<u>12/3/10 Supplemental Korea FTA Deal Did Not Fix Bush's 2007 FTA Text</u>

- **The supplemental deal did not alter the basis for the U.S. International Trade Commission (ITC) projection that <u>the Korea FTA will increase the U.S. trade deficit</u> or the Economic Policy Institute's projection that <u>the agreement would result in the loss of 159,000 American jobs</u>. The ITC identified seven manufacturing sectors that would be losers under the FTA.**

Korea FTA: Losing U.S. Industrial Sectors		
(Data from U.S. International Trade Commission Study)	Increase in U.S. global trade deficit by sector (millions of dollars)	
	Low	High
Motor vehicles and parts	($531)	($708)
Other transportation equipment	($340)	($293)
Electronic equipment	($790)	($762)
Metal products	($169)	($187)
Textiles	($169)	($190)
Apparel	($56)	($74)
Iron-containing metals	($65)	($75)

- **The supplemental deal did not alter the NAFTA-replicating foreign investor offshoring protections; new rights for the 270 Korean establishments operating here who would be newly empowered to demand taxpayer compensation in foreign tribunals over U.S. environmental, financial, labor or health policies; financial sector regulatory limits; or limits on imported food and product safety standards and inspection in Bush's 2007 Korea FTA text.**

- **The Bush FTA labor chapter was not altered. The provision inserted by Bush for the Chamber of Commerce that bans reference to the International Labor Organization (ILO) Conventions in enforcing the FTA's labor terms remains intact.**

- **No currency adjustment provisions were added to counter the likelihood that Korea could erase the effect of FTA agriculture and other tariff cuts by devaluing its currency. Korea is one of only three countries Treasury has officially charged with currency manipulation.**

- **Many congressional Democrats and Democratic base groups opposed Bush's Korea FTA. In a 7/10 letter to Pres. Obama, 110 Representatives said that changes to the investor, labor and financial service rules in Bush's FTA were essential. A 9/10 letter signed by over 500 labor, consumer, environmental, faith, and farm groups demanded renegotiation of these damaging terms.**

- **The supplemental does not require Korea to import more U.S. cars nor are U.S. tariff cuts conditioned on Korea buying more U.S. cars. Korea exports 500,000 cars here and we send 6,000 cars there. Only 4% of autos sold in Korea are foreign. The Korean Auto Manufacturers Association celebrated the new deal because it "is forecast to drive up South Korean automakers' market share in the U.S."**

- **The supplemental deal did not change the FTA's 35% domestic content rule that allows duty-free treatment for vehicles with 65% of content sourced from China, Mexico or other nations. Thus, even if the U.S. were to export more cars to Korea, it would not likley translate into more jobs for U.S. workers in auto parts, steel, glass, tire and rubber. The EU-Korea FTA content rule is 55%.**

- **The FTA was not fixed to ban goods assembled in South Korea from parts from the North Korean *Kaesong* sweat shop zone from getting FTA benefits. Thus, the FTA would generate more income for the Kim dictatorship and its weapons program, undermining U.S. sanctions and our security.**

- **None of the changes to the FTA's textile provisions demanded by a bipartisan group of Congress people and by the industry were made, including to keep out Chinese transshipped goods.**

- **The supplemental extends tariff phaseout times for both Korean and U.S. autos, allows Korea to maintain pork tariffs for 2 extra years, waives Korean auto safety rules for up to 75,000 U.S. cars, allows 4 years access for U.S. cars that exceed Korean emissions/fuel efficiency rules, added an auto-specific safeguard, requires Korea to develop a system to review if auto regulations meet their goals in the least burdensome manner, extended the length of L-1 visas for Korean workers in the U.S. The issue of U.S. beef market access in Korea was not addressed.**

