Legislative Bulletin.. October 12, 2011

Contents:

H.R. 3080 - United States-Korea Free Trade Agreement Implementation Act (Cantor, R-VA)

Order of Business: The bill is scheduled to be considered on October 12, 2011 under a closed rule, H.Res. 425. The rule provides for 90 minutes of debate with 60 of those minutes equally divided, and 30 minutes controlled by Rep. Michaud *(D-ME).* It does not provide a motion to recommit. Under Trade Promotion Authority (TPA) (Public Law 107-210), bills implementing trade agreements are not amendable either in committee or on the House floor. More information on the legislation is below.

Summary: H.R. 3080 implements the U.S. – Korea Free Trade Agreement (KORUS) that was originally entered into on June 30, 2007. Reports estimate that the U.S. has lost $40 billion in potential exports as a result of delayed implementation of this agreement. This agreement takes effect on or after January 1, 2012 (once the President determines that Korea complied with the provision of the agreement). The Administration submitted this agreement to Congress on October 3, 2011.

South Korea is the United States' 5th largest export market. The European Union implemented a free trade agreement with South Korea on July 1, 2011. Since then, the American companies have lost market share, as their E.U. competitors have taken advantage of favored exports while the U.S. has been awaiting this agreement.

This agreement would create a more level playing field for U.S. exports by removing South Korean tariffs on U.S. exports. According to the U.S. International Trade Commission (ITC), KORUS would add a minimum of $9.7 billion to U.S. exports and boost U.S. GDP by at least $10.1 billion.

Upon implementation, 80% of South Korea's tariff lines will be 0, thereby creating increased export opportunities for U.S. goods and products that are exported to Korean markets. This agreement phases out additional tariff lines so that after five years 92% of South Korea's tariff lines would be zero, and virtually all tariff lines would be eliminated within 10 years.

Considering that the average South Korean tariff currently charged to U.S. exporters is more than four times the average tariff that South Korean products face in the U.S., the ITC estimates that addressing this discrepancy through this agreement would increase U.S. exports to South Korea by nearly 30% more than imports from South Korea would increase.

This agreement is estimated by the ITC to generate an estimated $10–11 billion in new U.S. exports annually, increase U.S. gross domestic product by $11 billion, and add at least 70,000 new U.S. jobs. This is done without any additional government spending.

SUMMARY BY TITLE:

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

- Implements the United States-Korea Free Trade Agreement entered into on June 30, 2007, with the Government of Korea, and submitted to Congress on October 3, 2011.
- Makes U.S. law paramount to any provision in the Agreement that conflicts with U.S. law, and states that the agreement would not modify or limit any authority conferred under any U.S. law.
- A state law that conflicts with any provision in the agreement could only be declared invalid in a legal action brought by the United States Government.
- Prevents private legal actions against any provision of the agreement.
- Authorizes the President to establish or designate an office with the Department of Commerce to handle disputes that could arise from the agreement. This office is authorized to be appropriated $750,000 for each fiscal year. More information on this office can be found under Chapter 22 of KORUS.

TITLE II – CUSTOMS PROVISIONS

- Allows the President to modify any tariffs or tariff-free treatment in the agreement and to create additional tariffs as necessary (subject to certain limitations).
- Establishes the tariff reduction on certain passenger cars, electric motor vehicles, and certain trucks in accordance with the Harmonized Tariff Schedule (HTS).
- Rules of Origin:
    - Considers a good an “originating good” if that good was wholly obtained or produced in its entirety in the territory of Korea, or the United States, or both. Originating goods are the goods that receive preferential treatment under the agreement.
    - The bill also provides special calculation methods of such operative terms for automotive goods.
    - Includes the costs of freight, insurance, packing, and other such transportation costs, as well as duties, taxes, customs fees, and spoilage in the calculation of value of an originating material.
    - Also includes the cost of duties, taxes, and customs brokerage fees on the material paid in the territory of Korea, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.
    - Allows for certain textiles or apparel goods to be considered an “originating good,” as long as the total weight of all nonoriginating fibers in such a good does not exceed 7% of its total weight.
    - Requires that a person’s selected inventory method be used consistently without change throughout a fiscal year. The inventory management method could mean “averaging,” “last-in, first-out,” “first-in, last-out,” or any other method otherwise accepted by that country.

