Ratification of a Free Trade Agreement:
The Korean Legislature’s Response to Globalisation

HYUN-CHOOL LEE
National Assembly Research Service, Yeongdeungpo-gu, Seoul, Korea

ABSTRACT
This article examines the changing nature of the state’s capacity under conditions of globalisation. In particular, it explores how the Korean National Assembly reacts to the challenge of globalisation as well as how a state develops its capacity to deal with transnational issues. By analysing the National Assembly’s response to the ongoing issues of the Korea-Chile and Korea-USA Free Trade Agreements, this article points out the causes of the imbalance that exists between the parliament and the executive administration under the multi-level system of governance. It also examines ways of strengthening state capacity by reducing a perceived democratic deficit. The Trade Procedure Acts submitted to the 17th and 18th National Assembly can be expected to contribute to the improvement of the National Assembly’s responsiveness and accountability and the state’s capacity in the supranational sphere.

KEY WORDS: Globalisation, state, Korean National Assembly, Free Trade Agreement, FTA, democratic deficit, legislature

Defining globalisation as Russett et al. (2004: 429) do, as “a process whereby economic, political, and cultural transactions are less and less constrained by national boundaries and the sovereign authority of national governments,” is now standard. In regard to their impact on state authority, national governments seem to be increasingly losing their control over the exchange of the goods and services, peoples and ideas that cross their borders. Indeed, global issues like economic interconnectedness, environment, disease, human rights and transnational crime pose challenges to state sovereignty. In facing these, a nation-state is forced to reformulate conventional state authority and seek out new forms of governance (Krasner, 1999: 12-14). It is also recognised that globalisation does not mean a simplistic erosion of national sovereignty; rather, it implies more of a re-definition, re-direction and reconfiguration of a nation’s purpose and influence within the international system. Governance has increasingly become “multi-level” or “multi-scalar” across the sub-state bodies (municipal and provincial) and the supra-state agencies (regional and global) as well as the nation-state (Scholte, 2005).
Globalisation’s challenge to traditional domains of state authority gives rise to concerns about state capacity and changes to that capacity. Some authors emphasise that the state should still play an important role in some issues, like welfare, despite changed conditions and circumstances that have reduced states’ functions and authority (see Strange, 1997: 368-9). Others contend that states still have authority within their own domain, as a primary regulator and should even extend their reach (see Held et al., 1999: 5-6). Analysts in the latter category tend to pay attention to states’ leading roles in the economy, often drawing on the cases of the East Asian developmental states (Evans, 1995; 1997; Weiss, 1998). It is true that several East Asian governments have strengthened their state’s capacity by building institutions to cope with increasing global competition. Weiss highlights the ability of states to adapt to globalisation, enhancing state capacity. In doing so, she refers to strong states as “midwives” and “catalytic” states (Weiss, 1998; 2003). Likewise, Gainsborough (2007) contends that, in the case of Vietnam, non-state actors tend to emerge as a significant force in the strengthening of a state’s power.

States are not unitary actors, but are aggregations of institutions. We need to distinguish the administrative, legislative and judicial institutions and their activities (Slaughter, 2004). When we see state responses to the challenges of globalisation and increasing global competition, we must examine how each of these institutions react and respond. We must also investigate how a state develops its capacity. Only then can we explain which political factors either exert influence or contribute to the capacities that are producing policy and practical outcomes (Robinson, 2008: 567).

The Korean government has been reforming its administrative structure by creating specialised institutions. Such institutions have helped the state cope with globalisation, especially following the East Asian financial and economic crisis, which had a huge impact on Korea’s domestic governance structure, economy and society more broadly. As a result, the government has not only streamlined its structure but also conspicuously improved its officials’ competencies toward specialised professional human resources in areas like information, technology and international bargaining (Kim, 2008: 192-7). While the government’s administrative bodies have become highly specialised in global issues, the legislative branch has lagged behind the executive in dealing with the challenges of globalisation. This disparity means that the weight of foreign policy power has moved more and more toward the executive branch, thereby taking power away from the legislature branch.

This shift in power to the executive has been demonstrated in the fact that legislatures have been slow in responding to various initiatives, the executive branch has been expanding its regulative power to the transnational level by joining the World Trade Organisation (WTO), Organization for Economic Co-operation and Development (OECD), Korea-USA Free Trade Agreement (FTA), Korea-Chile FTA, and so on. The legislature’s attempts to consider issues democratically have been slow and unsystematic. Such factors as lack of awareness, imbalances in information and limitations of personnel and institutional resources are at work. We may identify such limitations on democratic control resulting from the imbalance between the legislature and the administration transnational deficit of democracy.

This study aims to analyse the National Assembly’s response to the ongoing debate over the Korea-Chile and Korea-USA FTAs, which have been characterised as indicating multi-level sovereignty. Given this perspective, the paper attempts to
discover the causes of the imbalance that exists between parliament and administration under multi-level governance. It also seeks a means of parliamentary reform that will expand the parliamentary democracy so as to reduce the democratic deficit.