WHAT WAS NOT CHANGED

- **<u>Labor chapter requirement that the ILO Conventions may not be referenced in enforcing the FTA labor chapter.</u>** As a result of this clause, enforcement of the Korea FTA's labor chapter is limited to reference to the general two-page ILO Declaration on Fundamental Principles and Rights at Work that does not establish the internationally-recognized core labor rights. The addition of this limitation led Chamber of Commerce President Tom Donohue to reverse his opposition to FTA labor provisions, noting that he was "encouraged by assurances that the labor provisions cannot be read to require compliance with ILO Conventions."[1] Diverse U.S. unions made clear that this offensive limiting language had to be cut. During his campaign, President Obama committed that all of his trade agreements require adherence to the standards of the ILO core Conventions.[2] In a September 14, 2010 statement, the UAW noted: "The UAW has serious concerns regarding the effectiveness of the worker rights provisions of the proposed KORUS FTA in protecting basic international labor standards."[3] The AFL-CIO also had a list of other Korea FTA labor chapter changes that were also ignored.[4]

- **<u>Foreign investor offshoring privileges and investor-state private enforcement</u>:** No changes were made to the Bush text's investment chapter. The Korea FTA's investment text remains almost word-for-word the same as CAFTA, which expanded on the investor rights provided in NAFTA. The Korea FTA contains the special privileges and protections for foreign investment that promote offshoring. This includes a guaranteed minimum standard of treatment for offshore operations that extend beyond what countries afford domestic corporations and rights to "regulatory takings" compensation for domestic policies that investors claim undermine expected future profits. The Korea FTA also replicates the NAFTA-CAFTA "investor-state" enforcement system. This empowers foreign investors and corporations to privately enforce their new FTA privileges by suing host governments in World Bank and UN tribunals for cash compensation. The definition of foreign investor in the Korea FTA would allow a Chinese firm who (directly or through a subsidiary) incorporated in Korea that established a U.S. operation to use this system. Investor-state enforcement is not necessary or appropriate for an agreement between two developed countries with well established rule of law and sound domestic court systems. The U.S.-Australia FTA does not have investor-state private enforcement. These terms are a special threat in the Korea FTA: there are 300 Korean establishments[5] operating within the U.S. that would be newly empowered to launch extrajudicial attacks on U.S. domestic policies. Compensation for such claims is paid with our tax dollars, exposing the Treasury to new liabilities. Over $300 million in compensation has been paid to NAFTA-country corporations and investors using this private enforcement system against health, safety, zoning and other policies.[6]

- **<u>Financial regulation limits</u>**: The Bush FTA terms remain unchanged. Any policies that limit financial firm size or impose firewalls are subject to challenge.[7] Nations are prohibited from using capital controls or banning risky financial products and services. These limits could conflict with U.S. and Korean financial reregulation policies. While the Korean and U.S. governments may refrain from attacking financial reregulation measures in the wake the crisis, the Korea FTA allows private corporate enforcement of its key financial regulatory limits.[8] A spokesperson for Citigroup raved that the Korea FTA has "the best financial services chapter negotiated in a free trade agreement to date."[9]

- **<u>Limits on imported food and products safety standards and inspection</u>:** The Bush terms remain unchanged. The U.S. now imports nearly $65 billion in food annually - almost double the value imported when NAFTA and the WTO went into effect. Like NAFTA and CAFTA, the Korea FTA requires the U.S. to import meat and poultry that does not meet U.S. safety standards. This food shows up in stores with a USDA label. The Korea FTA also incorporates the WTO standard of presuming a country's domestic food and product safety standard is a trade barrier subject to challenge and sanctions if it extends beyond the weak international standards set by the Codex Alimentarius, a UN body dominated by agribusiness representatives. Domestic food safety, product safety and worker safety rules that are challenged in Korea FTA tribunals must be eliminated or the U.S. would face permanent trade sanctions - as has happened in the NAFTA case against the U.S. safety ban on Mexican-domiciled trucks. China recently won a WTO challenge against the U.S. safety-based ban on Chinese chicken imports. Currently, Mexico and Canada are challenging the U.S. country-of- origin food labeling policy at the WTO using rules similar to those in the Korea FTA.

- **Textile tariffs cuts that favor Korea:** U.S. tariffs for 44 product lines phase out more quickly than Korean tariffs on the same goods. Especially exposed are industrial and technical textiles, such as Kevlar and flame retardant fabrics. Korea is the main U.S. competitor in this essential high tech sector. As well, the agreement would immediate zero out tariffs on fiber fill even though the U.S. currently has anti-dumping duties in place on such Korean goods. The agreement provides no special protections to avoid duty-free treatment being given to Chinese goods transshipped through Korea, which is already a serious problem prior to tariff elimination.

