



**United States Council for
International Business**

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International Chamber of Commerce (ICC)
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ATA Carnet System

March 24, 2006

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the United States Trade Representative
600 Seventeenth Street, N.W.
Washington, D.C. 20508
Transmitted Electronically

Dear Ms. Blue:

This is in response to the Federal Register Notice of February 9, 2006, requesting comments on the proposed Free Trade Agreement with the Republic of Korea. USCIB strongly supports negotiation of an FTA with our seventh largest trading partner. We view this as an extremely important opportunity to expand U.S. exports and to improve conditions for U.S. investors in Korea. We are confident that the existing barriers to the free flow of goods and services between the two countries can be overcome in a comprehensive and commercially significant agreement.

We recommend that the specific issues and objectives outlined in the attached submission be included in the negotiation.

We appreciate this opportunity to provide business views on the FTA and stand ready to provide elaboration on any of these points.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter M. Robinson", is placed over a light blue rectangular background.

Peter M. Robinson
President, USCIB



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USCIB Comments on the Proposed Free Trade Agreement with the Republic of Korea, in response to the Federal Register Notice of Feb.9 March 24, 2006

USCIB strongly supports negotiation of an FTA with the United States' seventh largest trading partner. We view this as an extremely important opportunity to expand U.S. exports and to improve conditions for U.S. investors in Korea. We are confident that the existing barriers to the free flow of goods and services between the two countries can be overcome in a comprehensive and commercially significant agreement. We recommend that the specific issues and objectives outlined below be included in the negotiation.

Agricultural Trade

The U.S. should seek the complete elimination of all tariffs and other barriers that restrict Korean imports of U.S. agricultural products. Tariffs and other trade impediments should be eliminated as rapidly as possible, with no products excluded from the negotiation.

In particular, we request duty free treatment for key commodities and processed food products in the shortest possible time period. The longest tariff phase out should be twelve years. Tariff cuts should be linear with back loading of tariff reductions kept to an absolute minimum.

Korea's average applied tariffs on agricultural goods are four times as high as those of the U.S. (according to the WTO).

Non-Agricultural Trade

USCIB believes that the U.S. should seek elimination of all non-agricultural tariffs, including on consumer and industrial products, in this bilateral trade agreement as it did in the U.S.-Australia FTA.

Korea's applied tariff rates on average remain almost twice as high as U.S. average tariff rates on non-agricultural goods (according to the WTO). For example, Korea maintains an 8% automotive tariff on passenger cars. This is too high for a country that is a major exporter of passenger cars and has a domestic market where imports account for only 2.7%. In contrast, the passenger car tariff rate in the U.S. is 2.5% (see more on the auto

sector below under non-tariff barriers). Also, for certain priority consumer products, the average tariff is 8 percent.

Korea was not a party to the Uruguay Round “zero-for-zero” tariff elimination initiative for medical devices, and maintains import tariffs on a range of medical technology products, including some top U.S. export categories.

Korea’s tariffs and import duties for the soft drink industry are prohibitive, for example, 54 percent on orange juice and 45% on apple juice. That industry is most interested in securing duty free status for a number of tariff codes.

Non-Tariff Barriers

- The FTA should include commitments on regulatory transparency that will lead to transparent and predictable regulatory and rulemaking procedures. As a general matter, Korea’s opaque regulatory regime is one of the largest barriers to doing business in that country.
- Overly burdensome standards and conformity assessment procedures need to be addressed. USCIB recommends agreement on the “one standard-one test, supplier’s declaration of conformity approach, which includes adopting technical regulations based on recognized international standards and one-time testing of products by the supplier or by a third party and with the acceptance of the supplier’s Declaration of Conformity as a valid alternative to third-party certification.
- Burdensome and non-transparent labeling requirements need to be addressed.

Agriculture and Food NTBs

- Negotiators should work to allow for mutual recognition of products designated as organic, and work toward eliminating confusion surrounding the necessary documentation required for shipments of processed organic foods.
- There have been significant problems reported in exporting processed products because of Korea’s restrictive approach towards food additives and flavorings. Companies report problems with excessive documentation surrounding food additives and flavoring.
- USCIB requests that USTR encourage Korea to adopt a more open and transparent pre-import registration scheme for products and ingredients.
- The Korean pre-registration regime for food products and ingredients often requires submission of proprietary business information in order to gain permission to import. This registration and public disclosure threatens intellectual property rights at the level currently required. Such practice is the exception, not the norm, in global trade. Such pre-registration requirements should be eliminated.
- The Korean Government should accept the “Food and Extract Manufacturers Association Generally Recognized as Safe” (or FEMA-GRAS) list of approved

ingredients, which would accelerated and simplify trade in the food product sector, for example, for the trade of soft drink products.

