the bottom model is unwarranted.⁴⁰

East Asia — Trade and Prosper

Greater openness to world trade leads to greater economic growth. In their large-scale study “Economic Reform and the Process of Global Integration,” economists Jeffrey Sachs and Andrew Werner compared trade policies in 117 nations. They showed that between 1970 and 1989, developing nations that were open grew on average by 4.49 percent annually, while developing nations that were closed grew by a mere 0.69 percent. During the same period, open developed countries grew by 2.29 percent annually, and closed ones by 0.74 percent.⁴¹

In a study from November 2006, Gonzalo Salinas of Oxford University and Ataman Aksoy of the World Bank found that “trade liberalization has been followed by a significant increase in GDP per capita growth for a sample of developing countries that are not in transition from socialism, do not have conflicts, and do not depend on a single natural resource [mainly oil].”⁴² They showed that, “The estimated average increase in growth [due to liberalization of trade] varies between 1.2 and 2.6 percent.”⁴³

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For example, during the mid 20th century, South Korea was able to transform itself from a war-ravaged economy into a dynamic economic tiger. In 1960, South Korea had a real per capita GDP of \$1,605. In 2006, it achieved a per capita GDP of \$23,680. In 1960, South Korea was just slightly wealthier than Zambia; today South Korea is 24 times richer.⁴⁴ And it is equally impressive that South Korea today has been able to abandon child labor and have 95 percent of its citizens graduate from high school.⁴⁵

Since 1980, measured over any given five-year period, East Asia has grown more rapidly than any other region in the world, with GDP growth ranging between 6.8 and 9.4 percent for the region as a whole. The percentage of the region's population living on less than \$2 a day fell from 66.9 to 31.3 percent between 1990 and 2005, a decline that represents 476.3 million people.⁴⁶

When it comes to assessing countries' living standards, it is also useful to consider the United Nations' Human Development Index (HDI). In addition to GDP per capita, it includes life expectancy, adult literacy, and gross primary, secondary, and tertiary education enrollment. According to the 2006 United Nations Development Program Human Development Report, South Korea has an HDI of 0.912 on a scale between 0 and 1. This places the country as 26th in the world, ahead of European Union members such as Portugal, Slovenia, and the Czech Republic.⁴⁷

That could only have been realized with relatively open trade policies. It is true, as many critics contend, that some East Asian countries had import restrictions and state interventionism, but those were not the determinative factors for their development. Were that the case, then we should have expected Latin America, a region ravaged by the protectionism advocated by "dependency theorists," to be equally prosperous. As Norberg shows, East Asian interventions were not as prevalent as in other developing countries, and were abandoned well before the other nations dropped their restrictions.⁴⁸ Instead of implementing policies of self-sufficiency, the countries opened themselves to international trade, and "[t]he larger the share the of these countries' GDP accounted for by trade, the faster their economic growth has been."⁴⁹

According to the Sachs-Werner openness index, three East Asian countries—Korea, Indonesia, and Taiwan—were some of the first in the developing world to open to international trade. South Korea is considered to have been open since 1968.⁵⁰ Sachs and Werner note that, "It is surely

true that Korea, Taiwan, and Indonesia are not laissez-faire, but they and their neighbors in Southeast Asia, Thailand and Malaysia, have been more open to trade than other developing countries.”⁵¹

Furthermore, we can see that in recent years, trade liberalization in East Asian countries has increased. Average tariffs are now just above 5 percent, and foreign direct investment has increased from about 5 percent of GDP in 1985 to about 20 percent of GDP in 2003.⁵² In fact, the region’s increased trade and openness to the world was key for the remarkably rapid recovery from the 1997-1998 Asian crisis.

Implications for American Foreign Policy

Economic growth and increased productivity give countries an opportunity to improve their labor and environmental standards. South Korea has been a democracy for more than two decades; it is up to the South Korean people, acting through their elected representatives, to decide what kind of labor and environmental regulations to adopt. The U.S. should not attempt to decide for other democratic nations what kind of regulation and standards they need.