WHAT WAS CHANGED (AND SOME NOTABLE THINGS NOT CHANGED FOR AUTOS)

- **Automotive rule of origin remains at 35% of value and no limit on Korea's duty drawbacks for imported parts:** A vehicle will qualify for FTA tariff terms even if parts comprising 65% of value are from another country. Thus, even if the United States were to export more cars to Korea, this would not necessarily translate into more jobs for U.S. workers in the auto parts, steel, glass, tire and rubber industries. Calling the agreement's "rule-of-origin" and "duty drawback" provisions "highly problematic" in a September 2010 statement, the UAW warned that "the U.S. and Korea are effectively signing an automotive free trade agreement with the world."[10] The statement notes: "Workers and their unions in Korea are opposed to the KORUS FTA, in part, because it would encourage Korean manufacturers to significantly increase the sourcing of production to low-wage nations of Asia, including China… Thus, Hyundai, for example, could source the production (and employment) of up to 65 percent of the value of its vehicles to China or elsewhere, import these parts and components back into South Korea for final assembly, and then export the finished vehicle to the United States duty-free." Also, under the FTA, Korea is allowed to refund 100% of duties on imported parts. The EU-Korea 55% auto rule of origin requires a majority of value to come from the trade pact partners and duty drawbacks (refunds) are capped at 5%.

US-Korea FTA December 3 Supplemental versus EU-Korea FTA

Unchanged auto rule of origin at 35%.	Auto rule of origin 55%
No limits on duty drawbacks	Refundable duty capped at 5% for all countries (such as China) with whom Korea has no FTA. Cap triggered by significant increase of sourcing from any country that has not concluded an FTA with Korea i.e. where MFN duties still apply such as China.

- **Automobile and truck tariff phase-out schedule changes:** The supplemental agreement extends tariff phase-out timelines for both Korea and U.S. autos, but still results in removal of all tariffs upon full implementation. This is a key point, because the ITC study that found the FTA will increase the U.S. trade deficit generally and the automotive trade deficit with Korea and the world specifically is based on full implementation. The study did not consider the previous tariff phase out patterns, but only the end result, which does not change under the supplemental agreement.) The supplemental shortens elimination of tariffs on electric cars and plug-in hybrids for both countries from ten years to five years. The U.S. would be permitted to keep its 2.5% tariff on other autos in place until the fifth year. South Korea will immediately cut its tariff on U.S. autos from 8 percent to 4 percent and then eliminate the 4% tariff in the fifth year. (The EU-Korea FTA eliminates Korea tariffs immediately with Europes 10% tariff phased out over 5 years. [11]) Korea's 10% truck tariff will be eliminated immediately, while the U.S. 25% truck tariff will remain in place until the eighth year and be zeroed out by year ten. Currently, Korea exports no trucks to the United States while about 10% of U.S. exports to Korea are trucks.

US-Korea FTA December 3 Supplemental versus EU-Korea FTA

Korean 8% auto tariff goes to 4% immediately and to 0 in year five. U.S. 2.5% auto tariff goes to 0 in year five.	Korean auto tariff goes to zero immediately. EU's 10% tariff phased out over 5 years, goes to 0 in year six.
Korean 10% truck tariff removed immediately. U.S. 25% truck tariff phased out starting eighth year and goes to 0 by year ten.	Korean 10% truck tariff removed immediately. E.U. eliminates 22% tariffs over a period of three to five years, depending on the truck category.

