



BRAD SHERMAN  
UNITED STATES CONGRESS

PH: (202) 225-5911  
FAX: (202) 225-5879

February 9, 2011

The Honorable Barack Obama  
The President  
The White House  
Washington, DC 20500

**RE: KORUS FTA and North Korea Sanctions Policy**

Dear Mr. President:

As Congress prepares to consider legislation to approve and implement the Korea-US Free Trade Agreement (KORUS FTA), it is critical that your administration address concerns regarding the potential for the agreement to provide indirect benefit to North Korea.

It is imperative that the FTA not allow North Korean goods to enter the United States, including North Korean items that may be incorporated into goods manufactured in South Korea, as well as goods that are the product of so-called outward processing zones operated by South Korean firms located in North Korea.

There is ample opportunity for goods produced in North Korea to find their way to the U.S. via South Korea. North-South trade runs more than \$1.5 billion per year. Also, South Korea and North Korea operate a cooperative manufacturing center known as the Kaesong Industrial Complex. This outward processing zone employs more than 40,000 North Korean workers six miles north of the DMZ, in factories run by South Korean industrial giants, including a division of Hyundai.

These workers are not paid directly by their South Korean employers. Instead, their wages are paid into the North Korean government, which skims around half for itself and its various nefarious purposes. Labor conditions at the Kaesong facility are widely criticized, including by the U.S. State Department's annual report on human rights.

Aside from deliberate transshipment, there are two obvious ways that North Korean goods, from Kaesong or other parts of North Korea, could enter the United States, as outlined below. We must make sure that these avenues are completely and unambiguously closed in the context of the FTA.



### **North Korean Inputs**

It is possible that South Korean exporters may incorporate North Korean items in exports sent to the United States, or otherwise pass off products made in the North as products of South Korea. Currently, no good with any North Korean content is legally allowed to enter the United States absent specific permission from Treasury's Office of Foreign Assets Control. That should not change under the FTA. The FTA's content requirements and rules of origin will provide South Korean treatment to goods with significant foreign content – 65 percent non-South Korean content is permissible with respect to autos, for example. These content requirements and rules of origin should not be read to allow the “foreign” content to come from North Korea. Unfortunately, the FTA text does not specifically address the inadmissibility of North Korean content.

Moreover, under Korean Customs policy, a product made in Kaesong enters South Korea designated as being of South Korean origin as long as the firm producing it in North Korea is 65% South Korean-owned and certain other conditions are met.

It is my understanding that the South Korean government has assured the United States that no North Korean content will be exported to the United States, including content from Kaesong. If true, that is a positive development. However, it does contradict previous statements from Korean officials, including the current Korean Ambassador to the U.S., Han Duk-soo, who said in 2007 that “the planned ratification of the South Korea-U.S. free trade agreement will pave the way for the export of products built in Kaesong to the U.S. market.” South Korean firms see the low wages in Kaesong as a way to compete with Chinese manufacturing on price.

Given these factors, I am requesting that your administration seek changes to the agreement, or a formal exchange of letters with the South Korean government that commits the parties to a self-executing amendment effective upon implementation. This amendment would insert into the FTA text provisions that clarify that, in accord with current U.S. policy vis-à-vis North Korea, any item with any North Korean content, including goods assembled in South Korea that include any content from Kaesong, will not only fail to receive FTA treatment, but will not be allowed to enter the United States at all.

I further request that the implementing legislation provide for the codification of the current tough restrictions against North Korean goods entering the United States. This approach would provide the maximum assurance that the KORUS FTA would not provide for the legal import of North Korean content, and that policies in this regard could not be changed in the future absent an act of Congress.

It is also important that you announce that your administration will rigorously enforce U.S. policy against imports from North Korea, and take tough action against those that violate it. Your administration should provide Congress with a detailed plan for ensuring, through Customs and other relevant agencies, that goods bound for the United States from South Korea are devoid of content from the North.

**Kaesong and Other Processing Zones**

On June 13, 2007, I held hearings as Chairman of the Foreign Affairs Subcommittee on Terrorism, Nonproliferation and Trade concerning the foreign policy and national security dimensions of the KORUS FTA.

