

Linking domestic decision-making and international bargaining results: beef and automobile negotiations between South Korea and the United States

Min Gyo Koo¹ and Whasun Jho^{2*}

¹*The Graduate School of Public Administration and The Korea Institute of Public Affairs, Seoul National University, Seoul, Republic of Korea; and* ²*Department of Political Science and International Studies, Yonsei University, Seoul, Republic of Korea*

*E-mail: wsjho@yonsei.ac.kr

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Abstract

We develop an expanded two-level game analysis of trade negotiations between South Korea and the United States, with an emphasis on the important cases of beef and automobiles. The theoretical background of this study is that the chief negotiator is not always an honest agent with no independent motive. We find that small perceived win-sets during the beef and automobile negotiations in the 1990s created problems at the negotiation stage (as already predicted by Putnam), while large perceived win-sets during the Korea–US free trade agreement

(KORUS FTA) negotiations produced unexpected, but eventually resolved, problems at the ratification stage. Our analysis shows when and why larger perceived win-sets emerge in spite of the greater risk of failed ratification. During their bilateral negotiations in the 1990s, trade negotiators' autonomy, both in South Korea and in the United States, was institutionally weak, and their policy ideas were subordinated to mercantilism or fair-trade ideas, thus creating small perceived win-sets. By contrast, the empowerment of the Office of the Minister for Trade in South Korea after 2004 and the provision of trade promotion authority in 2002 to the US Trade Representative institutionally strengthened chief negotiators' autonomy *vis-à-vis* KORUS FTA negotiations, thus producing large perceived win-sets. During this period, the chief negotiators' autonomy, combined with their free-trade ideas, as well as with their own institutional interests, made the domestic constituency's win-set as perceived by chief negotiators larger than a Putnam's two-level game analysis would have predicted. The ratification of the KORUS FTA, albeit prolonged much longer than anyone expected, illustrates that the chief negotiators did not 'incorrectly' perceive their win-sets to be larger than they actually were.

1 Introduction

On 12 October 2011, the US Congress passed the Korea–US Free Trade Agreement (KORUS FTA), which is the largest free-trade deal for the United States since the North American Free Trade Agreement. About a month later after the congressional move, the National Assembly of South Korea also ratified the bilateral trade deal, thus finally ending a four-and-a-half year long legislative battle on both sides of the Pacific. The long overdue but triumphant story of KORUS FTA raises intriguing questions as the unusual pairing of beef and automobile issues has served as a major bone of contention during the prolonged ratification process, let alone the pre-negotiation and negotiation phases.

These thorny bilateral issues trace back to the 1990s when there was a sharp increase in petitions in the United States under the then new legislative initiative against unfair trade practices of South Korea. The two countries were able to start official FTA negotiations in 2006, only after the South Korean government lifted its controversial import ban on US beef as well as revising its ambiguous emissions regulations in favor of

US vehicles. Both countries originally signed the landmark KORUS FTA on 30 June 2007, but differences over beef and automobile trade effectively delayed the ratification processes in both countries. During the additional negotiations from 30 November to 3 December 2010, South Korea had to make extra concessions to the United States in the automobile sector, while gaining American concessions in the areas of beef, pork, pharmaceuticals, and visas. Notwithstanding, the legislative bodies on both sides still had to wait one more year to garner the necessary majority for the trade deal.

Why do countries, either strong or weak, conclude a deal in the first place if they intend to delay the ratification? When and why does the original bargaining zone once perceived by chief negotiators to be politically acceptable become unpalatable to domestic veto players? Why do certain concessions become unacceptable at the ratification stage despite the optimistic expectations of chief negotiators, while others are passed as anticipated? To address these questions, we develop an expanded two-level game analysis with an emphasis on the issues of beef and automobile trade between South Korea and the United States. The extant literature on two-level games notes that the negotiator's bargaining power is, to a large extent, determined at the domestic level at which the win-set is defined, while the chief negotiator serves as an honest agent with no independent motive (Putnam, 1988; Odell, 2000, 2002). However, we expand the Robert Putnam's original two-level game approach by highlighting the role played by chief negotiators both at the international and domestic levels.

We begin our expanded two-level game analysis with an observation that an autonomous negotiator's ideas about, and beliefs in, the efficacy of free trade affect the ways in which that negotiator probes and explores the views of domestic constituents. More specifically, we argue that pro-free-trade negotiators with strong autonomy tend to create large perceived win-sets, thus making the Level I (international) agreement (and eventually the Level II ratification) more likely, *ceteris paribus*. During their bilateral negotiations over beef and automobile issues in the 1990s, trade negotiators' autonomy both in South Korea and in the United States were institutionally weak and their policy ideas were overshadowed by mercantilism or fair trade. By contrast, the empowerment of the Office of the Minister for Trade (OMT) in South Korea after 2004 and the provision of trade promotion authority in 2002 to the US Trade

Representative (USTR) institutionally strengthened chief negotiators' autonomy *vis-à-vis* KORUS negotiations. Such an increased autonomy, combined with chief negotiators' free-trade ideas as well as their own institutional interests, made the domestic constituency's win-set as perceived by chief negotiators much larger than a Putnam's two-level game would have predicted. Unexpected exogenous shocks such as the advent of strong economic nationalism and the global economic crisis of 2008 temporarily widened the perception gap between chief negotiators and domestic veto players to the point that a breakthrough in the ratification stalemate was made more than four years after the conclusion of the trade deal in 2007. However, the eventual ratification of the KORUS FTA proves the point that the chief negotiators did not 'incorrectly' perceive their win-sets to be larger than they actually were.

The remainder of this study unfolds in four sections. Section 2 critically reviews the existing literature on international bargaining, focusing on the two-level game approach, and then illustrates an approach centered on the institutional arrangements and the pro-trade ideas held by chief negotiators. Built upon this conceptual framework, Section 3 examines the case of beef negotiations within and outside the KORUS deal in comparison to the US beef import case in South Korea in the 1990s. This section highlights the shifting institutional-bureaucratic politics in South Korea. Section 4 explores the automobile negotiations under the KORUS FTA with a focus on the USTR's proactive role, which was in clear contrast to its reactive role during the automobile negotiations with South Korea in the 1990s. Finally, Section 5 draws conclusions and policy implications.