The intrusive provisions in the Bipartisan Trade Deal are not necessarily suitable for any country, but especially not for a democracy that has made so much progress in the last 50 years. In fact, the Bipartisan Trade Deal highlights an important discrepancy in U.S. foreign policy. Democracy promotion has become a key objective of American foreign policy under the administration of George W. Bush. South Korea today is a vibrant liberal democracy and the 10th largest economy in the world. If we do not respect South Korea’s democratic process, then what nation will take America’s admonishments about democracy seriously?

Moreover, the United States has not ratified six of the eight International Labor Organization labor rights conventions, from which the ILO Declaration derives. Both Democrats and Republicans have rejected those conventions, some of which go back to the 1930s.⁵³ The American government is thus trying to force other countries to abide by rules it itself rejects. (The only plausible explanation for this approach could be something that may be called the “infant country argument.” Other democratic countries are not developed enough to know what is best for them, and thus, America needs to intervene to make sure that they make sane decisions.) But even if the U.S. had implemented all of the ILO’s standards, that does not mean that other countries should follow

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suit. Would Congress adopt European environmental and labor laws, or anything resembling those laws, in order to obtain a trade agreement with the European Union?

President Bush proclaimed in his second inaugural address, “America will not impose our own style of government on the unwilling. Our goal instead is to help others find their own voice, attain their own freedom, and make their own way.”⁵⁴ It is time to live up to these assertions.

Strategic Interests in the Region

The South Korea-U.S. free trade agreement can be a diplomatic tool for promoting American strategic interests in East Asia. Changing the agreement which both sides have agreed upon may push South Korea away from the U.S. on other issues. Korea is currently negotiating an FTA with the European Union, which is its largest trading partner—and could well turn to China and Russia next.

Through trade, America can demonstrate the benefits of open markets and free enterprise, which can help combat anti-Americanism and consolidate good relations with important allies around the world, by showing the way to greater prosperity. This approach has been used on several occasions since the last approval of trade promotion authority in 2002. For example, the Morocco-U.S. FTA, which was signed by President Bush on August 3, 2004, has helped strengthen ties with a moderate Muslim state and key Arab ally in the war on terrorism in the Middle East.⁵⁵

Today, an increasingly assertive China keeps pushing for negotiations within Asia, for example, “ASEAN plus Three” (the ASEAN countries plus China, South Korea, and Japan) discussions which would not include the United States. A genuine FTA with South Korea would improve America’s position in the region, and put it back at the forefront of Asian countries’ economic deliberations.⁵⁶ In the case of South Korea, good relations are absolutely crucial. South Korea has been one of America’s most important friends for 60 years. To belittle this valuable ally by scotching this agreement would have serious negative political and economic consequences.

Moreover, there is some evidence that a U.S.-South Korea trade agreement would help create a “domino effect” towards liberalizing trade, by encouraging other countries in the region to negotiate FTAs with the U.S.

For example, Japan has followed closely the progress of the KORUS-FTA, and Japanese electronics manufacturers are concerned at the prospect of South Korea being able to sell TVs, with no tariffs imposed, on the American market, while Japanese companies would still have to pay a 5-percent tariff. Similarly, Korean automakers would be able to export their cars to America without any tariffs, while their Japanese competitors would still face a 2.5-percent tariff. “We can’t get left behind Korea,” an official at Japan’s Ministry of Economy, Trade and Industry told *The Wall Street Journal* in July. “Japan is worried about this.”⁵⁷

One can see a similar reaction in Taiwan. Shortly after the KORUS-FTA was signed, Taiwan’s Economics Ministry released a report urging an increase in the island’s efforts to negotiate an FTA with the U.S. to avoid being shut out of any new regional free trade zones. The ministry estimates that the KORUS-FTA would cost Taiwan \$2 billion in lost U.S. trade market share and about 20,000 jobs. The U.S. has so far been unwilling to sign such an agreement with Taiwan due to fear of China’s reaction.⁵⁸ Still, Taiwan’s reaction shows that the KORUS-FTA can help promote trade with the U.S. throughout the region.