    - Excludes packing materials and shipping containers when determining whether a material is an "originating material" or a good is an "originating good."
    - Defines numerous operative terms, including and especially "good wholly obtained or produced entirely in the territory of Korea, the United States, or both," for the purposes of the preferential tariff treatment under the agreement.
- The legislation amends U.S. Code to clarify that "No fee may be charged under subsection (a)(9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Korea Free Trade Agreement Implementation Act."
- Shields an importer from penalties for making an incorrect claim of a qualifying originating good if he "promptly and voluntarily" makes a corrected declaration and then pays any duties owed. Exporters would be similarly shielded if they voluntarily provide written notice of any incorrect informant to every person to whom the original certification of a qualifying originating good was made.
- The agreement allows the President to suspend the entry of certain textiles that are under verification to qualify the agreement's Rules of Origin.
- Establishes recordkeeping requirements of goods exported that receive preferential treatment under this agreement.

TITLE III--RELIEF FROM IMPORTS

- Authorizes the filing with the U.S. ITC by an entity, including a trade association, firm, certified or recognized union, or group of representative workers, of a petition requesting adjustment to the obligations of the United States under the agreement (and asking for provisional relief). The Commission would then have to investigate whether "a substantial cause of serious injury or threat thereof to [a] domestic industry" is occurring as a result of the U.S.-Korea Free Trade Agreement (subject to certain exceptions).
- If the Commission finds injury or threat of injury, it would then have to recommend the amount of import relief necessary to correct or prevent harm. Further, the Commission would have to facilitate the efforts of the domestic industry to make a "positive adjustment to import competition."
- The President would not have to provide the suggested import relief, if doing so would have greater economic and social costs than benefits.

TITLE IV--PROCUREMENT

- Makes Korean products and services eligible for federal government procurement.

TITLE V--OFFSETS

The legislation would establish a new reporting requirement on federal and state prisons (for tax administration purposes) and would increase the penalties on tax preparers who did not comply with due-diligence requirements for the earned income tax credit.

The legislation increases the Merchandise Processing Fee from 0.21% to 0.3464% of the value of certain imports. This fee is paid by importers who import products from countries with whom the United States does not have a trade agreement. This fee is collected by U.S. Customs and Border Patrol. According to Ways and Means staff, the purpose of this fee is to offset the costs incurred by Customs and Border Protection (CBP) for the inspection and processing of these imports. The last increase in this fee occured in 1994.

The legislation would extend Customs User Fees that are set to expire under current law. These fees collected by Customs and Border Protection (CBP) are to "ensure all carriers, passengers and their personal effects entering the U.S. are compliant with U.S. customs laws."

Additional Information: More information from the Ways and Means Committee can be viewed here.

To read the text of the agreement, see this page:
http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text

For a brief summary from the U.S. Trade Representative's office, see this page:
http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta

Additional information from the Heritage Foundation can be found here:
The U.S.-Korea Trade Deal's Time Has Finally Come
10 Myths About KORUS and Free Trade Agreements
Complaints About North Korean Imports a Smoke Screen for Trade Protectionism
FTAs with South Korea, Colombia, and Panama Would Create U.S. Jobs and Exports
Enhance U.S. Security: Pass Free Trade Agreements with Colombia, Panama, and South Korea

Additional information from the U.S. Chamber of Commerce can be found here:
Myths and Facts: Trade Agreements, Deficits, Jobs, and Growth.

State-by-State Impact: The below outside groups have released state-by-state data below regarding the impact of the pending free trade agreements.

The **U.S. Chamber of Commerce** launched Trade Supports Jobs. This website gives a state-by-state breakdown of U.S. exports and the jobs they support.

The **Business Roundtable** unveiled the Impact of Trade in the United States which tracks U.S. exports on a state-by-state basis. It also individually lists exporting businesses, their products, and the foreign markets they export to.

The **American Farm Bureau** launched this page that details on a state-by-state basis the impact of these three agreements on U.S. agricultural exports. This website lists the states' individual agricultural products and their impact under the agreements.

The **International Trade Administration** released state-by-state data towards the bottom of this page.