2 Linking domestic decision-making and international trade negotiations

For decades, scholars of international relations have fretted over the integration of the domestic and international analysis in bilateral international negotiations. The so-called 'second image reversed' literature seeks to identify international sources of domestic change and emphasizes the significance of structural factors when making domestic policy choices (Gourevitch, 1978). Within this category, a power-based account will argue that the KORUS FTA is not the only FTA deal that has been delayed to be ratified by the United States and that such a delay in the

ratification phase illustrates that the United States enjoys an asymmetric bargaining power *vis-à-vis* its trading partners. From this perspective, delaying the ratification of a negotiated deal and unilaterally demanding renegotiations are a prerogative of the stronger state. In effect, the United States was not the only party who used such a prerogative. Although no dramatic change has occurred over the past decade in its relative power position *vis-à-vis* the United States, South Korea was also pressing or, more precisely, was forced by domestic conditions to press for a renegotiation of the beef deal. An exclusively power-based account thus does not offer a good account of why countries, both strong and weak, concluded a deal in the first place if they were to delay the ratification and to demand a renegotiation.

More nuanced structural arguments will cite international political economic factors—such as the stalemated Doha Development Round of the World Trade Organization (WTO), America's economic position, and the proliferation of FTAs in other parts of Asia—as the primary driver of KORUS FTA negotiations. Many studies conducted from this perspective have noted that the structural changes after the Asian financial crisis significantly contributed to cognitive changes and the diffusion of novel policy ideas that a new preferential approach was not only complementary to global multilateralism, but was also a crucial element of each country's economic survival (Pempel, 2004; Aggarwal and Koo, 2005; Dent, 2006). In a similar vein, some studies have attributed the voluntary nature of countries' decisions to enter preferential arrangements for fear of exclusion. The KORUS FTA illustrates that South Korea's fear of exclusion in the US market played a significant catalyzing role in launching an FTA negotiation despite South Korea's serious concerns about the dominant position of the US economy (Sohn and Koo, 2011). Despite some explanatory utilities, however, these studies also fall short of fully capturing the two countries' bargaining strategies and their outcomes, including the demands for renegotiations.

The outcomes of international trade negotiations often reflect the preferences of domestic industries that are either positively or negatively affected by trade liberalization. These preferences are often channeled through institutional arrangements rather than directly determining policy choices. Therefore, understanding interest group politics and domestic institutions alike is crucial for analyzing international trade

negotiations (Goldstein, 1988; Milner, 1988; Rogowski, 1989; Mansfield *et al.*, 2007). An interest group politics perspective would see the prolonged ratification stalemate of the KORUS FTA as no surprise, because international negotiations often find opponents with specific sectoral interests in their ratification phases. However, such a pluralist view is deficient in capturing the dynamic interplay of domestic and international negotiations over beef and automobile trade. Expectations of rejection at the domestic level must have aborted negotiations prior to any formal actions at the international level. In cases of KORUS beef and automobile negotiations, prior consultations and bargaining were conducted at the domestic levels and a mutually agreeable international deal was concluded in June 2007.

The lack of academic consensus on how best to link domestic decision-making and international trade negotiations warrants an integrated analysis for the domestic and international process. Putnam's conceptualization of two-level games, which has gained wide recognition, is useful in this regard. His original framework bisects the process of reaching agreement between two states into dual levels: the international level and the domestic level. Through the bargaining process, negotiators have limits upon their discretion, dubbed win-sets. A win-set includes every option available to chief negotiators which can be ratified in their respective states. Since any agreement will be fruitless without ratification, the negotiators must consider domestic conditions along with their national interests. In sum, an agreement may be concluded only if a negotiated solution falls within the area of overlap between the win-sets of two states and is better than negotiators' 'Best Alternative to a Negotiated Agreement' (Odell, 2000, pp. 26–27).

Certainly, the win-set approach is useful in revealing the nature of bargaining situations at different levels and available strategies. For Putnam, the size of the win-set depends primarily on domestic institutions and structures. In some cases, these factors can be subject to manipulation by the negotiators. Initially, he assumes that the chief negotiator has no independent policy preferences, but acts merely as an honest broker, or rather as an agent on behalf of his principals (Putnam, 1988, p. 435). As Putnam himself acknowledges, this assumption greatly simplifies the analysis of two-level games. In the latter part of the same article, he modifies that assumption, stating that, 'as principal-agent theory reminds us, this

assumption is unrealistic. Empirically, the preferences of the chief negotiator may well diverge from those of his constituents'.¹

The principal-agent problem is inherent in the delegation of legislative authority to bureaucratic agencies. The implementation of legislation is open to bureaucratic interpretation, which creates opportunities and incentives for the bureaucrat-as-agent to deviate from the intentions or preferences of the legislators (Chan, 1985). From this perspective, the chief negotiator may have a veto over possible agreement. Even if a proposed deal lies within a chief negotiator's Level II win-set, that deal is unlikely to be agreed upon if that chief negotiator opposes it. Since this provision applies to either side of the Level I table, the actual international bargaining set may be narrower than the overlap between the Level II win-sets (Putnam, 1988, p. 457).

However, neither Putnam's original formulation—where the chief negotiator's autonomy is inherently limited—nor the conventional principal-agent theory which pays little attention to the chief negotiator's proactive role and autonomy—offers sufficient depth of full analysis of the OMT and the USTR as key determinants of beef and automobile negotiations. In addition, the original win-set approach cannot fully capture feedback effects in the negotiation process in which bargaining outcomes at different points of time can affect others with a domestic process. A two-level game can be an iterative political process, and bargaining behavior in one stage of negotiations can alter domestic interests and the environment in the next stage.

Unlike Putnam, who characterizes the chief negotiator as either a loyal agent or a veto player, we argue that the KORUS negotiators enjoyed significant autonomy.² Along with institutional empowerment of chief negotiators on both sides, a noteworthy change in their ideas about free trade opened a new policy space and created larger perceived win-sets in spite of the greater risk of failed ratification. Thus, institutions

1 The motives of the chief negotiator include: (i) enhancing his standing in the Level II game by increasing his political resources or by minimizing potential losses; (ii) locking in domestic reforms or policies that he prefers for exogenous reasons; and (iii) pursuing his own conception of the national interest in the international context (Putnam, 1988, pp. 456–457).