Korea-USA FTA and Democratic Deficit

Since the 1997 East Asian financial crisis, various Korean governments have pursued bilateral and multilateral FTAs. Under this protocol, the country has moved away from the multilateral trade policy that is centred on the WTO. In November 1998, the Foreign Economic Policy Co-ordination Committee formally decided to pursue FTAs as part of its trade policy, and Chile was chosen as the first nation for negotiation. Beginning in August 2003, an FTA roadmap was confirmed at the governmental level, and FTA project strategies have also been formulated. The Korea-Chile FTA finally came into effect in April 2004. It was a watershed for the Korean government, committing it to further bilateral and multilateral FTA negotiations with Singapore (FTA completed in March 2006), Association of South East Asian Nations (ASEAN; September 2006), the USA (April 2007), the European Union (EU; October 2009), Japan, Canada and Mexico.

Trade agreements are a basic means by which the global economic order is formed. Inevitably, a distinction exists between the social strata who benefit from the trade agreement and those who suffer damage from it. Therefore, in Korea, it has been considered important to set the direction of negotiation based on a national consensus and to institutionally absorb the damage. Despite that approach, when looking at the process of pursuing trade agreements so far, the following democratic deficit problems have been revealed. First, no institutional device exists to mobilise national consensus. Secondly, negotiation information and related materials are not properly provided to the public. Thirdly, the legislature has been unable to perform the functions of checking, controlling and supervising the administration. Fourthly, public opinion is not sufficiently reflected in the negotiation process. While the FTA lies at the centre of trade policy, the negotiation and consultation processes are accompanied by much social confusion and bring many political costs (Yu, 2008). These processes are not yet adequately institutionalised.

The Korea-USA FTA in particular has been highly politicised, thereby rendering the domestic process even more difficult. While the logic of the government and the private sector in pursuing FTAs has been based mainly on orthodox economic theories, those who are less enthusiastic about FTAs have been politically mobilised around claims of “anti neo-liberalism,” “anti-American nationalism” and “progressivism” (Lee, 2008).

Between these two parties was a middle ground of opinion that was squeezed out. Under such a confrontational structure, one side saw the effect of FTAs as essential for economic growth, while the other side viewed their impact as essentially negative. The anxiety over an FTA with the world’s dominant economic power exacerbated such extreme views. At the same time, anti-American feeling that had long existed in Korean society, exacerbated by anti-American feelings surrounding the Iraq War, contributed to making policy discussion hotly contested. More specifically, it switched the dialogue’s focus from the actual impact of FTA to the confrontational
structure that exists between pro-American groups and anti-American groups in Korea. Accordingly, the Korea-USA FTA was highly politicised and was subject to contestation over the issue of the democratic control of the FTA negotiation process.

Forging an FTA with a foreign country is important for the outcome can determine national policies across a range of economic, security and social sectors and, as such, deserves serious consideration. In Korea, however, there was no institutional arrangement to manage trade negotiations. The government did not set up a presidential executive directive (executive regulation) until the negotiation for the Korea-Chile FTA was completed. Under the institutional arrangements by this regulation, however, private experts and other concerned parties found no room for participation and consultation. Furthermore, there was no consensus-building process within the National Assembly.

All the trade-related authority is concentrated in the Trade Negotiation Headquarters under the Ministry of Foreign Affairs and Trade. As a result, democratic control is not achieved. However, Article 60, Paragraph 1 of the Constitution explicitly states that the National Assembly has the right to consent to the execution and ratification of treaties including bilateral agreements. However, governments have interpreted this provision arbitrarily, carrying out negotiations under the presumption that they can obtain post-facto approval from the National Assembly on the ratification of the FTA. This process compares unfavourably with that in the USA, where the legislature is significant (and has the ultimate authority in foreign trade policy) and where institutionalised consultative measures are in place. In Korea, the government does not have a responsibility to report to the National Assembly regarding the trade negotiation process. Moreover, the Assembly does not have supervisory authority over negotiation, which is a defect in the trade governance policy.

In this article, the relationship between the executive branch’s and the legislature’s FTA governance is noted, and an analysis will be made on the FTA negotiation between Chile and the USA that is expected to inflict direct damage on Korea’s agricultural sector.

Free Trade Agreements and the Korean National Assembly

Korea-Chile FTA

It was in December 1999 that the first round of negotiations on the Korea-Chile FTA took place, but the National Assembly only responded to that matter a full year later, in December 2000, when the fourth round of negotiations was held in Seoul. Before that, concerned Standing Committee members and assembly members from the districts that cultivate relevant agricultural products were dealing with FTA negotiation at the personal level. At first, the concerned assembly members from these districts presented their opinions to the relevant Standing Committees. Then, as time went on, opinions were submitted at the party level through governing party-government consultations (Yu, 2006). At the same time, as negotiations went on, objections by farmers’ organisations and others were growing fiercer and concerned parties demanded clear expression of opinions by the National Assembly.
At the time, the governing Democratic Party made a strong demand to the administration that it exclude agricultural products such as grapes, apples, pears and plums from the Korea-Chile FTA. This appeal was made at the joint party-government meeting on finance and economics, foreign affairs and trade, and agricultural and fisheries. Democrats stated that their party would oppose the ratification at the National Assembly if their demands were not met. Instead, the ruling party could deliver its opinion on the negotiation process for reference through the governing party-government consultation discussion. In contrast, the National Assembly had considerable limitations in exerting its influence over the negotiation process. This was because there was no mechanism for the National Assembly to participate in the FTA decision-making process, thus limiting its impact on the negotiation process (Yu, 2006).