The important question now is: What signal is the U.S. sending by first concluding an agreement after 10 months of negotiations only to renegotiate the deal to include more stringent labor and environmental provisions? Although South Korea agrees to the new provisions, it may push one of America’s staunchest allies in East Asia away from the U.S. in the future. The same holds true for South Korea’s neighbors.

Questions about Sovereignty

The KORUS-FTA’s labor and environmental provisions raise the question of national sovereignty. Earlier agreements did not include the labor standards because the U.S. has only ratified two of the eight ILO labor conventions, as mentioned earlier. The reason is that the conventions’ antidiscrimination provisions might compel the U.S. to adopt mandatory wage levels in the form of “equal pay equal work” laws. Furthermore, some Americans fear that U.S. labor laws—for example, the President’s authority to dismiss public workers on strike and states’ right to work laws—could be undermined because of the right to organize enshrined in the ILO conventions.⁵⁹

While previous FTAs have proclaimed that the U.S. generally should abide by the ILO Declaration, they only oblige countries to enforce their own domestic labor laws. With the Bipartisan Trade Deal,

it is unclear what the U.S. actually is obliged to do. Governments are the only actors allowed to bring disputes against other governments over alleged labor law violations. Furthermore, if a dispute settlement panel rules against the U.S., that ruling is still not self-executing, and would thus not change U.S. law.⁶⁰ Basically, that means that even if the American government loses in a dispute settlement, it can ignore the panel's decision. That proviso represents the Bush Administration's tricky attempt to protect national sovereignty in its settlement with the Democrats.⁶¹

But as trade economist Claude Barfield points out, "[T]he administration may well have positioned itself on a slippery slope."⁶² To claim that international law will not trump domestic laws, while at the same time committing oneself to uphold international agreements is clearly very risky. If disputes arise, and the U.S. loses but refuses to abide by the verdict, the U.S. might find itself in a very precarious situation in which it needs to neglect the standards it has vowed to uphold in agreements with other countries.

Clearly, there is a trend towards incremental changes regarding labor and environmental provisions in trade agreements. It is unclear where the tipping point lies where the U.S. would find itself in a situation where it must abide by international labor laws and environmental treaties. Since this is the case, every step towards more international labor standards is a transfer of power from America to a supranational legal framework. The policy changes that are paving the way for more and more international standards to be included in FTAs are thus clearly a threat to U.S. national sovereignty. This would be especially problematic should America deem it necessary to change its labor or environmental laws in the future.

Use It or Lose It? — A Cost-Benefit Analysis

Absent complete free trade, what are on balance the pros and cons of the renegotiated South Korea-U.S. free trade agreement? That question demands a cost-benefit analysis. On the one hand, it will enshrine enforceable labor and environmental provisions in an important trade agreement, which would set a bad precedent. Labor unions will be able to point to these provisions and argue that if they were used for Korea, then they should be used for other trade agreements. Indeed, those provisions are also now incorporated in the pending Peru, Panama, and Colombia FTAs. If the KORUS-FTA were to be rejected by Congress, that could lead

to an opportunity to promote free trade without enforceable provisions in the future. That would be hard to accomplish if the provisions become entrenched as norms.

Moreover, the stringent labor and environmental provisions are just a part of organized labor’s long-term strategy of demanding more and more stringent provisions, and derailing trade agreements when possible. A concession as important as enforceable standards might open a Pandora’s Box. If we can enshrine enforceable standards, union officials may argue, why not enforce a wage floor as high as the American minimum wage? Worse, other incremental changes might dilute U.S. sovereignty in the long term.

On the other hand, congressional rejection of the KORUS-FTA will severely weaken America’s relationship with South Korea. Renegotiating the deal was patronizing enough; to scrap it after that would be insulting.