2 For instance, Chorev (2007) finds that the US chief negotiators have sought to introduce institutional arrangements to limit the role of legislators and thus to limit the political influence of protectionists.

and ideas appear in our explanations of beef and automobile deals as critical independent variables that explain why different negotiated outcomes arise in different periods.

The proactive roles played by the chief institutions in South Korea (the Ministry of Foreign Affairs and Trade (MOFAT) and the OMT and the United States (the USTR) in linking domestic decision-making and international bargaining results during the KORUS negotiations are in clear contrast to their passive (though seemingly aggressive) attitudes in the preceding decades. In the 1980s–90s, the USTR, as a champion of the fair-trade idea, adopted a sectoral approach to pry open South Korea's beef and automobile markets. The USTR acted merely as an honest broker for Congress and domestic industries to enforce their political and business interests. On the South Korean side, despite some bureaucratic quarrels over the negotiation initiatives between the MOFAT and the Ministry of Agriculture, Fisheries, and Forestry (MAFF) (in the case of beef negotiations) and between the MOFA and the Ministry of Commerce and Industry (in the case of automobile negotiations), the country's key negotiators largely played a defensive and reactive role in responding to the enormous pressure from the United States toward market opening.

At the turn of the new millennium, however, both the USTR and the MOFAT/OMT shifted from their earlier commitments to the fair-trade and mercantilist ideas, respectively, to an embrace of the free-trade idea. They also began pursuing their own institutional interests as well as broadly defined national interests. Aside from the relative autonomy of chief negotiators in the negotiation phase, we note that the degree of politicization in the ratification phase is determined by the exogenous factors such as the rise of economic nationalism and the advent of economic crisis. An unexpected shock, either domestic or international, may alter the context of pre-existing bargaining situations.³ These changes, which can either directly relate to the trade issues at hand or affect the broader economic context within which a trade issue is being negotiated, will create differing incentives for actors. As a result, the win-sets perceived by the chief negotiators may fall short of the acceptable standard to key domestic veto players, particularly during economic hard times.

3 As Putnam noted, the politicization of a particular bargaining outcome may indeed reveal the true win-set size. But he does not articulate how and to what extent the politicization can play a decisive role in the two-level game context.

However, this does not mean that autonomous, pro-free trade chief negotiators are set to ‘incorrectly’ perceive their win-sets to be larger than they actually are. The point is well proven by the fact that the KORUS FTA has eventually been ratified with some minor amendments. Figure 1 illustrates the expanded version of our modified approach to the two-level game.

3 Beef Negotiations

3.1 Background and issues at stake

Since the late 1980s, the opening of agricultural markets including beef has become a bone of contention in bilateral trade between South Korea and the United States. America’s fair-trade initiative attempted to expand agricultural exports into the Korean market by questioning trade deficit and South Korea’s protectionist policies (Burmeister, 1990, p. 715). In the South Korea–US beef negotiations, key players in South Korea have been the National Assembly, the MAFF, the MOFAT, and farmers’ groups, while their counterparts in the United States include the Department of Agriculture, the USTR, Congress, and the American Meat Processing Association.

The US Congress and the USTR, responding to the demand of beef exporters, pressured the South Korean government to further open its beef market. During the bilateral beef negotiations in the mid-1990s, the United States, under the provision of Section 301 of the Trade Act of 1974 and Super 301, demanded South Korea to fully open its beef market by July 1997.⁴ Although the MOFAT in South Korea wanted to handle

4 Section 301 authorizes the US President to take all appropriate action, including retaliation, to remove any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts US commerce. Section 301 cases can be self-initiated by the USTR or as a result of a petition filed by a firm or an industry group. Section 301 is essentially ‘export politics’ pursued with a vengeance, a product of the egregious trade imbalance and frustration at foreign unfairness, both in real and perceived terms. In the meantime, Super 301 was a congressional prod to make the administration use Section 301 to pry open recalcitrant foreign markets under the threat of retaliation. In principle, it required the USTR to cite countries in the order of priority for US retaliations (or their equivalents) under procedures and deadlines set by Section 301. In practice, it left considerable leeway to the administration. Originally enacted by the Omnibus Trade and Competitiveness Act of 1988, Super 301 expired in 1990. However, this authority was implemented several times by USTR under an executive order of President Bill Clinton (*New York Times*, 1993; Destler, 2005, pp. 129–131).

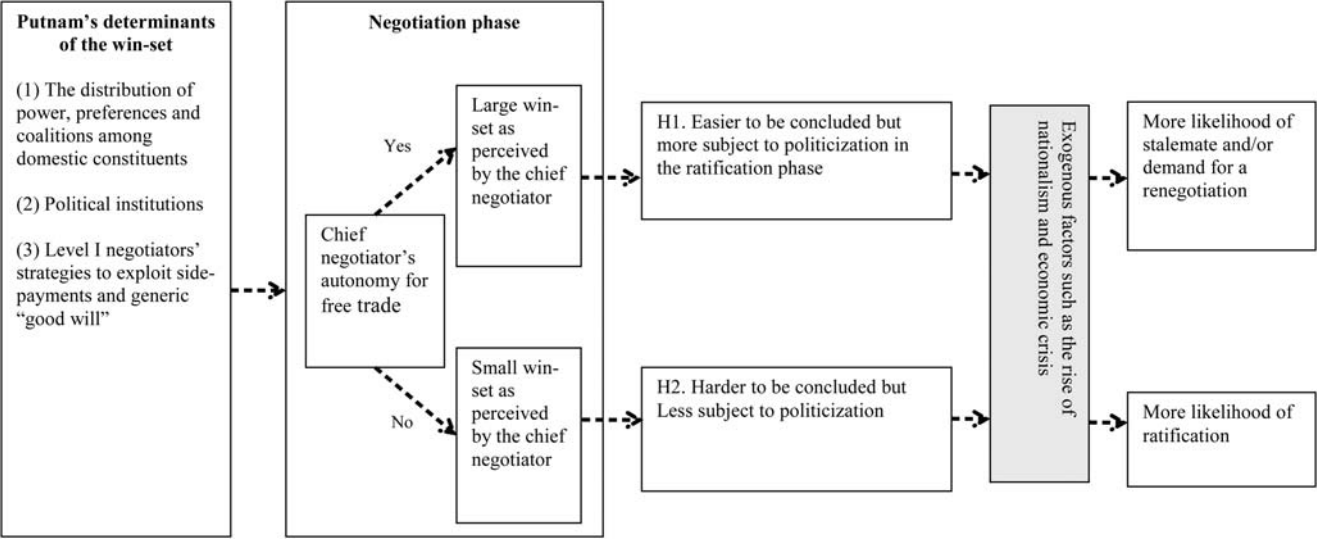


Figure 1 An expanded two-level game process for trade agreements.