Sector by Sector Impact:

Services: The service industry is not subject to tariffs, unlike the agriculture and manufacturing industries. Instead the service industry experiences trade barriers in the form of government policies that cater to domestic businesses and limit foreign competition. In 2009, the U.S. exported $12.9 billion in services to South Korea. KORUS will increase regulatory transparency in the service industry.

The Coalition of Service Industries (CSI) has compiled this document which lists the amount of service industry jobs in each congressional district.

Agriculture: The American Farm Bureau has estimated that agricultural exports could increase by more than $1.9 billion once KORUS is fully implemented. U.S. market share in South Korea is currently on the decline due to current Korean tariffs.

According to the ITC, U.S. exports of agriculture products would grow significantly as well:

- U.S. exports of dairy products would increase between 249% and 478%;
- U.S. exports of vegetables, fruits, and nuts would increase between 53% and 87%;
- U.S. exports of processed food products would increase between 37% and 42%; and
- U.S. exports of vegetable oils would increase between 20% and 33%.

Additionally, according to House Report 111-239:

> "U.S. agriculture exports to Korea currently face an average tariff of 54 percent, whereas Korean agricultural exports to the United States face average tariffs of just 9 percent. The Agreement would remedy this by making more than half of current U.S. farm exports to Korea by value duty-free immediately upon implementation, including U.S. exports of wheat, corn for feed, soybeans for crushing, whey for feed use, hides and skins, cotton, cherries, pistachios, almonds, grape juice, and wine. The Agreement would also address key non-tariff barriers. For example, Korea would recognize the equivalence of the U.S. food safety system for meat, poultry, and processed foods."

Manufacturing: In 2010, the U.S. exported manufactured goods to South Korea valued at $32 billion. According to the Heritage Foundation, South Korean manufacturing tariffs are double those of the U.S. Additionally, under this agreement the ITC estimates the following manufacturing export increases:

- U.S. exports of motor vehicles and parts would increase between 46% and 59%;
- U.S. exports of metal products would increase between 55% and 63%;
- U.S. exports of chemical, rubber, and plastic products would increase between 42% and
- 45%; and
- U.S. exports of machinery and equipment would increase between 36% and 38%

Additionally, according to House Report 111-239:

> "The Agreement would significantly lower both tariff and non-tariff barriers to U.S. exports of manufactured goods. Upon implementation, over 80 percent of U.S. exports of consumer and industrial products to Korea would immediately become duty-free, with virtually all tariffs phased out over ten years. Key U.S. export sectors that would receive immediate duty-free treatment include aircraft, electrical equipment, and medical and scientific equipment. As a result, ITC estimates significant gains in U.S. exports in key sectors and products. For example, the ITC estimates that exports of passenger vehicles would increase by 54 percent as a result of tariff cuts alone. Exports of motor vehicles and parts would increase an additional 41-56 percent as a result of the removal of non-tariff barriers. Similarly,

> exports of machinery and equipment would increase by more than 30 percent. Per the Agreement, Korea has also reaffirmed its commitment to fulfill its obligations under the WTO Information Technology Agreement and made commitments to further open Korea's market to U.S. high-tech exports by immediately eliminating tariffs on information and communications technologies not covered by the ITA. The Agreement would provide U.S. firms with lower tariff barriers than major competitors from countries that do not have trade agreements with Korea in effect."

Automotive Sector: On April 7, 2011, Ways and Means Chairman Camp (R-MI) released the U.S. ITC's study "U.S.-Korea Free Trade Agreement: Passenger Vehicle Sector Update." The ITC report states that "U.S. exports of passenger vehicles to the Republic of Korea (Korea) would likely increase significantly as a result of modifications to provisions in the 2007 FTA agreed to in the accompanying agreement."

