



ALSTON & BIRD LLP

*FTAs and Selected
Apparel Trade Topics*

New York

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Political climate

- Partisan bickering has brought the country to the brink of financial calamity three times this year
- Karl Rove says Americans are “fed up” with congressional acrimony, blaming the President for failed leadership
- Ezra Klein (Washington Post) says, “We have a Congress problem, not a deficit problem”



Popularity polls

- A CBS News/New York Times poll says only 12 percent of Americans approve the job Congress is doing; and just 6 percent of voters think members deserve reelection (down from 9 percent right before the 2010 midterm elections)
- President Obama's approval rating is 43 percent, the lowest of his presidency, and his jobs bill is so far going nowhere



But the three FTAs finally passed

- President Obama signed the Korea, Colombia and Panama FTAs into law on October 21
- Congress also passed, and the president signed, legislation extending Trade Adjustment Assistance, the Generalized System of Preferences and the Andean Trade Preference Act, all of which languished from inaction since the last Congress



Some observations

- 78 House Republican freshman voted for all three FTAs, 13 more than signed a letter of support last March
- Only seven Republican freshman, including Textile Caucus members Jeff Duncan (R-SC), Morgan Griffith (R-VA) and Mick Mulvaney (R-SC) voted against the Korea FTA



Some observations

- All but four members of the 60-member Tea Party Caucus voted for all three FTAs
- Only 59 of 192 House Democrats voted for the Korea FTA, short of the 70 some had hoped for; but they included Democratic Caucus leaders Nancy Pelosi (D-CA), Steny Hoyer (D-MD), and others



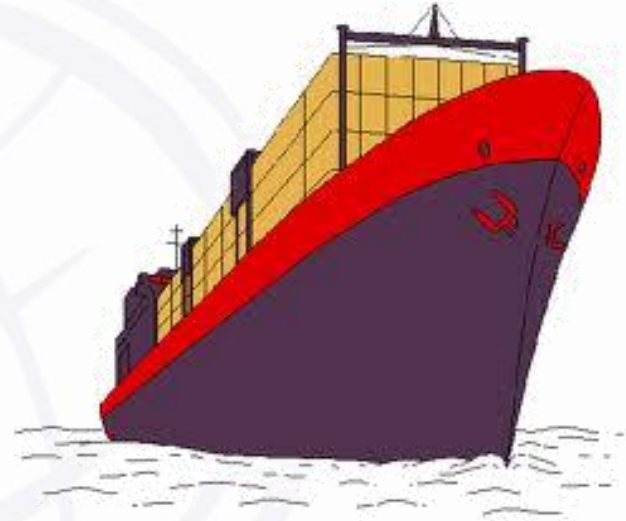
Some observations

- 31 House Democrats voted for the Colombia FTA (compare with 59 for Korea and 66 for Panama), reflecting strong union lobbying against Colombia
- Republican support in the Senate was overwhelming; only Susan Collins (R-ME) and Olympia Snowe (R-ME) voted against Colombia, and only Snowe voted against Korea; none voted against Panama



MPF change

- Unexpectedly, the TAA extension legislation increased the Merchandise Processing Fee (MPF) from 0.21 percent to 0.3464 percent, effective October 1; but left unchanged the minimum of \$25 and the maximum of \$485
- Formerly, a shipment worth \$230,952 hit the maximum; now it only takes \$140,012



MPF observation

- The WTO says user fees are supposed to cover only the cost of the services provided
- But the increase in the MPF is intended as an “offset” to the “cost” of reduced duty collection as a result of the FTAs
- This offset is not a cost of processing imports – might it be challenged before the WTO?