- <u>Auto Non-tariff barriers</u>: While various specific Korean non-tariff barriers, such as related to charging higher insurance rates for imported cars, were not eliminated, Korea agreed to a 12-month grace period before auto firms must meet new vehicle regulations. The supplemental agreement also requires Korea to develop a new system within two years to review existing auto regulations with respect to whether they accomplish their objectives in the least burdensome manner. The supplemental agreement allows for 25,000 cars per U.S. automaker – or more than three times the number of waivers allowed in the original agreement – to be imported into Korea if they meet U.S. safety standards even if they do not meet Korean standards. However, use of the waivers requires there being demand for U.S. cars in Korea. Less than 6,000 U.S. cars were sold in Korea in 2009. Also, under the supplemental agreement, all U.S. autos will be considered compliant with new Korean environmental standards on fuel economy and greenhouse gas emissions, developed since President Bush signed the FTA in 2007, if they achieve 119 percent of the targets in these regulations. Given Koreans strong antipathy towards imports – only 4 percent import penetration for all foreign autos and massive street riots against more imported U.S. meat – the question is whether zeroing out tariffs and removing non-tariff obstacles will result in significant increases of U.S. auto exports to Korea.

- <u>Special automotive safeguard:</u> The supplemental agreement added an automotive-specific safeguard measure. The Bush-signed agreement included a general safeguard mechanism only.

- <u>Additional changes</u>:

- **Korean tariffs on American pork extended**: Originally, Korea would have eliminated tariffs on American pork by 2013. The supplemental agreement extends this to 2015.

- **Visas for Korean workers in U.S. extended**: The L-1 visa for intra-company transfers was extended to five years. This covers managers/executives and "specialized knowledge staff" (those with knowledge of a firm's products/services, research, systems, proprietary techniques, management, or procedures.

- **Peace clause for Korean generic drugs extended**: The sale of Korean generic medicine in the United States will not be subject to patent or other disputes for three years instead of 18 months.

ENDNOTES

[1] U.S. Chamber of Commerce, "Chamber Welcomes Bipartisan Deal to Move Trade Agenda Forward," Press Release, May 10, 2007, Available at: http://www.uschamber.com/press/releases/2007/may/chamber-welcomes-bipartisan-deal-move-trade-agenda-forward

[2] See e.g. Obama's response to an Oregon Fair Trade Coalition questionnaire, May 9, 2008. Available at http://www.citizen.org/documents/ORFairTradeCoalitionObama.pdf

[3] UAW Statement, September 14, 2010, page 7. See International Metal Workers Federation http://www.imfmetal.org/files/10102608591310005/UAW_KORUS_FTA_ENGLISH.pdf Johanne

[4] Jeff Vogt, "Comments Concerning Free Trade Agreement with the Republic of Korea before the USTR," The American Federation of Labor & Congress of Industrial Organizations, Docket No. USTR-2009-0020, Sept. 15, 2009, at 4-5, Available at: http://www.regulations.gov/search/Regs/contentStreamer?objectId=0900006480a22cb2&disposition=attachment&contentType=msw8

[5] See map of Korean firms established in the U.S. at http://www.citizen.org/Page.aspx?pid=3967

[6] For a list of NAFTA cases, see http://www.citizen.org/documents/NAFTA_Investor_State_Chart_Nov_2010.pdf

[7] See Public Citizen, "Fixes to Problematic Foreign Investor, Financial Deregulation Provisions in Bush's Korea FTA Text Could Limit Prospective Damage, Start Obama's Promised Trade Reforms," July 2010, Available at: http://www.citizen.org/documents/Talkingpointsinvestmentand%20financiaservices10.pdf

[8] See Public Citizen, "Fixes to Problematic Foreign Investor, Financial Deregulation Provisions in Bush's Korea FTA Text Could Limit Prospective Damage, Start Obama's Promised Trade Reforms," July 2010.

[9] U.S. International Trade Commission. "U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects," USITC Publication 3949. September 2007, Corrected printing March 2010, at 4-10, Available at: http://www.usitc.gov/publications/332/pub3949.pdf

[10] UAW Statement, September 14, 2010, page 3. See International Metal Workers Federation http://www.imfmetal.org/files/10102608591310005/UAW_KORUS_FTA_ENGLISH.pdf Johanne

[11] See U.S. International Trade Commission. "U.S.-Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects," USITC Publication 3949. September 2007, Corrected printing March 2010, at 2-14, Table 2.3, Available at: http://www.usitc.gov/publications/332/pub3949.pdf. See also Robert E. Scott, "Trade Policy and Job Loss," Economic Policy Institute, Working Paper #289, Feb. 25, 2010, at 10, Table 5. Available at: http://www.epi.org/publications/entry/trade_policy_and_job_loss/