During the ratification process, the members of the Assembly from the governing and opposition parties from the rural districts, known collectively as “the Farmers’ Party,” played a core role in the reviews conducted in committees. In particular, they obstructed the submission of agenda at the main plenary session. During the 2004 general election, the official position of the Grand National Party was to recommend the agenda for approval, the Uri Party was for approvals, while the Democratic Party allowed a free vote. Assembly members made their position on ratification clear during the campaign, and it was apparent that holding to the party position was not always possible and usually their stand was reflective of their district’s situation and the pressure of various interest groups.

Ratification is a process over which the National Assembly can exert influence. The fact that the ratification of the Korea-Chile FTA took about a year after the two countries concluded the agreement showed that the Assembly played an important role in the ratification process. The objection of the rural Assembly members in the Standing Committees and in the ratification process played an especially large role in drawing support from farmers and fishermen who are directly influenced by this FTA. The Korea-Chile FTA ratification proposal was passed by the Assembly as “the Special Act on the Implementation of FTA.” Its ratification created a special fund of 1.2 trillion won to assist farmers and fisheries that was seen in the subsequent “Act on Special Action to Reduce Debt of Farmers and Fishermen” and “Special Act to Improve the Quality of Life of Farmers and Fishermen,” which were passed.

Despite such achievements, when we take a careful look, we can see that the role of the National Assembly was not as significant as it might appear. The Assembly could prepare no position at either the party or the Assembly level. Rather, the response to the Korea-Chile FTA was made at the individual level of each National Assembly member, and only post-facto handling of the case was made. This shows the limitation of the Assembly’s role. Of course, in the process of the National Assembly Standing Committee’s review, rural Assembly members addressed measures to assist farmers in dealing with the impacts of the FTA.

What played the biggest role in the ratification process, however, was the so-called Farmers’ Party, which was an informal grouping of Assembly members whose constituency was in rural and fisheries areas. Sixty-two members organised the Farmers’ Party as an informal group within the National Assembly through the Korea-Chile FTA ratification process. This group, transcending political parties, exerted influence on the ratification process by physically obstructing the
submission of the ratification agenda during the Korea-Chile FTA ratification process.

Because of the resistance of these individual members and by citizen organisations, the ratification proposal that was to be completed in June 2003 only passed the Foreign Affairs and Trade Committee by the end of December. Its passage at the main plenary of the end of year, however, was blocked by a violent physical clash between the members of the Farmers’ Party and the other members and had to wait until 16 February 2004. During this process, the government also presented draft subsidies acts and the 1.2 trillion won special fund of special Acts mentioned above that targeted farmers and fishermen.

Such compensation policies were possible thanks to the efforts of farmers’ organisations, citizens’ organisations and the “Farmer’s Party” rather than resulting from any role associated with the National Assembly itself (Yu, 2006). These compensation bills were not prepared by the National Assembly as part of a negotiation but were proposed by the government. Therefore, the National Assembly did not contribute to the birth of these compensation bills. Indeed, the fact that the National Assembly had failed to prepare a position on either party- or National Assembly-level, and the congressional response to the Korea-Chile FTA was only made at the level of individual Assembly members, justifies the assessment that the role of the National Assembly was limited.

**Korea-USA FTA**

After the Korea-Chile FTA was ratified, the government, which had experienced considerable political pain during its ratification process, introduced the “Free Trade Agreement Procedure Regulation.” Announced as Presidential Order No. 121 in June 2004, this regulation was to be applied to future FTA negotiations. The regulation ordained an agency to deal with FTAs and regulated their processes of pre-negotiation, negotiation and post-negotiation. The FTA Promotion Committee (hereafter “promotion committee”), the official Korean government FTA promotion organisation, was comprised of the director of trade negotiation headquarters as chairperson and 15 high-ranking officials in related ministries, and the Private Advisory Committee was formed to aggregate opinions through public hearings. Article 21 of the regulation makes the promotion committee chairperson responsible for reporting major negotiation procedures and processes to the National Assembly, to all concerned parties and the public. The chair is also responsible for aggregating opinions from consultations. Article 23 provides that the results of negotiations shall be reported to both the National Assembly and the public when the FTA negotiation is completed.