Another unexpected consequence

- Senate Republicans had vowed to block President Obama's key trade nominations until the FTA passed, causing several "recess" appointments, including Commerce Secretary John Bryson and Deputy Secretary Terry Garcia, who ultimately withdrew in frustration
- Shortly after the FTAs passed, Bryson and several others were confirmed; but not CBP Commissioner Alan Bersin, who allegedly has bipartisan opposition about whether he obtained "I-9" immigration forms for household help



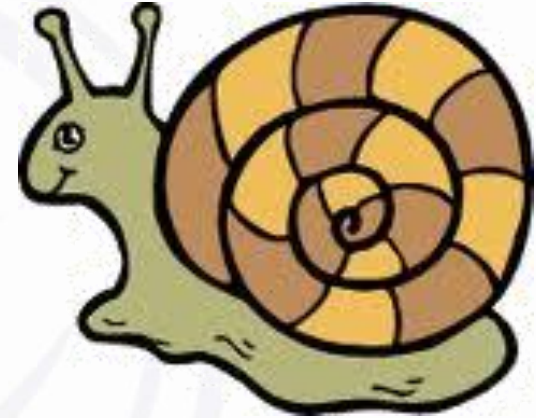
Implementation – Korea

- Korea's National Assembly must pass implementing legislation and 15 bills reconciling existing laws with the FTA
- The ruling Grand National Party (GNP) faces opposition from the Democratic Party (DP), which considers the FTA too US biased and want to renegotiate some points
- The GNP has the votes to force the vote, like it did with the EU— Korea FTA; but isn't inclined to do so in light of its having recently lost the Seoul mayoral election



Implementation – Korea

- Rumors of physical obstruction in the National Assembly cancelled a session scheduled for November 3
- DP opposition is greatest to the agreements Investor Dispute Clause, similar to NAFTA's Chapter 11
- Elections in five months could go badly for the GNP
- Originally considered the quickest, the Korea FTA could be slowed by Korean politics



Implementation – Colombia

- Hoping for implementation in time for the Summit of the Americas in April; but that's unlikely
- About five laws must be changed by the legislature to conform with the FTA
- President Obama will also look for strict compliance with US-Colombia labor accords
- AmCham in Colombia predicts second half of 2012



Implementation – Panama

- Panama is likely also to require legislative measures to conform with the FTA; but Panama has not made these requirements as clear as Korea and Colombia have
- AmCham in Panama predicts 12 to 18 months before the necessary processes are completed



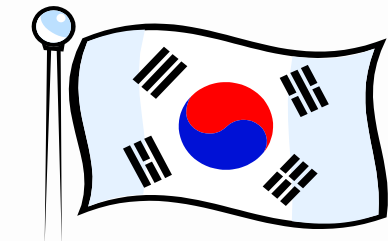
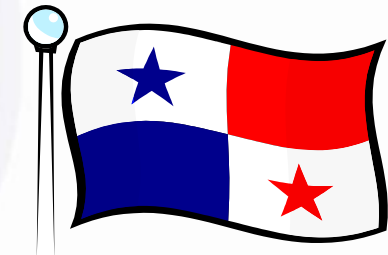
Economic effect

- The largest of the FTAs, with Korea, could boost annual U.S. exports by as much as \$11 billion
- The Colombia and Panama deals could add another \$1 billion per year
- In a year of jobs crisis, the White House says the Korea agreement alone could add as many as 70,000 U.S. jobs



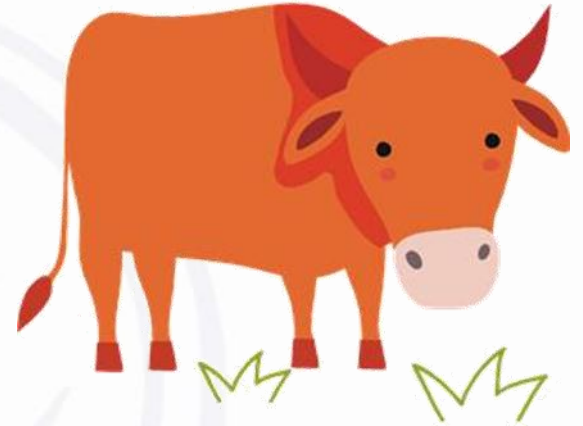
The three FTAs and their context

- The Colombia FTA will let Colombia “catch up” to Peru and will replace APTDEA for apparel from Colombia
- The Panama FTA will let Panama compete more directly with CAFTA, NAFTA, Peru and Colombia and will replace CBTPA for apparel from Panama
- The Korea FTA has no predecessor; Korea has enjoyed no preferential status with the United States since it lost GSP status during the Reagan administration