the beef issue with great care, so as not to strain South Korea's relations with the United States, its authority as a chief negotiator was not fully institutionalized until the OMT regime was adopted as a result of the 1998 government organization reform. The MAFF and the National Assembly in South Korea strongly opposed agricultural trade liberalization. The voice of protectionist veto players gained even greater strength in the fight over beef market liberalization as a result of growing antipathy toward America's unilateral pressure to pry open South Korea's beef market (Burmeister, 1990, p. 718). At the completion of South Korea–US negotiations and the Uruguay Round, the South Korean government agreed to open its beef market by the year 2001, instead of 1997.

The South Korea–US beef negotiations clearly show the interplay between ideas and institutional changes. Among others, the economic crisis at the end of the 1990s and resultant International Monetary Fund (IMF) liberal conditionalities served as catalysts for the Kim Dae-jung administration (1998–2003) and its trade officials to reformulate their trade strategies to be more responsive to the demands of the international market. Leadership over trade negotiations was gradually transferred into the hands of the MOFAT/OMT, which was institutionally shielded from parochial business interests (Koo, 2009, pp. 186–192). In 2004, under the Roh Moo-hyun administration (2003–2008), the OMT hammered out a proactive strategy to liberalize the beef market, as well as a roadmap for South Korea's multi-track FTA initiative. In January 2006, the then Roh administration agreed to lift a ban against US beef which had been effective since the first US case of mad cow disease in December 2003. It was an apparent move to respond to US officials who had indicated some opening on the beef as a necessary condition for the official launch of KORUS FTA negotiations.⁵ Once FTAs with major economies became a top national priority, traditional veto players such as the National Assembly, the MAFF and other government agencies in charge of uncompetitive clients were severely weakened.

Moreover, top elites in the MOFAT and the OMT urged President Lee, who came into office in January 2008, to resume imports of US

5 American officials requested for full access of all US beef regardless of the age as long as Bovine Spongiform Encephalopathy (BSE)-risk materials were removed during processing. However, South Korean officials argued for a 'two-step' opening that would allow US beef less than 30-month-old first, and then beefs from older cattle later.

beef before his first visit to the United States in April 2008.⁶ The OMT's empowerment and free-trade ideas in beef negotiations helped maintain a free-trade momentum. Anecdotal evidence indicates that South Korea's trade officials firmly believed that removing bones of contention such as beef issues would enhance the chances of the KORUS FTA being ratified in the US Congress.

3.2 *The protectionist idea and the beef negotiations in the 1990s*

The changes made to US trade policies with the implementation of Super 301 in the mid-1980s provided a good opportunity for the US meat industry to increase its market share in the global agricultural market. The industry went as far as to urge the USTR to carry out retaliatory trade sanctions, arguing that South Korea's limit on the import of US pork and beef was in violation of the article of Super 301. Determined to scrap the high tariffs, restrictive import licensing, and outright ban in the South Korean beef market, the US Congress passed a resolution calling for market liberalization in South Korea. In 1988, responding to the US Meat Export Federation's petition claiming that South Korea had violated Article 11 of the General Agreement on Tariffs and Trade (GATT) by limiting imports, the then US Trade Representative Clayton Yeutter launched an investigation of South Korean import restrictions under the provisions of Super 301 (Kim, 1999, p. 142).

The South Korean government reacted slowly to the USTR's pressure, taking an inherently defensive and reactive position to delay complete opening of the beef market as much as possible. Trade officials from the two governments met in multiple rounds of beef negotiations from February 1988 to April 1993. America's top priority was to ensure complete market liberalization of South Korea's beef market by 1 July 1997. The United States asked to increase its base import quota by 20% annually, with a new quota timetable based on total market opening by 1997. However, South Korean farmers and interest groups such as the National Livestock Cooperative Federation strongly protested the US pressure (Hankook Ilbo, 1997).

6 In December 2006, a MAFF-associated inspection agency in South Korea rejected three entire shipments of US beef after X-rays detected bone fragments in some of the meat.

In effect, antigovernment street demonstrations organized by farmers and growing popular discontent with America's unilateral market-opening pressure helped the protectionist MAFF to win substantial political victories (Burmeister, 1990, p. 718). The MAFF served as the champion of economic nationalism and argued that the opening of the market would lead to the collapse of the domestic livestock industry. The National Assembly shared the stance of farmers and the MAFF. Preferences of ruling politicians and their electoral strategies created and maintained a protectionist trade policy by setting the ceilings on price. South Korea's trade officials such as MOFAT did not have any choice but to comply with domestic veto players' demands. As a result, they claimed to their American counterparts that full market liberalization was politically unacceptable and that South Korea would liberalize its domestic market in accordance with the agreement reached in the Uruguay Round that limited beef imports to the minimum level.

As chief negotiators of both countries lacked autonomy from their domestic constituents, they both faced small Level I win-sets. After long and tense rounds of negotiations, both the parties finally made compromises in April 1993. The United States accepted South Korea's import quota scheme, which promised to increase the quota by 5% annually between 1993 and 1995, rather than increasing its base quota by 20%. The then Kim Young-sam administration, with the slogan of 'Globalization Policy,' started to allow the domestic sale of beef imported by the Korean Meat Industries Association in 1994.

To summarize, in the 1990s, the protectionist ideas and institutional limits of the South Korean negotiators made the deals to serve the sectoral interests of South Korean farmers. South Korea's key negotiators largely played a defensive and reactive role in responding to the fair-trade pressure from the USTR to open the beef market in South Korea. Beef negotiations in the 1990s had always been protectionist as the South Korean negotiators served as loyal agents of their principals, the National Assembly and the militant farmers, while the USTR pursued a more proactive role to balance trade deficit. Even in a changing global political environment under the WTO, the MAFF continued to resist opening agricultural and beef markets and passed up opportunities to put these issues on the negotiating table. Support of party politicians who tried to obtain favors for important local constituencies from the MAFF gave the ministry more leverage to influence its jurisdictional areas. Such Level I

conditions led to small win-sets, which in turn made the negotiation process much longer and more uncertain than the ratification process.

