



REPORTERS' MEMO

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Bush's NAFTA-Style Korea Free Trade Agreement Would Undermine Obama's Campaign Trade Reform Commitments

At the June 2010 G-20 meeting, President Barack Obama said he wanted to submit the George W. Bush-negotiated Korea Free Trade Agreement (FTA) to a vote in Congress in late 2010 or early 2011 – after fixing unspecified aspects of the agreement. Bush's Korea FTA text, which closely replicates NAFTA and CAFTA, contains key provisions that directly conflict with Obama's campaign commitments to overhaul America's trade policy to create jobs, guarantee workers' rights, protect the environment and ensure financial stability. **The Obama administration must fix these severe problems in Bush's Korea FTA.**

Obama's Commitments	Current Korea FTA Text
<p><u>Labor Rights:</u></p> <p>Obama: "I strongly support the inclusion of meaningful, enforceable labor and environmental standards in all trade agreements. As president, I will work to ensure that the U.S. again leads the world in ensuring that consumer products produced across the world are done in a manner that supports workers, not undermines them."¹</p> <p>Obama's Answer to Oregon Fair Trade Coalition Questionnaire: "Will you require new trade agreements to include core ILO Conventions?"</p> <p>Obama: "Yes"²</p>	<p>Unfortunately, the Bush administration inserted language into the Korea FTA explicitly forbidding reference to the International Labor Organization conventions, which set forth the core international labor standards. Bush's Korea FTA text requires countries to ensure workers the rights of collective bargaining, freedom of association and freedom from employment discrimination, but includes a footnote that says the obligations "refer only to the ILO Declaration" rather than the ILO Conventions.³ The ILO Declaration is a two-page general statement of the ILO's principles; it has little meaning unless read in the context of the actual Conventions and their jurisprudence. This footnote must be eliminated to meet Obama's commitments on the necessary labor components of trade agreements.</p> <p>Labor rights violations are widespread in Korea, so eliminating the footnote is not an academic exercise. For example, the Korean government has used its "obstruction of business" law to imprison labor leaders, and employers often use police to break up labor union activity.⁴</p>

<p><u>Financial Sector Regulation:</u></p> <p>Obama: “To renew our economy and to ensure that we are not doomed to repeat a cycle of bubble and bust again and again and again, we need to address not only the immediate crisis in the housing market, we also need to create a 21st century regulatory framework and we need to pursue a bold opportunity agenda for the American people....[T]here needs to be general reform of the requirements to which all regulated financial institutions are subjected. Capital requirements should be strengthened, particularly for complex financial instruments like some of the mortgage securities that led to our current crisis.”⁵</p>	<p>The FTA text was signed in 2007 before the financial crisis and includes the extreme deregulation requirements of past Bush FTAs. Bush’s Korea FTA includes rules that countries cannot limit the size of financial institutions or impose “firewalls” between the sort of financial services one firm may offer to limit the spread of risk, ban toxic derivatives, or control destabilizing capital flights and floods. Both the U.S. and Korea have implemented important new financial stability and reregulation measures that could conflict with these rules, making the countries subject to challenge under the FTA. And, the regulations now being written to implement Congress’ major financial reregulation bill could be subject to direct attack by Korean corporations operating in the U.S. unless the FTA is fixed.</p> <p>In many ways, the Korea FTA’s financial services provisions are more deregulatory than those of any previous FTA. According to fact sheets on the pact published by the Bush administration, “The Financial Services Chapter of the United States-South Korea Free Trade Agreement ... is a groundbreaking achievement, providing more extensive provisions related to financial services than ever before included in a U.S. FTA.”⁶</p>
<p><u>Extreme Foreign Investor Protections That Promote Offshoring and Their Private Corporate Investor-State Enforcement:</u></p> <p>Obama: “With regards to provisions in several FTAs that give foreign investors the right to sue governments directly in foreign tribunals, I will ensure that foreign investor rights are strictly limited and will fully exempt any law or regulation written to protect public safety or promote the public interest. And I will never agree to granting foreign investors any rights in the U.S. greater than those of Americans. Our judicial system is strong and</p>	<p>The Bush Korea FTA text includes the extraordinary foreign investor rights and their private “investor-state” enforcement that Obama criticized. This empowers foreign corporations to privately enforce new FTA investor rights by directly challenging U.S. laws before foreign tribunals to demand taxpayer compensation. With Korea, these outrageous provisions are especially threatening and totally unnecessary; Korea has a well-functioning domestic court system that respects private property and investment.</p> <p>The special threat is posed because there are hundreds of U.S. and Korean companies cross-established in the other country. About 79 Korean firms operate in the U.S. They would get <u>new</u> FTA rights to demand taxpayer payment for federal and subfederal labor, environmental zoning and other laws that they think undermine their “expected future profits” or violate other pro-corporate rights if the Korea FTA is passed with its current text.</p>

<p>gives everyone conducting business in the United States recourse in our courts.”⁷</p>	<p>U.S. firms in Korea could do the same. And this private enforcement system applies to the FTA’s financial deregulation rules also, so banks could attack reregulation of the financial sector. Most past U.S. FTAs were with developing nations who have few firms established in the U.S. But numerous Canadian firms operating here have used similar rules in NAFTA to attack U.S. laws. Under NAFTA, more than \$300 million has been paid by governments to foreign investors for the privilege of implementing environmental and public health regulations and other public interest measures.⁸</p> <p>The current text not only violates Obama’s commitments but also Congress’ reasonable (but unfortunately ignored) FTA standard from 2002 that foreign firms must have “no greater rights” than domestic firms.⁹ The U.S. provides checks and balances in line with our Constitution; it’s good enough for everyday Americans, and corporations shouldn’t get special treatment – especially not after they wrecked the economy.</p>
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ENDNOTES

¹ Obama’s response to a Texas Fair Trade Coalition questionnaire, March 3, 2008. Available at: <http://www.citizen.org/documents/TXFairTradeCoalitionObama.pdf>

² Obama’s response to an Oregon Fair Trade Coalition questionnaire, May 9, 2008. Available at <http://www.citizen.org/documents/ORFairTradeCoalitionObama.pdf>

³ See Article 9.2 of the Labor Chapter of the Korea FTA, Available at:

http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file934_12718.pdf

⁴ ILO Committee on Freedom of Association Report No. 353, Case 1865 ¶ 729 (2009), and

Young-Joon Ahn, “Ssangyong Motor union agrees to end strike,” Associated Press, August 8, 2009, Available at: <http://www.thefreelibrary.com/Ssangyong+Motor+union+agrees+to+end+strike-a01611957511>

⁵ Obama’s speech at Cooper Union in New York City, March 27, 2008, Available at:

<http://www.nytimes.com/2008/03/27/us/politics/27text-obama.html>

⁶ See http://www.ustr.gov/sites/default/files/uploads/factsheets/2008/asset_upload_file972_15191.pdf

⁷ Obama’s response to a Pennsylvania Fair Trade Coalition questionnaire, April 2, 2008. Available at http://www.citizen.org/documents/PA_Fair_Trade_Coalition_Obama.pdf

⁸ Public Citizen, “Table of NAFTA Chapter 11 Foreign Investor-State Cases and Claims,” November 2010, Available at: http://www.citizen.org/documents/NAFTA_Investor_State_Chart_Nov_2010.pdf

⁹ For a more in-depth exploration of the history of this requirement, which was inserted into the 2002 Fast Track bill, see Todd Tucker and Lori Wallach, *The Rise and Fall of Fast Track Trade Authority*, (Washington, D.C.: Public Citizen, 2009). Available at: <http://www.fasttrackhistory.org/>