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# The Implications of Biden's Intervention in the LG-SK Battery Dispute

U.S. politics meets South Korean economics in an IP case.

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By **Kyle Ferrier**

On April 11 two South Korean companies embroiled in a major case regarding the production of electric vehicle (EV) batteries in the United States reached a settlement at the crucial 11th hour. Less than a day before a U.S. International Trade Commission (USITC) ruling against SK Innovation over stealing trade secrets from LG Chemical was to go into effect, both parties came to a

separate agreement. By paying LG 2 trillion won (\$1.8 billion), split in cash and royalties, SK avoided a 10-year import ban on its batteries, with some limited exceptions.

However, the most crucial player behind the deal was neither LG nor SK, but rather the Biden administration, which carries its own set of potential implications.

While President Joe Biden and U.S. Trade Representative (USTR) Katherine Tai ultimately did not have to overturn the ruling, an option granted by law, the likelihood that the administration would do so without an alternative was ultimately crucial to the settlement. The commission's decision found that SK was clearly in the wrong, having stolen lucrative trade secrets worth much more than settlement amount and going to "extraordinary" lengths to destroy the evidence. The USITC also arrived at a 10-year ban because that is how long they estimated it would have taken SK to develop its own batteries without LG's stolen know-how.

With such a lopsided victory, there would have been little incentive for LG to come down from its high settlement demands without the involvement of the Biden administration, which was certainly pleased by the outcome. On the result, Biden stated that "this settlement agreement is a win for American workers and the American auto industry." Tai also said, "We are in a stronger position to drive innovation and growth of clean energy technology envisioned in the American Jobs Plan while also respecting the rights of technology innovators at the heart of trade and manufacturing policy."

Why did the Biden administration decide to weigh in on the settlement negotiations over the past two months? The independent USITC's ruling posed a challenge to the White House on two fronts. The first is economic development and jobs in a key battleground state. Had the ruling gone into effect, SK claimed the import ban would have jeopardized its \$2.6 billion, nearly complete manufacturing facility in Commerce, Georgia, expected to create 2,600 jobs. A planned second phase bringing the total investment to \$5 billion and 6,000 jobs further raised the stakes of the company's possible departure.

As a result, in the weeks after the decision, Georgian politicians on both sides of the aisle urged Biden to negate the ruling. Biden won Georgia in 2020 by a very narrow margin and the state is expected to again be crucial in 2024. Additionally, U.S. Senator from Georgia Raphael Warnock, a Democrat like Biden, is up for re-election next year, having only just won a close special election in January 2021. To let such an economic opportunity for Georgia possibly slip through his hands when he had the chance to reverse the outcome could have been problematic for Biden's re-election bid as well as Democrats holding on to their slim majority in the U.S. Senate.

The spat between SK and LG also threatened to impact the president's broader policy priorities on climate change and manufacturing. Two major aspects of Biden's "build back better" agenda are mobilizing U.S. manufacturing, particularly in the auto industry, and working toward a clean energy future – both of which are advanced by the SK plant. In addition to creating manufacturing jobs, the plant had been expected to supply batteries to Ford and Volkswagen for EVs intended for the U.S. market. The White House's \$2 trillion infrastructure bill introduced in late March emphasized the importance of EVs in its overall spending plan, including \$174 billion to help develop and encourage the adoption of EVs. Even though the USITC granted temporary import permissions for Ford's new electric F-150 pickup truck for four years and Volkswagen's ID.4 for two years, the automakers expressed concerns that this was not enough time to find an alternative supplier, and SK still questioned whether it would be able to move forward with the venture altogether. Thus, the decision threatened to slow the rollout of Biden's core policy agenda.

Although the Biden administration helped push through a compromise that it deemed to uphold both its policy commitments and intellectual property rights, all parties may not see it that way. Even as LG welcomes the deal publicly, under the surface its leadership is assuredly upset by the fact that it was forced to reach a settlement on lesser terms although it was found to be obviously wronged. While there is not much LG can do about it at this point, the Biden administration's willingness to tip the scales in this

instance does raise some moral hazard questions. If the White House is willing to look the other way on possible intellectual property theft when doing so advances its own policy priorities, this could encourage greater corporate espionage in key industries such as green and Fourth Industrial Revolution technologies like 5G and artificial intelligence.

Outside of these legal concerns, the USTR's involvement in this case arguably constitutes the administration's most significant trade policy action so far, which could potentially be revealing of what is to come over the next four years. Biden has repeatedly stated that fixing the domestic economy will take priority over international economic policy and as such has not taken many major steps on trade yet other than the announcement of his agenda and ordering a supply chain review. That the administration was clearly ready to step in so early into its tenure could suggest a greater willingness to intervene in trade disputes in support of its own goals, which previous administrations have generally not done. The only time a president has reversed a USITC ruling was in August 2013, when then-President Barack Obama overturned a case that would have issued an import ban on older Apple devices that were found to have infringed on Samsung patents. More broadly, Biden's intervention might also signify interest in a much more active U.S. industrial policy, though only time will tell.

However, perhaps the most revealing outcome of this case is how important foreign companies, and those from South Korea in particular, are to implementing U.S. innovation and climate policy. SK may have been in the wrong according to the USITC, but it is now seen as an important player in helping to reduce U.S. reduce greenhouse gas emissions and creating new jobs along the way. As the Biden administration looks to continue to push for advancements in areas where South Korean companies have a competitive advantage, especially in semiconductors, there may be more opportunities for these businesses in the U.S. as well as greater recognition of their importance, regardless of any negative attention along the way.

## The Author

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**Kyle Ferrier** is a fellow and director of academic affairs at the Korea Economic Institute of America (KEI).