3.3 The free-trade idea and the beef negotiations in the 2000s

The outbreak of the financial crisis in 1997 served as a turning point for South Korea to embrace, if not wholeheartedly endorse, liberal ideas. The crisis temporarily disorganized traditional veto players who argued that increasing beef imports would reduce farmers' incentive to raise cattle and eventually destroy the domestic beef industry in South Korea (Koo, 2009, pp. 186–188). Although some politicians remained militant, the economic crisis also generated pressure for the National Assembly to modify its role from protectionist to advocate of free trade (Mo and Moon, 1999). By the 2000s, the South Korean government began to think of market opening as one policy alternative under the changing international environment. Employing liberal market initiative, the South Korean government tried to form a new development strategy by breaking away from the traditional mercantilist stance (Jho, 2007). The Blue House and many government officials regarded the sacrifice of less competitive sectors such as agriculture to be necessary for the overall benefit of the South Korean economy. In 1997, the import of beef including the tail was permitted, and by 1998, the tariff on beef imports was lowered to 20%, accompanied by gradual increases in the minimum market access. In 2000, the South Korean government removed all tariffs on beef imports.

However, the government officials in South Korea were split on utilization of liberal economic ideas and trade policy. The MOFAT/OMT became a champion of free trade and comparative advantage ideas but its economic liberalism resulted in frequent clashes with the MAFF, although free-trade ideas put pressure on the latter to change such an attitude. Ideational changes among government officials were followed by an institutional arrangement designating the MOFAT/OMT as the principal negotiator in 1998. Through amendments to the Government Organization Act in 1998, the MOFAT was tasked with coordinating ministerial differences in opinions. Ministries other than the MOFAT would not operate independently; but were required to dispatch personnel to the negotiation delegation (Planning and Budget Committee of the Republic of Korea, 1998). The OMT, insulated from the pressure of specific interest groups, focused on a more comprehensive consideration

of national competitiveness and redesigned an aggressive FTA policy. Under this policy, the overall negotiations would be directly carried out by the OMT, with other ministries coordinating their positions through an interagency decision-making process (Koo, 2009, p. 189).

Although the OMT was created to mediate differences in opinion and interests of different ministries, coordination was not always easy. Serious conflicts erupted between the OMT and the MAFF on issues such as determining the scope of market opening. The MAFF stated that the right to regulate safety of agricultural products belongs to the importing country and reiterated its position on forbidding the import of beef containing bone pieces. In contrast, the OMT asserted that the KORUS FTA was a necessary condition in order to develop South Korea's competitiveness in the global economy (*Seoul Sinmun*, 2006). The OMT, keeping a distance from sectoral interests of industries and from client-based ministries with more protectionist views, began pushing independent negotiation agendas.

President Roh's appointment of Kim Hyun-chong as the third Trade Minister of the OMT dramatically increased the autonomy of the OMT as a chief negotiator of South Korea. With the strong endorsement of President Roh, the OMT formulated South Korea's pro-trade policies and tried to pursue neoliberal economic ideas through the KORUS FTA negotiations (*Chosun Ilbo*, 2006). As the OMT led negotiations, it had a monopoly on information, and this information imbalance allowed the agent to perform actions that were against the intentions of the principal but would be beneficial to the agent. In beef negotiations between 2004 and 2007, as President Roh's will to reach a trade agreement with the United States was strong, the MAFF found it difficult to raise any objections to the way the OMT was conducting the negotiations.

The OMT continued to enjoy policy autonomy under President Lee. In April 2008, the South Korean and US governments announced a new agreement to fully reopen South Korea's beef market. Since it set the ratification of the KORUS FTA as the most important element in its agenda for enhancing South Korea's economic competitiveness, the Lee government argued that the beef issue should not be allowed to bring about a situation that would hinder the ratification of the agreement. The OMT set a principle for the conditional opening up of the beef market and saw that as long as the specified risk material was excluded there would be little to fear from mad cow disease. In the end, when FTA ratification was prioritized as the most important state agenda, the

previous position of the MAFF on beef inspections and import limitations was conceded, and the MAFF was left out completely from the additional negotiations, which began in 15 May 2008. The MAFF complained that the KORUS FTA was something that should be decided at the national level, but under the FTA strategy of President Lee, the MAFF was sidetracked and bypassed (*Chosun Ilbo*, 2008).

To President Lee's and the OMT's dismay, however, the April 2008 agreement to resume US beef imports resulted in a significant controversy in South Korea over the different government policies for food safety. The agreement was followed by a series of nationwide 'candlelight demonstrations' during which tens of thousands of dissenters from various social and demographic backgrounds held candles in protest against the government's decision to resume imports of US beef (*New York Times*, 2008). The concerns of beef safety combining with anti-American sentiments triggered a series of large-scale public protests. The South Korean livestock industry raised its voice in protest because the drop in beef prices that increased imports would bring would hurt the domestic industry. Civil organizations took to the streets attacking the link between the beef deal and the KORUS FTA (*Hanrahan and Becker*, 2008). Opposition parties took a more aggressive political stance to oppose free-trade agreements. Resuming US beef imports was no longer a problem of opening the livestock market, but became an issue of the legitimacy of the Lee administration.

As large-scale candlelight demonstrations and protests, along with anti-FTA sentiments, flared up, in June 2008, the government had to postpone its announcement on the safety conditions of US beef imports. President Lee also reversed his previous stance against renegotiations, announcing that 'if it is the wish of the people then we will not import beef from cattle over 30-months-old' (*Opening Statement by President Lee Myung-bak, 19 June 2008*).⁷ On 21 June 2008, the South Korean and US governments confirmed a 'voluntary' private sector arrangement that excluded imports of beef from cattle over 30-month-old, as well as beef products from brains, eyes, spinal cord and cranial bones of cattle (*Jurenas and Manyin*, 2010, p. 8).