Despite having such institutional arrangements put in place by the executive branch for the Korea-USA FTA, the role of the National Assembly was not very different from the Korea-Chile FTA. The Korea-USA FTA negotiation started on 3 February 2006, but the National Assembly did not show any signs of movement. In particular, it did not send any representative to the formal negotiations held in Washington, D.C. However, about 50 Assembly members, drawn from both the ruling and opposition parities, came together to form the “National Assembly Group Studying the Korea-US FTA.” The aims of this group were to carry out
investigation activities on major FTA issues and to aggregate public opinion through public hearings and discussions. It demanded the formation of a Special Committee of the National Assembly on the Korea-USA FTA to complete official investigations and maintain oversight of the negotiation process. The Citizens’ Coalition for Economic Justice also held a press conference requesting the National Assembly to strengthen its checks and supervision of the promotion committee. The Assembly agreed to the formation of the Special Committee in June, but the first meeting was held only on 31 July, after the second round of negotiation was over.

The Special Committee consisted of 20 persons, a figure which is less than the usual quorum of Standing Committees, although the number was later increased to 30, with pro-FTA members constituting an overwhelming majority among the Special Committee (Yu, 2008). Because the Committee did not appoint experts to participate, it only had limited expertise. The status of the Committee was ambiguous in that the decisions were made not by the Special Committee but by the Unification, Foreign Affairs, and Trade Committee. Accordingly, the activities of the Special Committee were limited to receiving the report of negotiation results and raising issues on the report as well. A wide gap existed between these activities and roles and the timely checking of the government’s essentially unilateral and unrepresentative negotiation. Many expressed concerns as to whether the National Assembly could properly perform its scrutiny role when the Special Committee received insufficient information. As a result, there is no evidence that the National Assembly Special Committee had any impact on the details or strategies of the negotiation (Yu, 2008).

After the Korea-USA FTA negotiation was completed on 2 April 2007, confrontation between supporters and opponents of the deal moved into the National Assembly before the all-out ratification process in Assembly took place. In particular, with a presidential election looming in December 2007 and a general election soon after (in April 2008), the prospect of ratification was not bright. Former President Moo-hyun Roh called for both the National Assembly and the governing party to become involved, with the goal of achieving ratification within his term. However, he could not elicit unified support even within his ruling party because some party leaders opposed the ratification. More challengingly, 55 participating Assembly members held an anti-FTA workshop at the National Assembly and formed the “Emergency People’s Congress” (hereafter People’s Congress) to block the ratification of the Korea-USA FTA. This group collectively included respected people from many sectors, citizens’ organisations and experts.

The National Assembly also undertook a verification process immediately following the settlement of the Korea-USA FTA negotiations. The Assembly held a series of Special Committee and Standing Committee meetings to receive negotiation reports and to discuss problems in the presence of the promotion committee chairperson and the representatives of negotiation. Within two days of the negotiation settlement, the Unification, Foreign Affairs, and Trade Committee, the Agricultural, Ocean, and Fisheries Committee, the Industrial Resource Committee, and the Culture and Tourism Committee held committee meetings, requesting the submission of materials. However, the information provided was insufficient and the meetings produced no concrete results. Such a phenomenon was at least partially attributable to the fact that there is no system in place through
which the National Assembly can substantively check on the outcomes of FTA negotiations. Furthermore, the authority of the Assembly and its process of checking was still not detailed.

About 20 days after FTA negotiations were completed, a dispute emerged regarding the release of the 500-page draft agreement to the National Assembly. The government decided to allow just one copy on a computer monitor inside the National Assembly. Copying was not permitted and the available version was written in English. Access was also limited to just 20 members of the Korea-USA FTA Special Committee, accompanied by only one aide. The government tried to rationalise such restrictive measures, saying that the FTA was the community property of Korea and the USA, and that the disclosure of the details was not proper protocol (*Kyunghyang Daily*, 25 April 2007).

In the US case, however, there was considerable legislation that allowed Congress and others to view the agreement. In fact, the legislation makes it essential to disclose the agreement for this purpose of Congressional scrutiny. But, in Korea’s case, the difference is that no disclosure restriction exists at all. In order to resolve such a problem, the Trade Procedure Act was submitted to the National Assembly, but the deliberation was belated so that the debate was not opened by the end of the term.

After the presidential election in 2007 and the general election in 2008, the 18th National Assembly was opened, but still there had not been adequate discussion of the Korea-USA FTA. Beginning in April 2008, the politics of the streets took over. This included the candlelight demonstrations against the import of US beef that continued for more than 100 days. President Myung-bak Lee thought that a decision to allow American beef imports would overcome an important obstacle to US Congressional support for the broader Korea-USA FTA. President Lee’s decision, without any prior public debate shocked people who had seen US beef banned in 2003 because of Mad Cow disease, and pushed them to the streets. As many pundits point out, the essence of protests is not just about beef and trade policies (*Korea Times ’09*, June 2008). In this case, it was more about a monopoly over the decision-making process and arbitrary decision-making combined with a lack of communication and transparency during the FTA negotiation and ratification processes.

The National Assembly, however, failed to respond to the conflicts over the FTA. Riding high on the protests, opposition parties linked the beef issues to the government’s move to get the FTA approved by lawmakers. The members of the opposition Democratic Party were trying to stop the trade agreement with the USA from advancing to the floor of the National Assembly for a final vote.