Auto sector NTBs

The U.S. Korean auto MOUs to address NTBs have not succeeded, in part, due to the inherently flexible nature of NTBs. In addition to addressing existing NTBs, the FTA should include a new supplemental and results oriented approach to ensure that the Korean market is in fact open to U.S. vehicle imports before U.S. auto tariffs are removed. The barriers that restrict the importation and sale of motor vehicles in Korea, in addition to the 8% tariff on passenger cars, mentioned above, include:

- **Auto Tariffs/Tax Structure.** A U.S.- Korea FTA should include a commitment for a comprehensive reform of Korea's auto tariff/tax structure, including elimination of auto taxes based on engine size. Korea continues to maintain an antiquated, discriminatory, complex and distorting auto tax structure. The tax structure is especially burdensome because the taxes are applied in a cascading fashion on top of the 8% duty. The tariff and tax burden combined increases the cost of an imported vehicle by up to 70% (56% for domestic vehicles). This puts imports at a 14-percentage point price disadvantage. Korean auto taxes are among the highest among OECD members, and account for 14 % of the Korean national tax revenues.
- **Auto Standards/Certification.** An FTA with Korea should include Korean acceptance of vehicles that meet the U.S. safety and emissions regulations as meeting domestic standards. This is already the case for the majority of Korean auto safety regulations and that acceptance should be carried forward to cover all current and future automotive technical requirements.
- **Anti-Import Bias.** The FTA with Korea should contain additional requirements by the Korean government to address direct and indirect anti-import bias in Korea. Since foreign automakers were allowed to enter the Korean auto market, both Korean government and industry officials have periodically employed public relations campaigns appealing to national pride to slow-down or stop the sale of foreign automobiles. This strategy has been highly successful and has convinced many potential consumers that buying a foreign car is unpatriotic and indulgent, while inviting government and/or public retribution.

The negotiations on a U.S.-Korean FTA represent an important opportunity for the U.S. automotive industry to achieve genuine import market access in Korea for U.S.-built motor vehicles. Korea is a major global automotive manufacturer and exporter. While there has been a significant improvement in the investment climate for foreign auto companies investing in Korea, sales of imported vehicles from all sources totaled only 30,901 vehicles in a 1.1million vehicle market (2.7 %). This is the lowest import participation level of any major automotive market; Korea ranks 30th among the 30 OECD members in auto import penetration.

Services

The U.S.-Korea FTA should adopt a negative list approach—that all sectors are open unless a specific reservation is taken.

Banking

We are encouraged by the February 19, 2006 proposal by the Ministry of Finance and Economy (MOFE) for a sweeping series of financial regulatory reforms but significant barriers remain:

- Lack of Regulatory Transparency. Korean regulators at time impose new regulatory requirements that are at odds with international practice.
- Capital Requirements. Foreign Banks are not allowed to use their parent's capital to meet prudential requirements, even if their home country regulation and supervision has implemented Basel or equivalent standards.
- Restrictions on refinancing and operations in local currency.
- Barriers between business lines.
- Complex Requirements for Approval and Documentation
- Ownership Limitations
- Prior individual consent for cross-border data flows.

Asset Management and Securities

- Restrictions on foreign participation
- Excessive Capital requirements

Insurance

The U.S. and Korea reached a bilateral insurance agreement in 1986. While this agreement technically opened the market for U.S. companies, there has been only a modest rise in the market share because of impediments to doing business in Korea. The U.S. should seek to have this FTA increase the transparency and competitive regulatory conditions in Korea to include:

- proper separation of supervisory responsibility between government and voluntary industry groups;
- a common standardized notice and comment period of a minimum of 30 days, provisions for publication of a reasoned response, a formal appeals process consistent with global best practices; providing national treatment to foreign enterprises on the ability to have exchanges of information with the Government of Korea;
- amelioration of the dispute resolution adjudication, requiring full disclosures from complainants, timely and simultaneous service of every process on all parties, and mediation by trained arbitrators, and invalid and abandoned complaints should be taken into account when used to rank insurers;
- implement a negative list system whereby the regulations specify activities that are prohibited or excluded and permit all unspecified activities;
- allow insurers to design and price policies based on the market, without the requirement to have the Financial Supervisory Service (FSS) through the Korea Insurance Development Institute, approving all risk rates and deeming whether the rate is fair;
- ensure the rights of individuals and/or companies to contract at will to create private principal/agent relationships;
- have the Government of Korea codify into law the initiative announced in its 2006 deregulation agenda to include the exemption of foreign currency denominated products from the limitation on foreign currency reserves;

- delay implementation of Phase II of the bank assurance regulations so that bank assurance sales may be expanded to include risk products;
- eliminate the requirement for foreign insurance branches to locally invest a certain portion of their assets;
- grant full market access to foreign occupational pension scheme providers and include the principle of national treatment. Regulations should place no limitation on investment of pension scheme assets overseas; and
- ensure that Korea Post and other quasi-financial institutions are subject to the same rules and regulations, including capital adequacy requirements, as private sector firms; and place Korea Post under the supervision of Korea's competent financial supervisory agency in order to ensure a level playing field consistent with Korea's international commitments.

Telecommunications and E-Commerce

USCIB members expect the same forward thinking trade provisions that have thus far been included in U.S. bilateral trade agreements for the Telecommunications sector and E-Commerce.

