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Renegotiating the KOREA-US FTA. American Hegemony and the "Dismantling" of the Office of the Minister for Trade

[The original Korean text is available here]

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On December 3, 2010 South Korea and the United States announced that they had reached agreement on a new KOREA-US FTA with comprise agreements on both automobiles and agriculture. The agreement may face difficult hurdles in the legislatures of both countries that must ratify it. This article examines the process and politics that led to the agreement.-U.S. Free Trade

Whether the Free Trade Agreement reached between South Korea and the United States (KORUS FTA) prior to the November 12 Seoul G20 Summit constituted a hasty "renegotiation" of the 2007 Treaty to comply with US demands on the eve of President Barak Obama's visit to Seoul, is no longer just a matter of semantics. Of course, it is apparent why the Lee Myung-bak administration -- as well as certain news outlets under its influence -- has doggedly insisted on referring to the negotiations by a different name. First, this was to hide the fact that the administration's declaration of "no renegotiation" had failed. Second, it was a kind of ploy to avoid a National Assembly review, the argument being that no such review was required since this was not "renegotiation." However hard the Lee administration has worked to conceal it, the U.S. press with its freedom of speech has provided a detailed account of virtually all matters. And one can even find a fair amount of information trickling through the South Korean press as well.

It took fierce resistance to renegotiation in South Korea to prevent the two presidents from announcing the conclusion of the FTA as planned during Obama's visit to Seoul for the G20 Summit.

Obama with President and Mrs. Lee at the summit

Let's go over the Minister for Trade's report to the National Assembly on November 16. First, automobiles. The U.S. demand is, quite literally, for the introduction of new provisions on mileage and greenhouse gas emissions involving the relaxation of existing environmental and safety standards for U.S. cars imported into Korea and allowing for self-certification rather than testing. In addition to these NTB (non-tariff barrier)-related areas, the U.S. demanded tariff-related concessions as well: it seeks to postpone the immediate abolition of a 2.5 percent tariff on Korean cars entering the U.S., to delay the ten-year timeline for abolishing pickup truck tariffs by another ten years, and to apply a "snap-back" (tariff reimposition) clause, one of the most poisonous provisions which would make subsequent tariffs retroactive. In a demand for treatment on a par with South Korea's FTA with the European Union, the US proposed the addition of a separate duty drawback provision.[1] And in a request that went unreported in the Korean press, the US proposed changing rules of origin regulations in order to increase the percentage of domestic parts used on U.S. automobiles for export. In this way, for cars made in Korea, the ratio of cheap foreign parts is lowered, which weakens price competition in American markets to the detriment of Korean manufacturers.

Automobiles and Beef: Giveaway Negotiations

If the U.S. demands are all to be met, the following items would have to be modified in the FTA text: (1) "Annex 2-B: Tariff Elimination," which contains the schedule for abolishing the U.S.'s 2.5 percent tariff, including pickup trucks; (2) "Confirmation Letter (Specific Auto Regulatory Issues)" in Chapter 9 on "Technical Barriers to Trade," which deals with automobile environmental performance and safety standards; (3) "Annex 6-A: Specific Rules of Origin"; and (4) Item 5 in "Annex 22-A: Alternative Procedures for Disputes Concerning Motor Vehicles." In addition, (5) duty drawback provisions would need to be newly drafted along the lines of the KOREU FTA. The KOREU FTA included a separate "protocol" at the end of the text, and it appears that this would take the form of a separate "annex" or "confirmation letter" in the KORUS FTA.

U.S. demands go beyond automobiles. The Lee administration has presented the same lame excuse it has been making for years, claiming that the beef issue is "separate" from the KORUS FTA and speaking as if it is not subject to negotiation. This has not been the case, however. It has engaged in beef negotiations from the very beginning, and the U.S. has demanded complete fulfillment of the terms reached in bilateral beef discussions in 2008, specifically that Korea permit the import of beef from cattle aged 30 months and over. At the time, Korean protests that the agreement could open the way for import of beef from cattle with mad cow disease led to scrapping the provision and limiting imports to beef produced from cattle under 30 months of age.

With negotiations at an impasse, President Barack Obama issued an "instruction" to the governments of "both countries" during the South Korea-U.S. summit, urging them to work around the clock to finalize the deal within the next few weeks.

A Serious Crisis of Trade Governance

When I see Korea's Office of the Minister for Trade (OMT), under pressure to renegotiate the KORUS FTA, making substantive, far-reaching changes to a text in which it previously said it would "not change a single word," and engaging in one-sided giveaway negotiations behind closed doors, I sense a serious crisis in trade governance. Indeed, this has been the case. It was June 2007 when the U.S. began talking about "renegotiation" of the earlier KORUS FTA. Since then, it has availed itself of every opportunity to push forward. At every step, the OMT responded that there would be no renegotiation. Then it argued that it was necessary for South Korea to ratify the KORUS FTA first in order to head off pressures to renegotiate. In short, it has avoided acting in a timely and appropriate manner, indulging in self-deception about a "balance of interests" that does not exist, only to find itself facing a worst-

case scenario.