### An Analysis of the Korean Legislature’s Responses

*Constitutional Right to Consent to the Execution and Ratification of Agreements*

In order to analyse the Korean National Assembly’s response to the FTA negotiations, it is first necessary to review the problem of interpreting the National Assembly’s Constitutional authority as it relates to trade. There is contention on the interpretation of the Constitution over whether the National Assembly has the right to consent to the execution and ratification of a treaty, or whether it has the right to consent only to the ratification of a treaty. And even when the interpretation is the
latter, there is contention that arises over the extent of intervention that the right to consent to the ratification of a treaty involves.

The position of the government is that the National Assembly has the right only to ratify a treaty after negotiations have been completed. This interpretation excludes the National Assembly from the pre-negotiation and negotiation processes.

Article 73 of the Constitution grants the right to execute and ratify a treaty to the President. However, this executive privilege should not be the basis for denying democratic control by the National Assembly regarding the general procedure of executing a treaty. Indeed, the tendency of the decisions at the transnational level can regulate at the national level. A treaty such as an FTA has an immediate effect as if it is domestic law. Therefore, it is consistent with the principle of division of power under the Constitution that there should be proper checks and balances exercised by the National Assembly. This limits the President’s exercise of diplomacy rights but potentially expands transparency and oversight.

Constitutional scholars also debate the scope and details of the National Assembly’s right to consent to a treaty. One approach (Kim, 2007) understands “execution and ratification” to be connected rather than separated. It also interprets the point in time of the National Assembly’s consent to be when the treaty text is confirmed. That is, when it has arrived at the stage, before that of expressing written consent to generate domestic effect. In other words, it occurs “immediately before the execution and ratification by the President” (Kim, 2007). Another approach criticises this interpretation, asserting that it is skewed too much toward the President in its distribution of power in relation to the formation of a treaty. In the Presidential system, dualistic legitimacy is guaranteed, so the content and scope of the “right of the National Assembly to consent” should be viewed from the perspective of a balanced distribution of power between the two democratic legitimacies of the President and the National Assembly. This position understands the point in time of “execution and ratification” not as “immediately before” the execution or ratification of a treaty, but comprehensively as “the entire process” before the execution or ratification of a treaty (Lim, 2007).

According to this latter perspective, democratic control over a treaty through the exercise of the National Assembly’s right to consent may be exercised not only at the point immediately before the President’s execution and ratification, but throughout the entire process of entering into a treaty. Such occasions include at the treaty’s starting negotiations, during the negotiation process, and before the President’s ratification. The consent of the National Assembly has meaning as the democratic control that prevents the President from making an arbitrary decision and justifies ratification by the President for a treaty’s effect as domestic law and further develops the state’s capacity in the transnational governance (Lim, 2007; Oh, 2006).

Such an interpretation is supported by the chronology of Constitutional revisions. The Constitutional text provides that the National Assembly has the right to consent to “the execution and ratification of a treaty.” The first Constitution granted the right to execute and ratify a treaty to the President, while it gave the right to consent to the ratification of a treaty to the National Assembly. However, the fifth revision granted the “right to execute and ratify a treaty” to the President and “the right to consent to the execution and ratification of a treaty” to the National Assembly (Lim, 2007). This provision remains in effect.
If such a clear mandate is in place, then why is the Assembly’s role becoming an issue? The reason should be found in the fact that the nature of a treaty that requires the consent of the National Assembly has fundamentally changed. Treaties that acquired the effect of a domestic law with the consent of the National Assembly mainly dealt with rights and duties or relations among states. Many of the treaties that dealt with economic issues among states had such comprehensive and substantial impact on the lives of the majority of people as the Korea-USA FTA did. For most past treaties, the points of contention concentrated on just one or two issues, and the National Assembly could exercise its Constitutional rights by voting for or against the treaty after its execution. However, FTAs are much more far-reaching, with multiple issues, multiple contentions and broad national impacts, so arguing for the Constitutional right to consent being exercised only with the post-facto consent is far more problematic. One has to consider not only simple economic issues but diplomacy, security and social issues as well. This is why Constitutional debates have arisen on FTAs and the Assembly’s role.

Contention and the Trade Procedure Bill

As explained above, information disclosure about FTA negotiation has not been institutionalised. And while it was difficult to develop national consensus through the participation of experts and interest groups, even National Assembly-prepared democratic control over the negotiation process was lacking. In this situation, the Trade Procedure Bill, which was signed by Assemblyman Young-ghil Kwon and some 40 other assembly members from both the government and the opposition parties, was proposed at the Assembly on February 2006. It was based on the view that there was a need for an institutional mechanism to resolve domestic conflicts over trade agreements. It was also contended that such a mechanism was necessary to strengthen the state’s capacity to engage in effective trade negotiations. This bill was followed with proposals by several Assembly members over two sessions, including Sang-kyong Lee, Young-ghil Song and Jong-ryul Kim. Subsequently, three other bills were proposed by the end of 2008. We will review the bills in more detail to see how measures to improve the system were sought so that the trade agreement could be negotiated, reviewed and ratified within a democratic system that included an active role for the National Assembly and a more accurate reflection of public opinion. A major consideration was that the National Assembly’s functions of supervision and co-ordination of the government might be strengthened for trade agreement policies and negotiations and perhaps more broadly.