In sum, until the 1990s, the autonomy of the MOFAT as a chief negotiator remained small and limited because the MAFF and the National Assembly, with their protectionist attitudes backed by domestic clients, held

7 Beef from cattle over 30-month-old allegedly has higher changes of mad cow disease.

veto power, if not *de facto* control, over the beef issues. After the financial crisis, South Korea's FTA policies dramatically changed to a competitive strategy, despite protests from interest groups. In the 2000s, especially after the institutional empowerment of the OMT as a chief negotiator, the autonomy and free-trade idea of South Korea's chief negotiator grew. Under these circumstances, the OMT aggressively pursued to reopen markets to imported beef without recognizing fierce domestic opposition, which in turn led to a provisional agreement on the current 'under 30 months' deal.

4 Automobile negotiations

4.1 Background and issues at stake

From one perspective, the auto deal in the KORUS FTA is a balanced and agreeable outcome for both countries. As one policy commentator in Washington aptly put it, the FTA outcome on autos will make both sides better off than they will be in its absence (Schott, 2007). Top US negotiators also voiced optimism. In an interview with a South Korean news agency in April 2007, Wendy Cutler, the Assistant USTR for Japan, Korea, and APEC Affairs, and the chief negotiator of the KORUS FTA negotiations, said that 'the agreement represents the most robust agreement the United States has ever reached in the automobile sector', with the prospect of full opening of a foreign market to US autos. The then US Trade Representative, Susan Schwab, also expressed her excitement that the KORUS FTA will 'allow American manufacturers, farmers, ranchers, and service providers a unique set of opportunities to sell into Korea's fast growing markets' and that 'the further integration of our economy with Korea's is important for the U.S. to continue playing a meaningful role in Asia' (Remarks by US Trade Representative Susan C. Schwab, 14 June 2007a). Yet the deal remained effectively opposed by Congress, automakers, and organized labor in the United States until President Barack Obama finally showed signs of willingness to pick up this 'badly flawed agreement' in the second half of 2011.

It is no surprise that the automobile issue was so controversial across the Pacific Ocean. Auto trade makes up the biggest sector of bilateral trade between South Korea and the United States. Disparity in the auto trade has often been cited as a main US complaint and served as a bone of bilateral contention. Starting from scratch, South Korean automakers have been remarkably successful in the US market since they shipped

vehicles to the United States for the first time in 1986, recording annual sales of over 600,000 vehicles in spite of a recent global economic slowdown. Despite two major bilateral auto agreements from the 1990s, US auto sales to South Korea remained about one tenth of South Korea's sales to the United States, allegedly due to the latter's persistent tariff and non-tariff barriers (Stangarone, 2008).

In the South Korea–US automobile negotiations that have intensified since the 1990s, key players in the United States have been the USTR, Congress, and the Big Three, while their counterparts in South Korea include the MOFAT/OMT, the Ministry of Knowledge Economy (MKE), and the auto conglomerates such as Hyundai and Kia. Among other issues, the shifting dynamics between the USTR and Congress lay at the heart of the prolonged stalemate with respect to auto provisions in the KORUS FTA. During the automobile negotiations in the 1990s, the USTR served as a loyal agent of principals, namely Congress and the auto industry, while the MOFAT (and the then Ministry of Trade and Industry, MTI) played a defensive and reactive role in the face of aggressive market opening pressure from the United States. During the KORUS FTA negotiations, however, the USTR (and the MOFAT/OMT as well) began playing a more proactive role, pursuing both broader national interests and their own institutional goals, which did not necessarily coincide with those of key domestic constituents. Most notably, the USTR under the George W. Bush administration sought a balance of national interests rather than pursuing sectoral/parochial interests alone, as in the 1990s (Remarks by US Trade Representative Susan C. Schwab, 14 June 2007a). Yet as the winds of political change blew strong and hard, accompanied by growing economic storms, the USTR's position temporarily weakened and the auto issue became a major barrier to the ratification of the KORUS FTA.

4.2 The fair-trade idea and the automobile negotiations in the 1990s

The US auto industry remained competitive and committed to open trade until the late 1970s. However, the second oil shock of 1979 revealed that American automakers were unprepared for the dramatic shift of market demand toward small, high-mileage models. Their sales sharply slumped and the Big Three suffered record losses, with Chrysler even requiring a governmental rescue to avert bankruptcy. The auto industry

suddenly found itself in dire straits. The congressional response to the industry's difficulties resulted in explicit protection for autos, voluntary export restraints by foreign (particularly Japanese) automakers, and local content legislation (Destler, 2005, pp. 77–79). Most importantly, there was a sharp increase in petitions under the new legislative initiative against unfair trade practices of foreign countries.

Initially, the major target of the US fair-trade policy in the auto industry was Japan. Yet, as the trade imbalance with South Korea increasingly worsened in the late 1980s, the United States also became concerned about South Korea's unfair trade practices. In addition, the Big Three demanded that their government take sanctions against the South Korean automakers as part of their global strategy. To overcome the depression of the domestic market caused by stagnation of the US market, and the depression of market share due to the increase of Japanese and European cars in the US market, the Big Three had actively considered reaching out to foreign markets (Lee, 2005, pp. 12–13).

Against this background, the South Korea–US automobile trade dispute began in June 1993, when the American Automobile Manufacturers Association (AAMA) urged President Bill Clinton to pursue the liberalization of South Korea's heavily protected auto market. In August 1995, the AAMA filed a petition with the USTR seeking to put South Korea on a new Super 301 priority list for action that would require the USTR to address, under Section 301, any and all restrictive practices affecting US exports. The main points of contention were South Korea's allegedly 'sovereign' practices: high import duties (8%), the progressive auto tax system against large engine displacement cars, complicated type certification procedures, limited foreign access to the auto loan and advertisement markets, and anti-import campaigns. In order to avoid designation as a Priority Foreign Country under Super 301, the South Korean government scurried to make sufficient trade concessions. On 28 September 1995, South Korea and the United States reached an agreement to increase market access for foreign automobiles in South Korea.⁸

8 In South Korea, domestic interest groups remained divided, while different government agencies—the MOFA and the MTI in particular—competing for the trade negotiation authority. The lack of interagency coordination and no clear territorial boundary between government institutions related to foreign trade negotiations led to embarrassing negotiated outcomes. As explained earlier, South Korea's trial-and-error experience helped to establish the OMT as a chief negotiator in 1998.

