

North Korean Goods to Enter the United States Under the KORUS FTA Unless the Parties Change the Agreement

The United States currently maintains a near total embargo on imports from North Korea. No product with any North Korean content may legally enter the United States without a special license from Treasury; these licenses are generally not granted. Our sanctions policies with respect to North Korea are imposed under the International Emergency Economic Powers Act (IEEPA), the Arms Export Control Act (AECA), and other statutes that grant significant latitude to the executive branch to impose sanctions against countries hostile to the United States. By the same token, it is possible for the President to alter these sanctions without Congressional approval.

The rules of origin in the FTA provide preferential, often duty free, entry for goods with as much as 65 percent non-South Korean, non-U.S. content. The KORUS FTA is silent on North Korean content – nothing in the agreement explicitly states that the U.S. will not accept goods with North Korean inputs. No language in the agreement says that the foreign content allowed in a product covered by the agreement may not be North Korean.

The only language that the United State negotiators can point to in the agreement that purportedly allows us to maintain our embargo policy is a footnote in the rules of origin chapter that reads: “For greater certainty, whether a good is originating is not determinative of whether it is also admissible.” This vague language actually provides no certainty.

The South Koreans operate an industrial park six miles north of the DMZ known as the Kaesong Industrial Complex. There are currently more than 40,000 North Koreans employed there, with plans to expand to several hundred thousand. These workers are paid a fraction of their South Korean counterparts, and much of their pay is kept by the North Korean government for its nefarious purposes. Goods produced in Kaesong are incorporated in items for export by South Korea.

Both South Korea and U.S. officials claim to Congress that the agreement will not alter the ban on North Korean goods in the U.S. What Republic of Korea officials say to their own constituencies is different. The current Ambassador to Washington, and former Prime Minister has said that the agreement will not just open up the U.S. to North Korean-made “inputs” in South Korean goods, it will lead to the export of goods 100 percent made in Kaesong to the United States: *“The planned ratification of the South Korea-US free trade agreement will pave the way for the export of products built in Kaesong to the U.S. market.”*

On this point the agreement may not be silent, but what it says does not provide much assurance. Annex 22-B, which governs so-called “outward processing zones,” the South Korean terminology for Kaesong, provides for a committee to recommend whether goods produced in such zones should receive preferential treatment, based on vague political factors. Would Congress get a say?

Annex 22-B states that “[d]ecisions reached by the unified consent of the Committee shall be recommended to the Parties, which shall be responsible for seeking legislative approval for any amendments to the agreement [affecting the zones].” No one from the U.S. government has ever definitively stated on the record or in writing that legislative approval means an actual statute, perhaps in the form of a joint resolution, enacted by Congress. There are many ways short of actual statute for Congress to be deemed to have “approved” an executive action.

The South Koreans will likely attempt to export goods with North Korean inputs to the United States. If our officials try to ban such goods from entering our market, we will be vulnerable to “legal” retaliation from the South Korean side, causing us to either forgo the benefits of the agreement, or to relent and allow North Korean content into the United States.

The South Koreans will also likely lobby hard for goods 100-percent manufactured in Kaesong to receive duty-free treatment in the United States, pursuant to the procedure set out in Annex 22-B. A future administration could relent (or be forced to relent) to such demands, and Kaesong goods would enter the United States without a vote by Congress.

Congressman Sherman has urged the Administration to make changes to the agreement and provide language in the implementing legislation that would explicitly ban North Korean goods, including goods incorporated into South Korean items, from the United States, and to provide that no changes in Kaesong’s status can be made without statutory authorization (letter attached).

--- Factsheet prepared by the Office of Congressman Brad Sherman