At the same time, the purpose of legislating was to prepare a relevant institution and system for thorough preparation for negotiation. This aim was to be accomplished through the evaluation of the impact that would result from entering into the agreement. As such socio-economic damage from the agreement was minimised, and the trade agreement was forced to actually contribute to national economic development. These four trade procedure act bills are the same in terms of their goals and their intention to promote both transparency and state capacity for trade negotiation through securing the actual right of the National Assembly to consent. However, differences exist in the subject and scope of their agreement, information disclosure and trade governance.
Definition of a Trade Agreement

Assemblyman Kwon’s proposal defines a trade agreement as “all the provisions related to economics” and requires all those agreements be subject to National Assembly scrutiny and consent. Lee and Kim’s proposals limited the definition to a trade agreement that is subject to Assembly consent under the Constitution. In fact, Kwon’s proposal could have meant violating the Constitution under the current legal system. The proposals by Lee, Kim and Song resolved this violation issue, but the consent of the Assembly was still required for ratification. Hence a different problem arises: the scope of a trade agreement that is subject to procedural law remained unclear.

The Governance of Trade

One significant issue involved the co-ordination of interests and issues between the government and the private sector. The establishment of the “Private Advisory Committee” under the four proposals is considered as remarkable progress in terms of governance (Oh, 2006; Unification, Foreign Affairs, and Trade Committee, 2008). The existing Korean trade governance mechanisms do not have a sturdy window to reflect the private sector’s interests. However, different opinions exist as to where the Committee should be located. The Kwon proposal recommends that the Committee should be established under the Prime Minister’s Office, the Lee and Kim proposals suggest the Committee should fall under the Trade Commission, and the Song proposal contends it should be with the Ministry of Foreign Affairs and Trade. The issue of where the Committee should be set up is a matter that should be decided in accordance with the legislative policy.

In terms of co-ordination between the agencies of the executive branch, the existing mechanism involves the Foreign Economic Ministers’ Meeting. Since this meeting is established under the Ministry of Planning and Finance, however, effectively co-ordinating the often divergent interests of the Ministries of Planning and Finance, Foreign Affairs and Trade, and Agriculture, Fisheries, and Food is limited. In order to overcome these limitations, the three proposals, excluding Song’s, recommended that the Trade Commission be established under the prime minister. This would enable the Trade Commission to undertake careful deliberation and exercise its decision rights with regards to the Commercial Treaty Policy. By establishing the trade governance structure with the prime minister at its core, it is expected that the different interest groups will come to consensus, resulting in better co-ordination and better negotiation outcomes. However, if the Trade Commission is established under the Executive Branch, it will give a single entity sole access to trade information, deliberating power and decision-making power. With these powers vested in a single entity, some are concerned that it may ultimately become another tyrant (Unification, Foreign Affairs, and Trade Committee 2008).

It is also important to review the relationship between the executive branch and the legislature. As noted above, the National Assembly’s role has been a minor one in Korean trade governance. The four trade procedure acts provide for a strengthening of that role through procedures before, during and after trade
negotiation. However, there are differences in each proposal. Variations exist in the National Assembly’s access to trade negotiation information. Although each insists that the details of trade negotiations should be disclosed to the Assembly in their entirety, Song’s proposal states that Article 127 of the Criminal Code making it a crime for a civil servant to disclose confidential information shall be applied to maintain security.

With regard to the composition of the Private Advisory Committee, Song’s proposal does not explicitly state the National Assembly’s right to nominate the Committee members, while the other proposals insist that over half of the Private Advisory Committee members be nominated by the National Assembly. However, it should be considered whether it is desirable for the National Assembly to exercise its power to nominate.

Kwon, Lee and Kim’s proposals also provide that the executive branch must report basic plans, the plan for implementation, and trade information of all major trading nations to either the National Assembly or the standing committee in charge of FTA issues. Song’s proposal limits such a duty to the reporting by the executive branch on specific agreements. The reasoning behind preliminary report procedure is to establish a strategic plan prior to the negotiation process and for this plan to be used during negotiations. Additionally, by making the executive branch report the preliminary plans to the National Assembly, it is expected to enhance the Assembly’s control over the issue and, at the same time, increase the government’s accountability (Unification, Foreign Affairs, and Trade Committee 2008). This should enhance transparency and be a more democratic process (Oh, 2006). The above-mentioned aspects are some of the positive results that can be expected from the preliminary report process.

