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Facing KORUS in the Fight for Fair Trade

The Sierra Club believes that trade done right can foster development and sustainable growth while also protecting workers and the environment in the U.S. and abroad. Unfortunately, the recently concluded South Korea-U.S. free trade agreement (KORUS) falls short of these goals.

On the campaign trail, President Obama promised to promote 21st century trade agreements that include strong, binding environmental and labor provisions. He also committed to ensure that no foreign investors are granted rights exceeding those held by U.S. investors. The South Korea-U.S. free trade agreement falls far short of President Obama's promise of a 'smart, fair and strong' trade policy.

KORUS Undermines the Ability of Government to Protect People and the Environment

The South Korea-U.S. FTA perpetuates a flawed trade model that puts investor rights and corporate profits above the public interest. The pending agreement includes investor-state dispute settlement, which restricts the ability of governments to confront environmental challenges and

legislate in the public interest. Investor-state dispute resolution enables corporations to sue governments directly when they believe laws or regulations impinge upon their property rights. Not only can this compromise the ability of governments to protect the environment, but it also can limit their ability to resolve labor and public health problems.

Investor-state dispute mechanisms have become increasingly common in free trade agreements and bilateral investment treaties since the 1990s. Hundreds of cases have been filed costing governments millions in legal fees and arbitration payments. Perhaps an even greater consequence than monetary loss, however, is a chilling effect on good environmental governance when governments choose not to pass legislation that protects citizens and the environment if threatened with an investment dispute. For instance, the tobacco giant Philip Morris filed a lawsuit against the government of Uruguay on February 19, 2010, charging that new health measures involving cigarette packaging amount to unfair treatment of the company. In response, Uruguay promised to water down its public health laws.



Dow AgroSciences LLC v. Canada

Dow AgroSciences LLC, a U.S. manufacturer of plastics and chemicals, filed a notice of arbitration for a claim against the government of Canada on March 31st, 2009. The claim was over the ban the Province of Quebec placed on the use of specific pesticides, including 2, 4-D, on lawns within the province. Dow AgroSciences LLC sued for \$2 million on the grounds that this ban violated their investor right under NAFTA to fair and equitable treatment and was equivalent to expropriation. 2, 4-D belongs to a class of chemicals that is known to cause serious illnesses, including cancer, and had already been banned on health and environmental grounds in the Province of Ontario in Canada and in several other nations. This case demonstrates that a developed nation with a strong judicial system capable of settling investment disputes domestically is not safe from attack by foreign investors. Under the South Korea-U.S. FTA, the United States could face similar challenges. These cases against the U.S. are all the more likely because South Korea is a major capital exporter with hundreds of firms with investments in the United States.

The South Korea-U.S. FTA specifically allows foreign investors and corporations to bring suit over contracts with the government related to natural resource exploration, extraction and refining; power generation or distribution services; water treatment or distribution services; and roads, bridges, canals, dams, or pipeline infrastructure. This means that if the U.S. government changes the terms of a contract -- for instance its contract with BP in the wake of the Gulf oil spill -- corporations could use the terms of the free trade agreement to sue. Given how many oil spills, levee breaks, and bridge failures we've seen in recent years, we need to be assured that the private interest is not put ahead of the public interest with such flawed trade agreement provisions.

The Perils of Affording Additional Rights to Korean Investors

Currently NAFTA is the only free trade agreement the U.S. has signed with a major capital exporter. The vast majority of investor-state challenges to U.S. public interest laws have come from Canadian investors. A major capital exporter, South Korea, is our seventh largest trading partner. There are over two hundred corporate affiliates of South Korean firms in the U.S. that would obtain new rights under the South Korea-U.S. FTA to challenge local, state and national laws. The South Korea-U.S. FTA, therefore, poses a new threat to citizens, the environment and good governance.

South Korea Accepts Weaker U.S. Emission Standards

One element of the compromise between President Obama and President Lee Myung-bak on the auto provisions of the South Korea-U.S. FTA allows U.S. cars to enter the South Korean market even if they exceed the country's emissions standards. Under the revised agreement, U.S. cars can be imported into South Korea as long as they are not more than 19% above South Korean emissions cutoffs. While we appreciate the Administration's efforts to safeguard the U.S. auto industry, this is troubling as an example of a trade agreement leading the country with stronger environmental standards to weaken them instead of the country with weaker environmental standards to strengthen them.



Opposition in Both Countries

KORUS not only faces opposition here at home, it is also highly contentious in South Korea. From farmers to manufacturers, Koreans in large numbers are publicly demonstrating their opposition to KORUS. The ability of U.S. investors to challenge good governance in Korea is a point of opposition for Koreans just as the reverse concerns us here in the U.S. The Sierra Club stands in solidarity with the people of South Korea and the United States who are fighting to protect their livelihoods and their environment from this harmful deal.

Footnotes

1. See, "Obama letter to Iowa Fair Trade Campaign" Iowa Fair Trade Campaign. Dec. 26, 2007 Available at: http://www.citizenstrade.org/pdf/iftc_obamaletterontrade_12262007.pdf
2. See, "Submissions on Restricting Cosmetic Pesticide Use in British Columbia" University of Victoria Feb. 2010 Available at: <http://www.elc.uvic.ca/press/documents/ELC-Submission-Cosmetic-Pesticides.pdf>
3. See, "Top Ten Countries with which the U.S. Trades" U.S. Census. Dec. 2010
4. See, "Multinational Corporations Could Challenge U.S. and Korean Law Under the Korea FTA" Public Citizen. March 2011 Available at: <http://www.citizen.org/Page.aspx?pid=3967>
5. See, "KORUS FTA 2.0: Assessing the Changes" Peterson Institute for International Economics. Dec. 2010
6. See, "U.S. - South Korea Free Trade Agreement: An Attack on Workers in both Countries" Jan. 20, 2011 Available at: http://www.workers.org/2011/world/fta_0127/

Call your Member of Congress today and urge them to oppose KORUS. Let them know that passing KORUS will hurt American workers and the environment.

Call the Capitol Switchboard at (202) 224-3121 and ask for your senators' and/or representative's office.

For more information on the Sierra Club's Responsible Trade Campaign contact:

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