The United States agreed not to bring the automobile trade case to the WTO for the time being. However, this did not preclude another wave of US trade pressure against South Korea, as the Clinton administration re-designated South Korea as an area of concern, signifying that Washington would not turn off the pressure to fully open South Korea's car market. Accordingly, Seoul would be closely monitored by Washington to ensure that it would be in full compliance with the 1995 agreement (Lee, 2005, p. 11). In 1996, South Korea exported about 200,000 automobiles to the United States, while importing about 8,500 US vehicles. The Big Three automakers had a less than 1% share of the South Korean market.

The United States wasted no time in accusing South Korea of impeding American automakers from entering its market. The Clinton administration invoked provisions of Super 301 in October 1997, to secure a meaningful opening of the South Korean auto market and, particularly, meaningful access for US manufacturers of motor vehicles, listing South Korea's auto market as Priority Foreign Country Practice (Stevenson, 1997). After several intensive rounds of negotiations, the two parties reached an agreement in Washington on 20 October 1998. South Korea did not give in to the American demand that import duties on foreign vehicles be cut from the current 8 to 2.5%, but the South Korean government did yield to requests to amend its complicated automobile tax system, which penalized large engine displacement cars, in which the United States had a particular comparative advantage, and to lift other non-tariff barriers.

Much of the USTR's energy was directed toward what critics have labeled 'aggressive unilateralism': negotiations aimed at opening specific foreign markets under the threat of closing the US market to them (Bhagwati and Patrick, 1991). The core authority the USTR employed was Section 301. The US administration worked, for both policy and political reasons, to spread the pain among America's trading partners (Destler, 2005, pp. 123–124). The 1980s and the 1990s were the heyday of fair-trade ideas in US trade policy circles (Goldstein, 1988). In addition, the Clinton administration's ill-fated attempt to regain fast-track authority made the administration's trade policy agenda more subject to congressional fair-trade ideas. As 1997 began, Clinton was completing his third year without fast-track authority—the longest previous gap since its initiation had been eight months in 1988. In order to satisfy the House, the Clinton administration mounted aggressive efforts to ensure

that American companies got as much access as possible to foreign markets (Stevenson, 1997).

In sum, the ideational and institutional subordination of USTR to Congress in the 1990s made the automobile negotiations with South Korea aggressive but reactive, only to serve the sectoral interests of US auto industry. South Korea had a small Level I win-set as well, but did not have much choice but to made concessions in accordance with enormous market-opening pressure from the United States. Once concluded, the auto agreements in the 1990s were well received in the United States, at least until the mid-2000s.

4.3 The free-trade idea and automobile negotiations at the KORUS FTA

In the post-9/11 world, America's trade policy changed dramatically under the rubric of 'competitive liberalization,' in which global, regional, and bilateral trade negotiations would complement and reinforce each other, as articulated by President Bush's first US Trade Representative, Robert Zoellick. Such an ideational shift was institutionally backed by the 'Bipartisan Trade Promotion Authority (TPA) of 2002,' which allowed the Bush administration to end the 8-year lack of the fast-track authority that allowed trade agreements to be concluded with a simplified ratification procedure (Murphy, 2002, p. 980). The president was authorized to conclude agreements regarding tariff and nontariff barriers only on condition of close consultations with Congress and trade advisory committees. However, the law also left considerable slack that was enjoyed by the president (and the USTR) in the aftermath of the 9/11 attacks, which justified the urgency to cement America's trade ties with its allies. The Bush administration used the authority granted by the TPA to pursue a parallel track of preferential and multilateral trade negotiations, while embedding the neoliberal economic agenda into its foreign policy goals. With the TPA, the Bush administration was able to enjoy a much greater of freedom in negotiating trade agreements than the Clinton administration did, without such an authority (Destler, 2005; Sohn and Koo, 2011).

The automobile negotiations at the KORUS FTA were conducted against this backdrop. The United States eventually agreed to immediately end its 2.5% tariff for South Korean cars with engine displacement of

less than 3,000 cc. The United States will retain its 2.5% tariff for 3 years for South Korean cars larger than 3,000 cc. The United States also agreed to lift its 25% tariff on South Korean pickup trucks over the next 10 year period. The initial deal called for South Korea to immediately eliminate its 8% import tariffs on US vehicles, revamp the tax rates that US officials had long complained about, and revise environmental and safety regulations in favor of US automakers.

The negotiation process was neither easy nor smooth. The main causes lay in renewed protests from US automakers and stronger congressional opposition after the Democrats' victory in the 2006 midterm elections. On numerous occasions, the Democratic Congress urged caution in trade negotiations with South Korea, citing the persistent imbalances in auto trade. On 2 March 2007, for instance, fifteen members of Congress, including the Chair of the Ways and Means Committee, Charles Rangel, and the Chair of the Way and Means Subcommittee on Trade, Sander Levin, wrote President Bush with a proposal derived from the 'performance metric' and the 'snapback' approaches ([Letter to President George W. Bush, 2007](#)). One day prior to the signing ceremony of the KORUS FTA on 30 June 2007, key House Democratic leaders, including Speaker Nancy Pelosi, Chairman Rangel and Chairman Levin, said that they could not support the agreement as written, citing the automobile provisions ([Pelosi, Hoyer, Rangel and Levin Statement on Trade, 2007](#)). Furthermore, congressional leaders were critical of the Bush administration for what they perceived as its failure to consult with Congress before and during the trade negotiations with South Korea. At a congressional hearing on the KORUS FTA, Democrat Bill Pascrell complained to the deputy USTR, Karen Bhatia: 'Korea is not the problem. You're the problem—USTR' ([Hearing on the US–Korea Free Trade Agreement Negotiation, 2007](#)).

The difficulties with the auto provisions of the KORUS FTA were more about the declining position of the US auto industry than any specific provisions in the agreement itself. The ongoing crisis in the US auto industry over the past decade has pushed US automakers to the brink of collapse, reinforcing the industry's need to protect its position in the US market. At a hearing before the Subcommittee on Trade of the Committee on Ways and Means in March 2007, industrial and union representatives complained that the South Korea's automobile market remained too closed to foreign cars, citing the statistic that '80% of the

\$13 billion US trade deficit with South Korea is in automobile products.’ They also complained that the USTR was not fighting for the US auto industry nearly as hard as the South Korean government was fighting for theirs (Sullivan, 2007).

