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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@portfoliomedia.com

KORUS — Are There Shortcomings? Let's Fix Them

By Clayton Yeutter, Hogan Lovells

Law360, New York (July 14, 2010) -- International trade is once again in the limelight. Not only is it increasing in the aftermath of a devastating decline in 2009, but nations have begun to realize that it may be the best job creator they now have.
After more than a year of trade policy somnolence the Obama administration has seemingly reached that conclusion. It has recently made some admirable policy announcements.

The first was a National Export Initiative, with the goal of doubling U.S. exports over the next five years, an ambitious undertaking indeed. To the surprise of many, that initiative is on schedule, though adding more than $1.5 billion in new exports annually is a formidable challenge.

The second policy move was to join the Trans Pacific Partnership (TPP) negotiations, the objective being to create a model free trade agreement with several nations, mostly Asian. That too is a laudatory initiative, for the hope ultimately is to have an Asia-Pacific free trade area with a much higher level of economic activity between the U.S. and that part of the world.

This exercise should have positive spillover effects for the first initiative, doubling our exports, since most of the world's fastest-growing markets are in Asia.

The third policy move, announced most recently, is to have the proposed Korea-U.S. Free Trade Agreement (known now as KORUS) ready for a final sign-off by both countries when

President Barack Obama visits South Korea in November. That move shocked some of Obama's private sector supporters (labor unions in particular) along with members of Congress who are adamantly opposed to trade agreements.

But this should not have been unexpected. It is a move that fits perfectly with the first two pronouncements. An FTA with Korea could readily be folded into a TPP agreement when the latter is reached. And if KORUS were approved by Congress in a timely way, it would make a lot of sense for Korea to join the TPP negotiations (as have other nations who have FTAs with the U.S.)

A Korean FTA would also contribute meaningfully to the administration's National Export Initiative, for it will generate more enthusiasm from American exporters than any trade agreement the U.S. has negotiated in recent years.

The open questions are: (1) Can the Obama administration reach substantive agreement with Korea between now and November? and (2) Can the administration persuade Congress to approve whatever agreement is reached?

Putting the first question in context, this agreement was supposedly concluded by the Bush administration three years ago. But neither President George W. Bush nor Obama has submitted it for congressional approval, fearing that it might be rejected. Though there will always be critics for any agreement as comprehensive as an FTA, most of the flak for this one has been directed at provisions applicable to trade in automotive and beef products.

So what can be done to overcome this opposition and pave the way for congressional approval?

As to automobiles, some critics wish simply to avoid additional competition from Korean manufacturers. Hence, their preference would be either to exempt automotive trade from U.S. tariff commitments, or to minimize agreed tariff reductions.

But that's a nonstarter, totally contrary to the spirit of an FTA. Were we to do this, Korea would counter with requests for similar treatment of its import sensitive products, and before long there would be little left of the agreement.

Other critics complain that Korean manufacturers sell far more in the way of automotive products in the U.S. than our manufacturers sell in Korea, and that difference should somehow be dramatically reduced.

One suggestion is to mandate a minimum number of U.S. auto sales in Korea, but that's a nonstarter, too. No country is in a position to expand exports by forcing other nations to buy its products.

What the administration can and should do for the U.S. automobile industry is make sure that any nontariff barriers that are impeding U.S. automotive exports to Korea are removed, and stay removed. There may not be any that are not already covered by KORUS, but the issue merits careful attention. There are a myriad of potential nontariff barriers available to Korea or any other country in this area of global commerce, so one must be ever alert in order to identify and challenge them.

As to beef, the principal controversy is over bovine spongiform encephalopathy, or mad cow disease. The diagnosis of BSE in a single animal here in the U.S. a few years back prompted Korea and many other nations to ban beef imports from the U.S.

The human equivalent of BSE is a frightening disease, so one can fully understand the immediate border closing reaction of nations that were traditional importers of U.S. beef products.

Since then, however, the risk to humans has been systematically evaluated, and there is now a clear consensus that the human health risk is so low that it is essentially immeasurable. That is assuredly the case for American beef, so no country should be impeding beef imports from the U.S. for alleged BSE-related health reasons.

Those reasons are emotional, and they're real, but they are not science-based as they must be. Science-based policymaking in the food safety and animal health arena is required under an agreement negotiated in the Uruguay Round, to which both Korea and the U.S. are signatories.

One issue which could emerge, though it is not now on the agenda, is the matter of capital controls. The U.S. has been insisting in recent FTAs that signatory countries agree to forgo capital controls. The logic of the American argument is palpable; capital controls directly impact financial markets and indirectly affect trade flows.

Depending on the severity of their constraints, they can readily neutralize and even overwhelm the economic benefits of an FTA. But there is another side to that coin. We live in a volatile world, and the political and economic case for capital controls often becomes overwhelming in its own right, particularly in developing countries that feel like they've been hit by an economic tsunami.

The government of Korea may choose not to raise capital controls as an issue at this late stage of the FTA negotiating process. But if it does, some accommodation by the U.S. (perhaps just a creative safeguard provision) might provide an acceptable trade-off for FTA alterations that Korea may be asked to make in automotive and beef trade.

Obama's objective in November should be to emerge from his meetings in Seoul with an agreement that is marketable in both countries. In my view, that is an achievable proposition, though there are critics in both countries that will never be satisfied.

At some point, both chiefs of state will have to expend political capital to secure legislative approbation of what they've done. That won't be easy, but their respective constituencies will be the beneficiaries of that political leadership.

The European Union is just concluding its own version of KORUS, with Canada and Australia close behind and China in the wings. The Association of Southeast Asian Nations, and perhaps even Japan, are likely on the horizon.

We've now blown what could have been a three-year lead in further advancing U.S.-Korean trade relationships. But waking up now is better than not waking up at all. The foreign policy, national security and economic arguments for finally concluding KORUS are compelling.

Clayton Yeutter is senior adviser for international trade at Hogan Lovells in the firm's Washington office. He formerly served as U.S. trade representative and secretary of agriculture.

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