Trade issues, which are necessarily wide-ranging, represent a specialized area. Even the government's own offices and ministries have been unable to keep an appropriate leash on the OMT, which exercises exclusive negotiation rights. The Blue House lacks the systems and personnel to check it. The OMT has avoided even discussing matters with the National Assembly, citing "trade secrecy," and trade negotiations in South Korea have long since become the exclusive jurisdiction of these trade officials. In the modern economy, trade is not simply a matter of abolishing tariffs and reducing quotas. It is a grave miscalculation to view trade policy as just one of many policies such as those regarding interest rates, exchange rates, or real estate. For all intents and purposes, trade is everything in South Korea's export-dependent economy, every aspect external to it, and at this moment all trade negotiation powers -- the authority to reach trade agreements -- lie exclusively in the hands of a tiny group of trade officials. In short, a serious problem of unchecked abuse of trade authority has become a chronic condition.

The recent "happenings" surrounding the amendment of the Marketing Act and Large Enterprise and Small-Medium Enterprise Cooperation Act, legislation intended to preserve small-scale commercial districts, provide a clear example of the consequences of botched trade negotiations. The main contents is focused on restriction of the entry of powerful retailers into the small-scale commercial distract. The OMT has already rejected an amendment that passed the National Assembly Standing Committee, arguing that it violated a WTO agreement as well as the KOREU FTA, which had not even been signed at that point. Coincidentally, the argument was similar to that of the UK Business Secretary, who was lobbied by the English retailer TESCO, an opponent of the legislation. This type of problem would never have emerged if, while negotiating the KOREU FTA, South Korea had simply included an "economic needs test" provision in the conditions for retail service openness. Seven EU nations have such provisions, which require an assessment of the effects on surrounding commercial areas, the environment, transportation, and employment when a large-scale overseas supermarket enters the country. In the end, OMT has exposed domestic small enterprisers to the market power of large international enterprises, thereby undermining the law designed to protect the rights of small retailers. In short, the OMT opposed legislation that had passed the Standing Committee, pinning responsibility for the negotiation's failure on the National Assembly. It is apparent that, in the event that a trade dispute flares up between South Korea and the UK, the official OMT opinion submitted to the National Assembly will be cited as evidence in the UK's favor.

Should the OMT Be Left to Its Own Devices?

The KORUS FTA renegotiations are no different in nature. Despite a change in the administration, the myth of the OMT's autonomy has remained intact, and its power has become even greater; at some point, trade agreements became something of the OMT, by the OMT, and for the OMT. In the U.S., where trade governance is relatively sound, the Trade Representative must discuss matters with Congress before, during and after the process. Such untrammeled power as exists in South Korea is beyond their wildest imaginings. Senior technical experts from the House Ways and Means Committee are known to have accompanied the U.S. on these renegotiations as well.

Broadly speaking, trade agreements can be separated into domestic and overseas agreements. In South Korea's case, domestic agreements are little more than formalities. For National Assembly discussions, an after-the-fact report will suffice. Overseas agreements are confidential and thus take place exclusively under the OMT's purview. But new trade governance will have to balance both of these aspects. The OMT, as it stands now, should be dismantled. It would be far more effective in terms of improving bargaining ability and expertise to invest these functions in an organization directly under the President as in the U.S, an independent office like the Korea Communications Commission (KCC), or an economic office as in Japan or Germany, rather than to leave it in its current diplomatic status due to the negotiation "function." Also, a permanent trade committee should be set up in the National Assembly to provide checks and balances.

In addition, given that trade issues have a crucial impact on voters' economic lives, active participation should be legally guaranteed both for the stakeholders and for civil society. Owing to its structure, the nature of trade in recent years has been such that even a single botched negotiation may have a fatal impact. As such, the recent trend in places like the U.S. and Europe has been to emphasize a constant communication network linked to civil society. A Trade Procedure Law based on "National Assembly's Right to Consent to the Conclusion of Treaties," as guaranteed by the Constitution, was first proposed in 2005. Since then, it has drifted along, shunted aside by the political maneuverings of the Ministry of Foreign Affairs and Trade.

Whatever we call the renewed deliberations on the KORUS FTA, it is high time to initiate reforms to trade governance as it stands. The OMT has to be dismantled if it stands in the way.

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Notes

[1] A duty drawback provision stipulates that import duties or taxes be repaid by a government, when imported goods are re-exported or used in the manufacture of exported goods. While the EU has forbidden this provision up to now in FTA with other countries, Korea has long maintained it.

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