

# Regulating for Globalization

Trade, Labor and EU Law Perspectives

## Who's going to have the last laugh in the “no exit” trade conflict between Japan and South Korea?

Masayuki Aoyama (Graduate of UCLA School of Law) · Thursday, January 28th, 2021

On January 8, 2021, a South Korean district court ordered the Japanese government to pay compensation to a group of former “comfort women (???)” also known as victims of sexual slavery by the Imperial Japanese Army before and during World War II. The court denied sovereign immunity to Japan and ruled that the Treaty on Basic Relations between Japan and the Republic of Korea of 1965, which was signed to settle property issues and claims between the two countries, does not settle compensation claims related to the comfort women. Earlier, the South Korean Supreme Court ruled that Japanese companies must compensate Korean wartime laborers who were recruited and assigned under the National Mobilization Law of Japan.

The Japanese government has not wavered from its stance that the 1965 treaty settled all claims between the two countries. These court rulings are not accepted by Japan, which, in retaliation, imposed export controls on South Korea. Following the recent court order, there are calls in Japan for additional economic sanctions, reflecting its public opinion. History has not been put to rest, and now presents a powerful challenge not only for Japan and South Korea, but for the United States as well.

The United States, Japan and South Korea share geopolitical and strategic objectives in tensions with North Korea, Russia, and China. Although there are alliances between the United States and Japan and the United States and South Korea, Japan and South Korea have no alliance for these and other historical reasons. On the one hand, Japan became the most developed of Asian countries, and on the other Koreans point to the old-fashioned hierarchy under the Chinese tributary system based on Confucianism, in which Korea was in a higher position than Japan. Nonetheless, they have in common vulnerability to the modern global shift to conservatism. Japanese and Korean politicians tend to act in line with the recent nationalistic trends, which is reflected in these rigid and seemingly insolvable historical, political, and economic conflicts.

The new export controls by Japan do not impose severe restrictions – South Korea has been removed from the “White Countries” list and three chemical materials are subject to individual permission procedures – but even so serve as a symbol of Japan taking a stand against South Korea, pleasing many Japanese voters. In response, South Korean activists, supported by the country's ruling party, organized a boycott of Japanese products. As a result, Japan reduced its trade surplus with South Korea and South Korea has become less dependent on supply from Japan of some raw materials. Despite the essentially symbolic nature of these actions, they reflect a reality in which both sides know they cannot sever their diplomatic relationships because they face

the common threats of North Korea and China, and neither can risk a loss of support from the United States which is unlikely to tolerate any interference with its Asia-Pacific security strategy.

Now, Japan and South Korea distrust each other even more. Although Japan was once one of the most valuable sources of foreign investment in South Korea, Japan now worries it cannot rely on balanced treatment in the court system. South Korean companies may have to consider liquidating Japanese investments to avoid reputational damage as “Japan-related” companies, for fear that they may be targeted by local activists and politicians with boycotts. South Korea faces a severe national security crisis because Japan has the power to threaten its traditional “processing trade” economy – importing significant amount of raw materials and components from Japan, processing finished products (such as automobiles and smartphones) in local, and exporting them to other countries – the driving force of its national development. Thus, South Korea is seeking alternative sources of indispensable raw materials for its manufacturing, mainly from Taiwan and mainland China.

Many in South Korea see anti-US sentiment on the rise because they perceive a US diplomatic betrayal in the closer US stance with Japan in this conflict. Some fear that this could cause South Korea to seek closer ties to China to achieve geopolitical neutrality and balance against the United States. Stepping back, the trade conflict threatens to harm both countries as well as the United States, and therefore plays into China’s hands. Both Japan and South Korea know that eventually they must compromise, but neither can make the first move. The power of public opinion threatens political stability. Therefore, both countries await look to the new US administration with hope for a resolution. The Biden administration, which already has a full agenda, will have to deftly navigate the sensitive historical forces while addressing this very modern challenge. To achieve regional stability in East Asia the United States will find itself between a rock and a hard place, but it has no choice.

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