Substantive issues resolved

- Korea and United States agreed not to agree about beef
- Korea agreed to relax auto safety and emission standards for U.S. cars
- Colombia met its milestones on violence and labor rights issues
- Panama changed its rules about registering bearer bonds



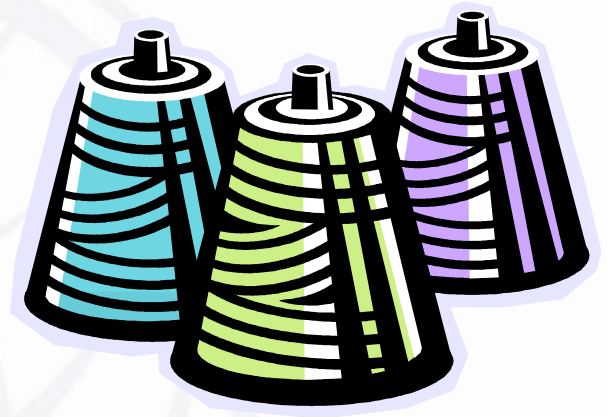
Apparel origin rules

- Apparel origin rules in the three FTAs are based on yarn forward, first introduced in NAFTA, with some expected exceptions familiar from existing FTAs
- Each has the same chapter note for chapter 61 and 62 saying that the rule applicable to an apparel article only applies to the component determining tariff classification



Examples of yarn forward variations

- Panama allows the use of foreign wool yarn; Colombia and Korea do not
- Colombia and Korea allow the use of foreign rayon filament yarn; Panama does not
- All three FTAs allow foreign silk and linen fabrics in originating apparel articles



Single transformation – Colombia

- Colombia gets the worst single transformation deal
- Only brassieres can be cut and sewn with foreign fabric and get originating treatment
- All other apparel articles are subject to some form of yarn forward, subject to exceptions for silk and linen fabrics



Single transformation – Panama

- Panama enjoys single transformation for the same apparel articles originally provided for under CAFTA: brassieres, men’s woven boxer shorts, men’s and boys’ woven pajamas, women’s and girls’ woven pajamas and negligees, and certain girls’ dresses
- But Panama does not enjoy this treatment for apparel articles added by the so-called “pocketing letters” under CAFTA



Single transformation – Korea

- Korea does *not* get single transformation treatment for brassieres
- Korea enjoys single transformation for man-made fiber knitted women's and girls' jackets and, just as in NAFTA, circular knit cotton pajamas, nightwear and women's and girls' panties and briefs of cotton yarns of more than 100 metric number



Single transformation – Korea

Korea also enjoys single transformation for men's and boys' shirts of certain specified cotton and MMF woven fabrics and all woven apparel of cotton velveteen, cotton corduroy of more than 7.5 wales per centimeter, Harris tweed, lightweight wool/MMF blends and certain polyester batiste (all of the foregoing copied from NAFTA)



Chapter rules

- All three FTAs include the visible lining rule, requiring visible linings of some fabrics in some classifications of apparel to be wholly formed in the FTA country
- Colombia and Panama are saddled with chapter rules, like CAFTA's, regarding narrow elastic fabric, sewing thread and pocketing, although Panama enjoys exceptions for boxers, pajamas and nightwear



Chapter rules

- Korea is spared the chapter rules regarding narrow elastic fabric, sewing thread and pocketing
- One can only speculate whether domestic interests will try to close the alleged “loophole” allowing foreign single yarn sewing thread for apparel produced in Colombia and Panama, as provided in the proposed CAFTA “fixes”



De minimis

- Like CAFTA, Colombia and Panama have a 10 percent de minimis rule, meaning that foreign fibers or yarns that would otherwise disqualify an apparel article will be permitted if they do not exceed 10 percent by weight of the component determining classification
- Also like CAFTA, Colombia and Panama do not allow de minimis treatment of spandex