The Ministry of Foreign Affairs and Trade voiced its concerns about reporting obligations in the preliminary planning stage and reporting obligation during the negotiation process to the National Assembly (Unification, Foreign Affairs, and Trade Committee 2008). Their concerns were based on the fact that these obligations are intrinsically related to the policy implementation power held by the Executive Branch. They are concerned that these obligations may impinge on the power of the President to enter into a Treaty. For this reason, they pointed out that making the reporting procedure a mandatory obligation should be carefully considered. On the other hand, it was indicated that the unsystematic approach to the long-term economic and trade policies have resulted in administrative shortcomings, which resulted in a lack of prioritisation and systematic approach, especially on trade issues. At the same time, raising doubt about the proposal, the government officials contended that even without legislation making it a mandatory obligation, in many cases administrative departments have developed strategic plans and policies prior to embarking on negotiations and these plans and policies were reported to the relevant standing committee within the National Assembly. If properly done, reporting to the Assembly has many advantages and the government will be able to deal more effectively with the rapidly changing trade environment. At the same time, the government will be able to induce continuous popular participation in the decision-making process. More importantly, it may result in social consensus on trade agreements. For these reasons, a reporting process to the National Assembly should be implemented.
Table 1. Comparison of major contents of the Trade Procedure Act proposals

<table>
<thead>
<tr>
<th>Proposal by</th>
<th>Young-ghil Kwon</th>
<th>Sang-kyong Lee</th>
<th>Jong-ryul Kim</th>
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<td>17th National Assembly</td>
<td>18th National Assembly</td>
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<td>Definition of trade agreement</td>
<td>All trade agreements</td>
<td>Trade agreements that require consent by the National Assembly according to the provision of Article 60, Paragraph 1 of the Constitution</td>
<td>n/a</td>
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<tr>
<td>Goals and basic principles of trade agreement policy</td>
<td>Guarantee the power of the National Assembly to deliver basic guidelines to the government in the case that the government implements a trade treaty</td>
<td>n/a</td>
<td></td>
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<tr>
<td>Disclosure of information</td>
<td>In principle, disclose all the information, and report to the National Assembly</td>
<td>Disclose information according to the current laws and the National Assembly will review the government report</td>
<td>Apply Article 29 of the Criminal Code when disclosing/revealing the circulation material of the National Assembly</td>
<td></td>
</tr>
<tr>
<td>Confidentiality provision</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
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</tr>
<tr>
<td>Form and operation of Trade Commission</td>
<td>Establish a Trade Commission under the Prime Minister’s Office</td>
<td>n/a</td>
<td>Under the Ministry of Foreign Affairs and Trade</td>
<td></td>
</tr>
<tr>
<td>Establish sub-committees in issue areas</td>
<td>Establish sub-committees in issue areas</td>
<td>National Assembly nominating rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Form and operation of Private Advisory Committee</td>
<td>Under the Prime Minister’s Office</td>
<td>Under the Trade Commission</td>
<td>National Assembly does not have commissioning rights</td>
<td></td>
</tr>
<tr>
<td>National Assembly nominating rights</td>
<td>National Assembly nominating rights</td>
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<tr>
<td>The government cannot deny the demand of the Advisory Committee to submit materials</td>
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</tbody>
</table>

(continued)
<table>
<thead>
<tr>
<th>Proposal by</th>
<th>Young-ghil Kwon 17th National Assembly</th>
<th>Sang-kyong Lee 18th National Assembly</th>
<th>Jong-ryul Kim 17th National Assembly</th>
<th>Young-ghil Song 17th National Assembly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedure before starting negotiations</td>
<td>Formulate a basic plan every three years and a yearly plan to implement and report to the National Assembly Report annually to the National Assembly on the trade status of major trading nations and their trade policies toward Korea Explicitly states the right of the National Assembly to consent regarding the proceedings of a specific agreement Grants the National Assembly the right to recommend a part of the trade negotiation team Prepare industrial impact evaluation domestic policies and treaty phrases</td>
<td>Formulate the basic plan and an action plan as well Report annually to the committee in charge the trade status of major trading nations and their trade policy toward our country</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Negotiation procedure</td>
<td>Regular reporting to the National Assembly and disclosure of information to the general public</td>
<td>Report major proceedings to the committee in charge</td>
<td>Report to the Unification, Foreign Affairs, and Trade Committee the major goals and project schedule before proceeding with a specific treaty Review economic feasibility</td>
<td>Report major proceedings to the Special Committee</td>
</tr>
</tbody>
</table>
Table 1. (Continued)

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<thead>
<tr>
<th>Proposal by</th>
<th>Young-ghil Kwon</th>
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<th>Jong-ryul Kim</th>
<th>Young-ghil Song</th>
</tr>
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<tbody>
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<td></td>
<td>17th National Assembly</td>
<td>18th National Assembly</td>
<td>17th National Assembly</td>
<td></td>
</tr>
<tr>
<td>Procedure after negotiation</td>
<td>After provisional signature but before formal execution, request the consent of the National Assembly and demand re-negotiation</td>
<td>Report consistency with the basic plan, etc., industrial impact evaluation, employment impact evaluation</td>
<td>Report consistency with the basic plan, etc., industrial impact evaluation, employment impact evaluation</td>
<td>After formal execution but before ratification, request the consent of the National Assembly</td>
</tr>
<tr>
<td>Every year evaluate trade agreement policies and report to the National Assembly</td>
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</table>

*Source: Unification, Foreign Affairs, and Trade Committee (2008).*
In relation to the National Assembly’s right to consent, Kwon’s proposal provides that such consent should be acquired twice, once before beginning negotiations and again after initialling but before formally signing treaty. The proposals by Lee, Song and Kim accommodate the current Constitutional practice of acquiring the Assembly’s consent after the formal execution but before the ratification according to Article 60 of the Constitution (Table 1).