The economic consequences of not ratifying the KORUS-FTA would also be significant. Rejecting the treaty would mean forsaking an opportunity to increase U.S. GDP by \$10.1-11.9 billion and U.S.-South Korea trade by an estimated \$17.8 billion a year, and America will further lose the opportunity to be at the forefront of trade negotiations in East Asia—leaving a vacuum that China will gladly fill.

Rejection of the agreement would harm the cause of true free trade in general. The agreement could not only boost trade between Korea and the U.S., but also create a “domino effect,” galvanizing support for free trade in a world where multilateral trade negotiations have broken down.

Moreover, scrapping the KORUS-FTA accomplishes nothing in the long term. That would amount to giving in to organized labor, which will not give up until FTAs are transformed into tools of protectionism rather than catalysts for liberalizing trade. The agreement, despite its flaws, still promotes free trade, which is why the unions oppose it.

The fact that governments are the only actors who can bring cases to dispute settlement makes the KORUS-FTA worth the risk. A situation in which labor unions and NGOs can sue businesses for not upholding ILO standards would yield round after round of stalling through litigation—which would suit organized labor just fine. Yet that is not the case today.

If the alternative were to advance unilateral free trade, then opposing the KORUS-FTA would be an easy choice, but that is not the alternative. The alternatives to the agreement are greater protectionism,

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America's long-term foreign policy interests are undermined by using trade negotiations to interfere in other democracies' internal affairs.

bruised relations with a key ally, and a missed opportunity to generate momentum in a world where free trade is under attack and multilateral negotiations have broken down.

This is not to say that all FTAs that include the more stringent labor and environmental provisions based on the Bipartisan Trade Deal should be ratified. Each agreement should be addressed individually to determine if the benefits outweigh the problems that arise with the provisions; in the case of the South Korea-U.S. free trade agreement, they do.

Conclusion

The labor and environmental provisions in the South Korea-U.S. free trade agreement are problematic, both from a Korean and an American perspective. Unimpeded free trade is the best way to promote economic growth, which in turn is the best and only sustainable catalyst for improved labor and environmental conditions in developing countries. All other arrangements will hurt producers in poor nations and impede labor and environmental improvements worldwide.

The KORUS-FTA did include environmental and labor clauses from the beginning, but there are important differences between incorporating domestic and international standards in FTAs. Enshrining domestic standards leaves decision making to each country's governing institutions, while international standards pass that responsibility on to a supranational legal framework, which bodes ill for the signatory nations' sovereignty.

There are no valid theoretical arguments, nor any empirical evidence, for why labor and environmental standards should be included at all in FTAs. As this paper has shown, the best policy for American legislators would be to reject organized labor's demands and open up trade to all countries that want to trade with us. We may disagree with some countries' domestic policies, but setting up obstacles to trade will not make them adopt the changes we would like.

The unions will not give up until the same labor and environmental standards are enforced uniformly around the world. They will demand more and more stringent provisions to eventually turn FTAs into tools of protectionism.

Furthermore, America's long-term foreign policy interests are undermined by using trade negotiations to interfere in other democracies' internal affairs. America jeopardizes strategic interests by patronizing one of its staunchest East Asian allies.

The KORUS-FTA is not a perfect agreement, but it would generate so many economic and political gains for the U.S. that the benefits appear greater than its attendant problems. It would increase U.S. GDP by \$10.1-11.9 billion and bilateral trade by \$17.8 billion annually, boost America's standing in the region, and generate momentum for the cause of global free trade. Finally, to ratify it would bolster good relations with South Korea, an important ally, which negotiated and renegotiated the agreement in good faith.

The Bipartisan Trade Deal hurt the cause of free trade. Many FTAs might not be worth pursuing due to the more stringent, enforceable standards, but the KORUS-FTA is. As Deputy U.S. Trade Representative Karan K. Bhatia contends, "Other than a successful conclusion to the Doha Round, enactment of the KORUS FTA may be the single most important action that can be taken today to further U.S. trade objectives in the region [Asia]." ⁶³ The Doha Round is nowhere near conclusion; to reject the KORUS-FTA at this point makes no economic or political sense.

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