Additionally, according to House Report 111-239:

> "Under the Agreement, Korea will reduce its tariffs on U.S. motor vehicles and parts and eliminate non-tariff barriers. Korea will immediately cut its tariff on U.S. autos in half and fully eliminate those tariffs after five years. Korea will also immediately cut its tariffs on U.S. electric cars in half and phase out those tariffs over five years. The exchange of letters on February 10, 2011 specifically addresses safety and environmental standards and other non-tariff barriers to U.S. exports. Korea has committed to strengthen transparency commitments, which will help to prevent the emergence of new non-tariff barriers and discriminatory taxes. The exchange of letters also strengthens other enforcement mechanisms and creates a special motor vehicle safeguard. The ITC estimates that removal of non-tariff barriers will add an additional $48-66 million in new exports. This opportunity is in addition to the $194 million in expected new exports from lower Korean tariffs on U.S. autos."

National Security: As the U.S. Chamber has submits, implementing free trade agreements deepens out relationship with global partners. President Obama's National Security Adviser, Tom Donilon has stated in the Wall Street Journal, "passing them is a matter of national security…These agreements will also help strengthen our economic and commercial presence in Asia and Latin America, two regions where we have been strategically underweighted. We have fought to reinvigorate our partnerships with countries in these regions over the past few years, and closer economic ties are a key component of this effort." This FTA "will strengthen the economic arm of that relationship, putting it on par with our close bilateral military and security cooperation in the face of the threat from North Korea."

Committee Action: On July 7, 2011, the House Ways and Means Committee held a non-markup considering the draft implementation of KORUS. The non-markup provided the committee the opportunity to relay the views of the Committee to the Administration so that issues and concerns can be addressed before President Obama's Administration formally submitted to Congress legislation implementing the trade agreements.

The Administration submitted this trade agreement to Congress on October 3, 2011. The legislation to implement the trade agreement was introduced as H.R. 3080 and was referred to the House Ways and Means Committee. On October 5, 2011, the House Ways and Means Committee held a markup and the legislation was approved by a vote of 31-5.

Coalition Groups: On October 3, 2011, 85 coalition groups sent this letter to House and Senate Leadership urging passage of the Korea-U.S. Free Trade Agreement.

Additionally, according to the Ways and Means Committee, the following groups are supportive of this trade agreement:

Aerospace Industries Association
Agri Beef Co.
American Apparel & Footwear Association
American Automotive Policy Council
American Chamber of Commerce in Korea
American Chemistry Council
American Council of Life Insurers
American Farm Bureau Federation
American Feed Industry Association
American Forest & Paper Association
American Frozen Food Institute
American International Automobile Dealers Association (AIADA)
American Meat Institute
American Peanut Product Manufacturers, Inc.
American Potato Trade Alliance
American Seed Trade Association
American Soybean Association
Animal Health Institute
Asia-Pacific Council of American Chambers of Commerce
Association of American Chambers of Commerce in Latin America
Association of Equipment Manufacturers
Blue Diamond Growers
Business Roundtable
Business Software Alliance
California Cherry Export Association
California Date Commission
California Dried Plum Board
California Fig Advisory Board
California Pear Growers
California Strawberry Commission
California Table Grape Commission
California Walnut Commission
Campbell Soup Company
Cargill, Incorporated
Coalition of Service Industries
Commodity Markets Council
Computer & Communications Industry Association
ConAgra Foods, Inc.
Corn Refiners Association
Dairylea Cooperative Inc.
Distilled Spirits Council of the United States
Dow Chemical Company
Emergency Committee for American Trade
Equity Cooperative Livestock Sales Association
Footwear Distributors & Retailers of America
FreedomWorks
Grocery Manufacturers Association
Heritage Action
Hormel Foods Corporation
Idaho Barley Commission
Idaho Grain Producers Association
International Dairy Foods Association
International Intellectual Property Alliance
JBS USA
Kansas Association of Wheat Growers
Kentucky Small Grain Growers Association
Kraft Foods
Land O'Lakes, Inc.
Latin America Trade Coalition
Montana Grain Growers Association
Motion Picture Association of America
National Association of Manufacturers
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Barley Growers Association
National Cattlemen's Beef Association
National Chicken Council
National Confectioners Association
National Corn Growers Association
National Council of Farmer Cooperatives
National Fisheries Institute
National Foreign Trade Council
National Grain and Feed Association
National Grape Cooperative Association, Inc.
National Meat Association
National Milk Producers Federation
National Oilseed Processors Association
National Pork Producers Council
National Potato Council
National Renderers Association
National Sorghum Producers
National Sunflower Association
National Turkey Federation
North American Equipment Dealers Association
North Dakota Grain Growers Association
Northwest Dairy Association/Darigold

