

SERVICE SECTOR OPENING PRIORITY IN ROK-U.S. FTA *

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Negotiation is defined as a process whereby interested parties resolve disputes or agree on courses of action on the basis of mutual benefits. Given this definition, negotiation occurs in all types of relations among human beings. Relations between governments, private sectors, individuals, even the relationship between husband and wife can be explained as negotiation-oriented. Indeed, negotiations are conducted among friends and adversaries alike.

Traditionally, negotiation has been conceived as a game. Negotiators seek exclusively to reach their own objectives by maximizing gains for their side and minimizing concessions the other side might be attempting to obtain. The so-called “unequal treaties” concluded between governments during the era of “gunboat diplomacy” can be described as the outcome of negotiations of the “winner takes all” approach to negotiations.

Nowadays, negotiations between the governments are aimed at creating win-win situations that make the outcome acceptable to all the parties involved. In negotiation, each party, as always, is charged to secure its interests to the maximum. Therefore creation of win-win settlements may require flexibility and concessions, as appropriate, on the part of all the parties involved. A settlement is usually reached when the parties are convinced that a balance of benefits is struck.

During its half-century of rapid development in which it rose to become the 11th largest economy in the world, Korea engaged in countless bilateral and multilateral negotiations on trade, security and other issues. Though not quantified, she has both gained and lost much through negotiations, and her negotiation capability has advanced along with the country’s development. The Korean government by now has a relatively rich pool of skilled and experienced negotiators ready to work to promote the country’s national interests through negotiations at both bilateral and multilateral fora. Korean negotiators have in many cases made themselves known as tough yet flexible, thus contributing to creating win-win settlements.

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An underlying disadvantage for most Korean negotiators, however, is that negotiations are generally conducted and documented in English, a language that most Korean negotiators are often not fluent in speaking or high-skilled at writing, thus they are unable to identify the nuances of terms used in the documentation of negotiated settlements.

If we recall the maxim that negotiators disappear and only documents remain, then we quickly realize how very important to craft correctly the results of negotiations into written documents, which will be signed and become binding for the signatories. No stone should be left unturned at this crucial stage of documentation.

As mentioned, Korean negotiators are not always strong in this area. History shows that much of what they have gained at the negotiation table has not been properly reflected in the documentation. Qualified legal counselors or experienced advisers should assist, as necessary, Korean negotiators, as is the case for many advanced countries.

Also important is for us to abide by in good faith agreements we sign as a result of negotiations. Observation of the principle *pacta sunt servanda* is directly linked to the credibility of Korea as a respectable member of the international community. It is painful to recall that in early 1994 the Korean government unilaterally modified the tariff schedules for imported agricultural products multilaterally agreed upon as a result of the Uruguay Round of Trade Negotiations. Of course Korea was pressed subsequently to retract the modifications, and it cost then prime minister of Korea his position.

On February 2 of this year, the governments of South Korea and the United States formally launched negotiations on a free trade agreement (FTA). This was a bold and visionary decision taken by President Roh Moo-hyun, notwithstanding tremendous domestic political pressures.

Apart from economic and political impact, conclusion of an FTA with the United States will certainly give an enormously positive psychological boost in confidence to the majority of Koreans who are expecting the FTA to serve as “superglue” that will maintain the bond Korea and the United States have shared through their long-standing alliance, and maintain it despite the ever-changing geo-political environment.

It is by no means an easy task for the Korean government to complete the negotiations, which should hopefully happen before the U.S. administration’s “trade promotion authority” expires at the end of June next year. Nor should the Korean government make itself be held hostage to its

counterpart's legal regime in carrying out a negotiation that will be of such crucial importance to the future of the Korean people.

The negotiation may prove to be a rocky ride and may run into considerable resistance from the agricultural and service industries in Korea. The interests of particular industries may not be identical with Korea's overall national interest. But the minimum viability of such industries will be protected by safeguard mechanisms that are commonly included in FTAs as a general practice.

Legal, medical and educational service sectors, for example, may find themselves vulnerable to the initial shock that may come from application of an FTA with the United States. Eventually, however, they will reemerge with enhanced competitiveness so that the horizon of their business operations can be expanded even beyond Korea's national border.

Opening up of such service markets does not allow for straddling the fence. They must either be opened or kept closed. The latter choice will prove to be self-defeating in a rapidly globalizing world.

The Korean government must pursue the Korea-U.S. FTA negotiations with vision and resoluteness, transcending domestic political concerns and being mindful of the future well-being of its people. I, for one, am confident that the Korean negotiators have the skills, determination and loyalty to the people.