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Help South Korea, not the North

A proposed U.S. trade agreement with Seoul could end up benefitting Pyongyang too.

By Congressman Brad Sherman

Supporters of the proposed free-trade agreement between the United States and South Korea argue that we should approve the pact to improve our economy and to reward an ally in a troubled region for its strong security relationship with the U.S., and to solidify these strong security ties with a stronger trade relationship. Though there is no doubt South Korea is a close ally, we need to ensure that the agreement does not undermine U.S. security and economic interests by benefiting North Korea.

Just six miles north of the demilitarized zone that separates North from South Korea, factories run by South Korean industrial giants employ 40,000 North Koreans, with plans to eventually employ several hundred thousand. The two nations operate this cooperative manufacturing center, known as the Kaesong industrial park. These workers are not paid directly by their South Korean employers. Instead, their wages are paid to the North Korean government, which pays the workers what it chooses.

These Kaesong workers share virtually none of the rights workers south of the DMZ enjoy. Working conditions have been criticized in the U.S. State Department's annual report on human rights. Some critics of the pact refer to the facility as little more than a slave labor camp.

The U.S. and South Korea have been working closely to effectively isolate North Korea. But the tough approach that currently holds sway in Seoul has not affected South Korea's affinity for Kaesong. Despite increased tensions and real fears of war on the peninsula, Kaesong has continued to operate uninterrupted since its opening in late 2004.

While Washington is attempting to economically isolate the North Korean regime through a robust program of unilateral and multilateral sanctions, Pyongyang directly collects about \$3 million to \$4 million a month from Kaesong, plus millions more in various fees paid by South Korean companies. For the cash-strapped government of North Korea, that is a significant sum.

For national security, labor and human rights reasons, the U.S. needs to make sure that no products from Kaesong receive duty-free or other preferable treatment under the pending free-trade agreement. In fact, no product of Kaesong (or any North Korean plant) should be allowed into the U.S. Asking American workers to compete against duty-free imports made by grossly underpaid North Koreans is hardly in our national interest.

It is true that U.S. sanctions already restrict imports from North Korea. But that policy

can be changed with the stroke of a pen, because the existing restrictions are based on broad statutes that allow the executive branch to impose or remove sanctions without any meaningful congressional input.

The free-trade pact makes no mention of a ban on North Korean goods. In fact, its rules of origin appear to allow North Korean goods to be incorporated into South Korean products and given duty-free treatment under the agreement. For example, automobiles with only 35% South Korean content would receive favorable treatment under the agreement. If the U.S. blocks automobiles with as much as 65% North Korean content from duty-free access to the U.S., we would be found in violation of the agreement as drafted. We would then have to allow these products into our country or suffer the imposition of legal retaliatory tariffs on U.S. products, thus forfeiting the economic advantages of the free-trade agreement.

The current draft agreement also has a mechanism to declare goods 100% made in Kaesong as goods of South Korean origin, fully eligible for free access to the U.S. market. My interpretation of the vaguely worded agreement is that such action could be taken at any time by this administration, or the next one, without congressional approval. The then-Korean prime minister, and now ambassador to the U.S., spelled out the pact's goals in a December 2007 visit to Kaesong: "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." Under the current draft of the agreement, he is right.

Specifically, Annex 22B of the agreement includes this language: "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." That language is highly ambiguous, and no one should assume that "legislative approval" means Congress would have to actually enact a statute. In our system, we have a number of ways Congress may be deemed to have provided its "consent."

More than three years ago, I held hearings in the terrorism, nonproliferation and trade subcommittee in which I questioned Bush administration officials on my concerns regarding the possibility that North Korea would benefit through this agreement, including through goods exported to the United States. I specifically asked an official from the office of the U.S. trade representative whether a statute would be necessary to provide the "legislative approval" contemplated by the annex. The witness evaded the question. So, I wrote the current trade representative on Feb. 9, asking the same question. I've yet to receive a reply.

The text of the agreement must be changed, and the implementing legislation must make clear that any product with North Korean content will be barred. And it must make clear that any decision to apply the terms of the agreement to Kaesong, or any other facility on North Korean territory, must be explicitly approved by an act of Congress.

The free-trade agreement cannot be allowed to benefit North Korea. As currently drafted, it probably will.

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