De minimis

- The stingier Korean FTA only allows de minimis treatment of fibers and yarns not more than 7 percent by weight of the component determining classification
- Seven percent comes from NAFTA
- Spandex is also barred from de minimis treatment under the Korean FTA



Short supply

- Both Colombia and Panama have short supply designation rules similar to CAFTA's
- Both pick up short supply designations under CBTPA, ATPDEA and AGOA
- But only Panama picks up designations made under other free trade agreements (thereby picking up the NAFTA provisions for Harris tweed, for example); so Colombia does not pick up CAFTA designations



Short supply

- Korea short supply is similar, but with some big differences
- Either party can make designations, so each country's list could be different
- Neither party picks up existing designations from trade preference programs or FTAs
- Short supply goods will be subject to an annual cap of 100 million SME for the first five years



Short supply

- Fortunately, the short supply features of the three FTAs do not contain the defect concerning spandex that awaits correction under CAFTA
- But neither do they provide the language “exclusive of collars, cuffs *and waistbands*” contemplated by the CAFTA fixes for sweatshirts and similar upper body apparel articles with waistbands



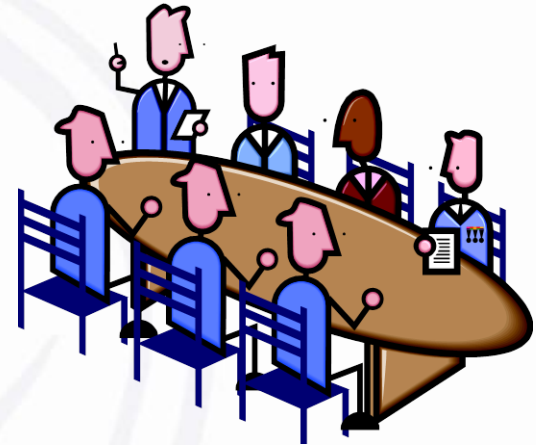
Trans-Pacific Partnership

- Negotiations are pending with Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam
- Textile provisions are not yet fleshed out yet
- The most interesting aspect is the inclusion of Vietnam, the first substantial apparel producer in the Far East and the first non-market economy to be considered for a FTA with the United States



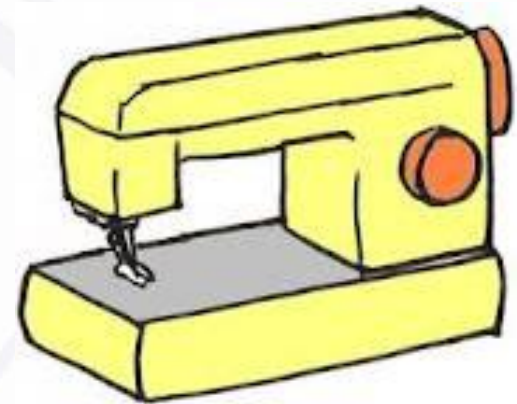
TPP idea to replace yarn forward

- The “TPP Apparel Coalition,” comprising AAFA, RILA, USA-ITA, NRF and the Outdoor Industry Assn., argued at the last TPP session in Chicago in September that yarn forward is too restrictive
- Labor and components are only 25 percent of a garment’s value, they said



Ideas

- “CTH” – allow a garment to be originating if processing causes it to undergo a “change in tariff heading” in a TPP country; mere assembly or knitting to shape would satisfy such a rule
- “RVC” – allow a garment to be originating if processing in a TPP country confers origin and the garment satisfies a “regional value content;” similar to GSP



Yarn forward for TPP

- The United States is evidently sticking with yarn forward
- A bipartisan House group of 15 Republicans and 15 Democrats asked USTR Ron Kirk for “flexible” origin rules allowing greater market access; but 52 other members demanded yarn forward last May
- Vietnam has the biggest stake and opposes yarn forward; so far it is backed by Australia, Brunei, New Zealand and Singapore; Peru sides with the United States and Malaysia is thus far neutral