Disclosure of information

The proposals by Kwon and Lee provide that the non-disclosure of information to the public would be exceptional. As a result, their proposals strengthen the public’s right to information. In the case of submitting material to the National Assembly, an exception is made to the application of Article 4, Paragraph 1 of the ‘Act on the Verification and Testimony at the National Assembly’ requiring submission of all materials to the Assembly whether national secrets or not. However, Song’s proposal provides that the submission of material to the Assembly shall be according to the provisions of the existing laws related to the Assembly such as the National Assembly Act. This proposal also provides for methods of circulating the Special Committee’s confidential material regarding the Korea-USA FTA that was put into operation on June 2006. Moreover, should the circulated material be leaked, Article 127 of the Penal Code applies making it a crime for a civil servant to disclose confidential information. Furthermore, in the case of information officially disclosed to the public, it must be according to the current laws such as the Information Disclosure Act. In addition to the confidential information under the Information Disclosure Act, Song proposed that even the information which might invite obstacles to the negotiation can be kept confidential. The problem herein is that such stipulations rather restrict people’s right to access information. Clearly, the proposals by Kwon and Lee have the merit of satisfying the public’s right to information and of promoting transparency in the negotiation process. None the less, concerns exist about unintended impacts, not least that public disclosure also reveals information to the partner negotiating the FTA or other trade agreement. Meanwhile, Song’s proposal has the problem of further reducing the rights to information and consultation of both the public and the National Assembly, even under the current laws. However, Song’s proposal seems to be inconsistent with the intent of the legislation of the procedure act to guarantee the public’s right to higher levels of access to information and the Assembly’s right to access information than is the case under the current laws.

Conclusion

FTA negotiations generated domestic conflicts between the government and the legislature because there was substantial imbalance and instability with regards to foreign policy between the executive and the legislature. Globalisation and multi-level sovereignty have been the origin of these imbalances. Such a phenomenon is not unique to Korea. However, in the USA and Europe, procedures have been developed that govern trade negotiations and make them more transparent. In theory this at least creates opportunities for trade negotiations to be subject to some
level of democratic control. In this context, the Trade Procedure Acts submitted to the Korea’s National Assembly are expected to contribute to the development of trade governance. More broadly, in an era of globalisation and multi-level sovereignty, the legislature’s role in the trade field will be required in security and international development co-operation fields.

As in most other countries, after the changes that took place during the era of globalisation, the National Assembly has made some limited advances in its foreign policy role. In core foreign policies and foreign economic policies, such as the resuming of US beef import and the Korea-USA FTA, it is inevitable that the role of the Assembly will be expanded. Not only that, but such expansion is an essential change for improving the state’s responsiveness and accountability as a whole. Only the strengthening of the National Assembly’s power and authority to parallel the expansion of the executive branch’s role can properly strengthen both democratic control of foreign policy and state capacity at the international level. As a result, it should become possible to have both a more efficient and a more democratic implementation of foreign policy.

In order to solve the problem of such a democratic deficit, several proposals regarding trade procedure acts were submitted to the legislature. Such laws are all aimed at strengthening the National Assembly’s authority with respect to trade agreements that have been monopolised by the executive. These proposals show that the existing right of the legislature to consent to the ratification of a treaty under the Constitution is insufficient to prevent a democratic deficit.

Based on this discussion, the future directions for the National Assembly’s role in the transnational realm can be summarised as follows. First, the institutional basis of the National Assembly should be strengthened. For democratic control of foreign policies, the existing right to consent to ratification and the right to examine government policies should be redefined. In the process, the method and scope of exercising the right to consent and the scope of binding power should be newly defined. Secondly, the right of the National Assembly to access information should be strengthened. Democratic control cannot be guaranteed through the existing foreign policy process, where the executive branch monopolises information and drafts a bill at the expense of the National Assembly’s role. The right of the Assembly to access information regarding foreign policy should be strengthened from the stage of formulating and implementing a policy. Thirdly, the Assembly’s prior consent procedure to the nomination of key foreign policy-related positions in the executive branch should be adopted. Currently, the Assembly’s approval is not required in order to appoint the director and key representatives of Trade Negotiation Headquarters. These positions are invested with great influence over the nation’s economic policy. For this reason, it is imperative for the prior consent procedure including nomination hearing be adopted in order for the National Assembly to be able to exercise its control right over the executive branch.

Acknowledgement

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References