Northwest Horticulture Council
Ocean Spray Cranberries, Inc.
Oklahoma Wheat Growers Association
Outdoor Industry Association
Pet Food Institute
Produce Marketing Association
Recording Industry Association of America
Retail Industry Leaders Association
Seaboard Foods
Securities Industry and Financial Markets Association
Smithfield Foods
South Dakota Wheat Inc.
SPI: The Plastics Industry Trade Association
Sunmaid Growers of California
Sunsweet Growers, Inc.
Sweetener Users Association
TechNet
Texas Wheat Producers Association
The Financial Services Roundtable
Third Way
Travel Goods Association
Tyson Foods, Inc.
U.S. Apple Association
U.S. Canola Association
U.S. Chamber of Commerce
U.S. Council for International Business
U.S. Dairy Export Council
U.S.-Korea FTA Business Coalition
U.S. Meat Export Federation
U.S. Premium Beef
Unilever United States
United Egg Association
United Egg Producers
United Producers, Inc.
US Dry Bean Council
US Wheat Associates
US-Colombia Business Partnership
USA Dry Pea & Lentil Council
USA Poultry & Egg Export Council
USA Rice Federation
Valley Fig Growers
Washington State Potato Commission
Welch Foods Inc.
Western Growers Association

Outside Groups Supporting:
The Club for Growth – *scoring as a key vote*
Heritage Action for America – *scoring as a key vote*
U.S. Chamber of Commerce – *scoring as a key vote*
Council for Citizens Against Government Waste – *scoring as a key vote*

Administration Position: The Administration strongly supports H.R. 3080, which approves and implements the United States – Korea Free Trade Agreement, signed by the United States and the Republic of Korea on June 30, 2007, and carries out provisions of the exchange of letters concluded between the United States and Korea in February 2011.

Trade Promotional Authority (TPA): These trade agreements are coming to the House floor under the Trade Promotional Authority (TPA). TPA is a fast-track authority that allows the Administration to negotiate the trade agreements, prohibits Congress from amending the agreements, and calls for limited floor debate. These agreements need a simple majority to pass both the House and the Senate. TPA expired on July 1, 2007, but because these agreements were signed before the expiration they are allowed to come to the Congress under that authority.

While Congress cannot be alter trade agreements negotiated between foreign nations and the Administration after the Administration submits them for congressional consideration, it is responsible for defining trade negotiation objectives in TPA legislation. These objectives are definitive statements of U.S. trade policy, and the Administration is expected to pursue these objectives during trade negotiations if they intend to have the trade agreement brought to Congress under this expedited procedure. For more information on Trade Promotion Authority and the Role of Congress in Trade Policy, see this CRS Report.

Cost to Taxpayers: The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 3080 would reduce revenues by $31 million in 2012 and by about $7.0 billion over the 2012-2021 period. CBO estimates that enacting H.R. 3080 would increase direct spending by $53 million in 2012 but would decrease direct spending by about $7.0 billion over the 2012-2021 period. The net impact of those effects is an estimated reduction in deficits of $16 million over the 2012-2021 period. CBO's report is linked here.

Does the Bill Expand the Size and Scope of the Federal Government?: No, the legislation would implement free trade agreements that would reduce government involvement in, and taxation of, trade between the United States and Korea.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: CBO has determined that the nontax provisions of the bill contain private-sector mandates with costs that would exceed the annual threshold established in UMRA for private-sector mandates ($142 million in 2011, adjusted annually for inflation). JCT has determined that the tax provisions of H.R. 3080 contain no intergovernmental or private-sector mandates as defined in UMRA. CBO's report is linked here.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: House Report 112-239 states that H.R. 3080 does not "contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule."

Constitutional Authority: Rep. Cantor's statement of constitutional authority, found in the Congressional Record, states: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1 (the power to lay and collect duties and imposts) and Article I, Section 8, Clause 3 (the power to regulate commerce with foreign nations)."

RSC Staff Contact: Curtis Rhyne, Curtis.Rhyne@mail.house.gov, (202) 226-8576.