Expected CAFTA changes

- Change the sewing thread rule to include single yarn sewing thread (watch out for effective date)
- Change short supply to allow yarns and fabrics for more than just the “outer shell exclusive of collars and cuffs” of apparel goods
- Change short supply to allow designations of fabrics containing foreign elastomeric yarn
- Increase the cumulation limits (regarding inputs from Mexico) by 25 percent to allow for the Dominican Republic’s participation in cumulation



Currency manipulation

- “Crouching Dollar, Floating Yuan” (*Al Jazeera*)
- House Democrats tried and failed on November 4 to bring to a vote their version of the bill passed in the Senate in September
- House Speaker John Boehner (R-OH) still says he will not bring the bill to the floor because he is concerned it will cause China to retaliate



Tim Ryan (D-OH) speaks

“It is an embarrassment for Congress that the House Republicans don’t have the spine to bring this measure to a vote on the floor ... Every day that passes without a vote on this bill is another day that we decide that losing a million jobs isn’t a problem and rethinking our economic future isn’t worthwhile ... We need to do our job and pass this bill to create the jobs America needs”



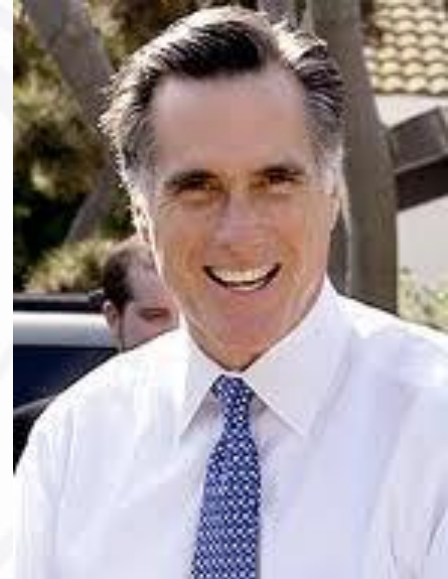
Mitt Romney on trade

- Formed a “Trade Policy Advisory Committee” in October, chaired by former Commerce Secretary Carlos Gutierrez
- “Free trade is essential to restoring robust economic growth and creating jobs”
- Will “reverse the stagnation brought about by the Obama administration’s neglect of our trading interests”



Mitt Romney on trade

- Obama has been “treated as a doormat” by China
- Would label China a “manipulator” on his first day in office, then “impose tariffs” on China exports that are being subsidized by manipulation
- Supported the Korea, Panama and Colombia FTAs and would support FTAs with India and Brazil



Herman Cain on trade

- Asked whether he supported NAFTA and CAFTA: “There are parts of NAFTA and CAFTA that I support, but I am sure that there are parts that I don't support, so I can't give you a specific answer”
- Uncle Sam needs to stop being “Uncle Sucker” in free trade agreements



Herman Cain on trade

- “[I]t would be .. naive to think we could influence [China’s] actions on currency or anything else with diplomacy or two verses of Kumbaya ... Appeasement is not a strategy ... As Ronald Reagan proved, strength is the strategy”
- “Our China strategy should be two simple words: Outgrow them!”



Michele Bachmann on trade

- Voted in the House for the Korea, Panama and Colombia FTAs; her first House vote since August 1, 2011
- Also voted for Peru FTA
- Voted against currency manipulation legislation in 2010
- On China's President Hu: "With all the money that we owe China, I think you might correctly say, Hu's your daddy"
- Responding to China's call to replace the dollar in global currency reserves, introduced a House resolution to "bar the dollar from being replaced by any foreign currency"



Rick Perry on trade

"I don't think our trade policies have been working for years, frankly, from the standpoint of being in the best interest of our families ... Do we need to trade? Absolutely ... Am I a free trader? Yes ... But I'm a fair trader ... Just because we pass a free trade agreement with a country doesn't mean we need to put ourselves at a competitive disadvantage to make their diplomatic people smile at us ... I mean we need to be tough traders ... But I'm telling you, we can't be tough traders, we can't be [a] foreign policy impactful country until we get this economy [turned around]"





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