As noted on page 31 of the transcript thereof (attached), I specifically asked then Deputy USTR Karan Bhatia for a letter clarifying Paragraph 5 of what has become Annex 22-B (formerly, it had been designated Annex 22-C) of the free trade agreement. Since we received no response from this request from the previous administration, I renew that request in this letter.

I note that Paragraph 5 of Annex 22-B states the following: "*Decisions 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. In my reading, this language creates two layers of ambiguity.

First what does "legislative approval" mean? Would it require an actual act of Congress, or merely some lesser, notice and consultation "approval?" Could the Executive Branch simply notify Congress of its intent to take certain action unless Congress disapproves within a certain period of time?

Second, would an amendment to the agreement actually be necessary to extend South Korean origin treatment to goods produced at Kaesong or similar zones, or could such a change be affected without amendment?

**In that vein, can you provide absolute assurance that neither this administration, nor any future administration could, after discussions with the Republic of Korea, provide the benefits of the free trade agreement to goods produced at the Kaesong industrial complex without a specific statutory enactment by Congress?**

Thank you very much for your attention to this matter. I look forward to your reply.

Sincerely,



BRAD SHERMAN  
Member of Congress

THE UNITED STATES-SOUTH KOREA FTA:  
THE FOREIGN POLICY IMPLICATIONS

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HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM,  
NONPROLIFERATION, AND TRADE

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Ambassador BHATIA. Effectively the latter. I mean, it contemplates—excuse me, the former. I think it is the former based on my memory what you are describing. It would contemplate that changes in rules of origin that would be needed to effectively allow goods from Kaesong or any other outward processing zone would require us to come back and seek legislation from the Hill.

Mr. SHERMAN. So you would need legislation and you would not simply give notice to Congress and ask us to disapprove?

Ambassador BHATIA. No, that is not what we contemplate.

Mr. SHERMAN. Needless to say, the drafting here would allow some successor of yours to take a different position, which is why I at least had to get you on the record here.

Mr. ROYCE. Mr. Chairman, if you would yield for a minute?

Mr. SHERMAN. I yield for a minute.

Mr. ROYCE. You understand I feel this is a moot point, but if you would like, the two of us could write a letter to that effect for legislative intent and we can get this issue off the table.

Mr. WU. Reclaiming my time, I would be much more impressed if the administration were to put it in writing.

Mr. SHERMAN. Yes. Well, we would like a letter from the USTR and the Secretary of State addressing this issue, defining what the words “seeking legislative approval” mean in Section 5 of Annex 22-C and also commenting upon whether such legislative approval is an absolute necessary precursor for whether any goods can come in under the 22-C process, because I could see the administration taking the position that says, well, we are responsible for seeking legislative approval, we will go seek it. In the meantime, we will let the goods in. So we will need something on timing and something on whether it requires an act of Congress.

So I now turn to the gentleman. I believe the next on the list is the gentleman from Texas.

Mr. POE. Thank you, Mr. Chairman.

Ambassador BHATIA. Thank you.

Mr. POE. I represent probably the largest refinery area in the southeast, southeast Texas. What land we do not have refineries on we grow rice. This portion of Texas used to have 600,000 acres of rice, long-grain rice. That was 25 years ago. Now our rice fields are down to 200,000. The number one problem is markets. I am a free trader. I believe in it. But as things would happen, long-grain rice from Texas, the number one market used to be Cuba and then Iran and then Iraq.

[Laughter.]

Mr. POE. We all know what has happened. We do not really trade with those people anymore, and then when we were selling rice, getting rice for Iraq, the government for some reason was buying it from Vietnam. So rice farmers, they would just like some markets. And this free trade agreement, we deal with avocados and sunflower seeds and lemons, but we do not deal with rice, and that concerns me because it is not free trade for rice.

Rice is an exception because it is better for South Korea to have a quota than it is for the United States to be able to go into that market and compete on the world scale, and I want to know why. What do I tell the rice farmers who are going broke down there in Texas? What would I tell them in this free trade agreement that