How receptive was the Bush administration to the suggestion from the private sector that no concessions must be given on the US side until they see actual numerical improvements in market access on the South Korean side? Certainly, the USTR at the time worked closely with the auto industry, and with Congress as well, to address South Korea’s trade barriers and put forward its ideas in a text. In a number of areas, the USTR made diligent efforts to eliminate the engine displacement tax, to address a number of regulatory issues, to mitigate the anti-import bias, and to deal with the transparency issues (Remarks by Wendy Cutler, 2006). The USTR also successfully included in the agreement an unprecedented package of automobile-related provisions, including a unique dispute settlement mechanism—namely, a snapback provision that if the other side, in this case South Korea, is not living up to the provisions of the auto sector’s requirements, then the tariffs that are currently in place will immediately fall back and be a permanent punitive action to South Korea.

Given such actions on behalf of the US auto industry, why did the USTR ultimately negotiate a deal that would not be welcome domestically? Our answer is the USTR under the Bush administration pursued national interests beyond sectoral ones. In many respects, the KORUS FTA shows that the United States (and South Korea as well) pursued economic benefits and strategic interests simultaneously in trade negotiations. In addition to the goal of maximizing the gains from trade and investment, the United States realized that an FTA with South Korea would give Washington a strong foothold to maintain its strategic and economic presence in Northeast Asia, while South Korea wanted to guard against the growing strategic uncertainties in the region by cementing its economic ties with the United States (Sohn and Koo, 2011).

Such new initiatives were well integrated into USTR officials’ statements, though some of them might be dismissed as little more than diplomatic rhetoric. At the hearing on the KORUS FTA negotiation before the Subcommittee on Trade of the Committee on Ways and Means on 20 March 2007, Deputy US Trade Representative Bhatia stressed the importance of an agreement with South Korea, claiming that it would

secure a unique preferential advantage for American companies in the South Korean market at a time when many of America's global competitors are actively seeking to lock-up East Asia's fast growing economies in economic relationships that exclude the United States and its firms (Hearing on the US–Korea Free Trade Agreement Negotiation, 2007). In a similar vein, US Trade Representative Schwab argued that the United States must not be on the sidelines as South Korea and other countries in East Asia and other parts of the world deepen and strengthen their trade ties (Remarks by US Trade Representative Susan C. Schwab, 30 June 2007b). In addition to compelling economic benefits, she emphasized, the KORUS FTA represents a broader historical geopolitical and strategic opportunity: 'For over 50 years, the United States and Korea have built an alliance of shared sacrifice in war and shared values in peace. The KORUS FTA is the ideal way to build on that relationship and ensure the next 50 years will be one of shared prosperity and security' (Remarks by US Trade Representative Susan C. Schwab, 30 June 2007b).

The deadlock surrounding the auto issue prior to the renegotiation in 2010 and the ratification in 2011 confirms that consensus on the trade policy has become difficult to obtain on Capitol Hill. A large part of the reason for this difficulty is the rise of partisan polarization in the House, and the decline in the capacity of members to build centrist coalitions across party lines. More and more, issues are seen as weapons for combat with the other-party enemy. Less and less are they considered dispassionately, on their own substantive terms, with recognition that neither political side has a monopoly on truth and wisdom. Polarization has also complicated the role of the USTR (Destler, 2005, pp. 305–306). At the same time, it has created some institutional room for manipulation of trade agendas, making bilateral negotiations easier to conclude, no matter how much more difficult it has made the ratification of internationally negotiated outcomes.

5 Conclusion

In this study, we developed an expanded two-level game analysis of trade negotiations between South Korea and the United States. The key argument is that the chief negotiator is not always an honest agent with no independent motive, as illustrated by the analysis of the unusual pairing

of beef and automobile negotiations in the 2000s. During the bilateral negotiations over the same issues in the 1990s, the autonomy of both countries' chief negotiators was institutionally weak, and their policy ideas were subordinated to mercantilism or fair-trade ideas, thus creating small perceived win-sets. By contrast, the empowerment of chief negotiators both in South Korea and in the United States during the KORUS negotiations produced large perceived win-sets, which in turn made agreements at both levels I and II more likely, if not any easier. We found that small perceived win-sets during the beef and automobile negotiations in the 1990s created problems at the negotiation stage, while large perceived win-sets during the KORUS negotiations produced unexpected, but eventually resolved, problems at the ratification stage.

In this study, we did not attempt to offer a general theory of international bargaining. Rather, our purpose was to show the value of analyzing the institutional and ideational bases for bilateral trade negotiations. A more complete account resides in the study of state institutions. But institutional arrangements alone cannot explain the variations in the negotiated outcomes. Equally important are the beliefs of those who have the authority for trade negotiations. Our approach also highlighted the role of politicization as an intervening factor in the post-negotiation phase. The rise of economic nationalism in South Korea and the onset of the subprime mortgage crisis in the United States suddenly altered domestic constituents' initial bargaining zone, both actual and perceived, creating stronger protectionist demands from domestic veto players on both sides.

Our expanded win-set approach to explain seeming anomalies in the South Korea–US trade negotiations lies in the intersection of an institution, an event, and a trend. The institution, first, is the chief negotiators, namely the MOFAT/OMT and the USTR. Yet institutional arrangements alone provide an insufficient explanation for the beef and automobile agreements. As critical are the belief systems of the individuals who negotiate the agreements. In both South Korea and the United States, liberal beliefs have become a policy bias of executive branches since the 2000s. Both the event and the trend are normally beyond the influence of the trade negotiator, at least in the short term, and are taken as given. The event was the change of the governments in both the countries and the onset of a global economic slump, which has heightened the political salience of both beef and auto issues. The trend is the relentless

polarization in recent decades of political parties both in South Korea and in the United States, which has effectively complicated the role of chief negotiators in manipulating trade agendas. The much overdue ratification of the KORUS FTA proves the point that the chief negotiators did not incorrectly perceive their win-sets to be larger than they actually were, but that the ratification of internationally negotiated outcomes has become much more difficult than ever before.

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