In addition, the U.S. should ask the Korean government to remove Foreign Direct Investment (FDI) restrictions applicable to facilities-based telecommunication service providers, cable and Direct to Home services, currently set at 49%, 49% and 33%, respectively. Elimination of the FDI limitation will stimulate overseas investment in Korea, help drive domestic growth in the telecommunications and key related sectors, and further the development of the information society. Other Asian economies, including Singapore, Hong Kong, and Japan, have removed all foreign investment restrictions in these services sectors.

The U.S. should seek FTA provisions that will ensure that U.S. telecommunications service providers have full rights to access undersea cables without unreasonable restrictions imposed by the terminal party. This will enable U.S. service providers to obtain international bandwidth from Korean facilities-based service providers without the current substantial mark-ups and will allow U.S. operators to fully utilize any wholly-owned capacity in undersea cable systems.

The U.S. should seek a commitment that the Korean Government will establish a regulatory body that is fully independent from the Ministry of Information and Communications (MIC). This regulator should have authority to issue impartial and binding decisions and regulations on issues affecting the telecommunications sector, such as market entry and pricing that are independent of the MIC's policy.

Express Delivery Services (EDS)

- Express delivery services should be explicitly defined in the agreement as follows: "Express delivery services include the expedited collection, transport and delivery of documents, printed matter, parcels and/or other goods, while tracking the location of and maintaining control over such items throughout the supply of services."
- The Parties to the agreement should maintain at least the level of open market access for express delivery services existing on the date the agreement is signed.

- Recognizing that government-owned and –controlled entities may enjoy benefits and exemptions that can affect competition with private operators, any regulations for agreements affecting EDS should provide for market conditions that allow for competition on a level playing field.
- The express delivery industry is crucial to fast-cycle logistics, e-commerce and rapid global transactions and, therefore, expedited customs clearance is crucial to the EDS industry. We seek the following customs provisions in an FTA agreement (see additional customs issues in the Trade Facilitation heading below):
 - Increase the *de minimus* level from U.S. \$100 to U.S.\$200;
 - Provide customs services 24 hours per day, 365 days per year, including quarantine inspection services for wildlife (fresh fish, lobster, etc.);
 - Enhance pre-clearance capabilities at Korean airports by allowing for the submission of only manifest data prior to flight arrival and allowing 30 days for import declaration and duty/tax payment (i.e., separating fiscal and physical clearance);
 - Develop and implement procedures for 100 percent paperless clearance;
 - No physical inspection of low-value export shipments by customs officer provided that 100 % of low-value cargo is subject to x-ray inspection (as is currently the case in Korea);
 - Bring customs requirements for aircraft parts in line with international standards and practice, which allow for reporting after parts are in use; and
 - Require the country of origin be stipulated on the commercial invoices for the shipments. However, the original Certificate of Origin should not need to be produced at time of importation. Instead, accept an imaged copy of the Certificate of Origin and check the original on a random basis.

Finally, because EDS adds value at so many points along the supply chain of global trade, a broad spectrum of issues affect the industry, including laws and regulations in the areas of intermodal transportation, distribution, warehousing, customs, postal, telecommunications, logistics, brokerage, insurance, and freight forwarding. For this reason, barriers to international trade in the industry can involve trade restrictions and trade distorting measures in any of these pertinent service sectors. Therefore, cross-sectoral liberalization of services through a negative approach is critical.

Broadcasting

- KBC restricts foreign channels from inserting local advertisements into the retransmission of their programming due to a strict interpretation of the Retransmission Decree, which states that the original broadcast programming cannot be altered. There is no rational basis for this restriction because simply replacing the original ads that target Korean viewers would not affect the actual programming. This restriction should be eliminated.
- The U.S. should seek to eliminate KBC’s restrictions against language dubbing of Korean imported television content. As it stands, the only offshore companies allowed to provide dubbed feeds in Korea are those that set up local joint ventures in which they are minority partners at best. Moreover, specialized “news” channels are not even afforded the right to a joint venture. Unpublished internal KBC guidelines prohibit foreign news channels from gaining such approval.

- The U.S. should seek to remove KBC's foreign investment restrictions that limit ownership of Korea's broadcasting operations to less than half. In addition to limited ownership of cable television-related system operators, network operators, non-news channel program providers ("PPs") and satellite broadcasters, foreign companies are prohibited from investing at all in PPs providing comprehensive news channels.
- Currently KBC's total foreign programming may not exceed 20 % of total airtime on terrestrial stations with additional restrictions set by genre. Korea also has a local content quota for local program providers. The quotas are restrictive, difficult to apply, and almost impossible to meet. We would like to see KBC's guidelines regarding foreign content quotas relaxed and simplified or removed altogether.

Subsidies to Paper Manufacturers

It is essential for the FTA to decisively address Korea's subsidization of its coated free sheet paper producers. The Korean government has been providing low-interest rate facility loans, other types of government-provided policy loans and government bailouts of bankrupt companies. The result of this industrial policy has been a significant increase in Korean production capacity of coated free sheet paper primarily directed at the export market, particularly the U.S.

The pattern of subsidization in the Korean coated paper sector is similar to that for semiconductors, on which the U.S. won an important WTO Appellate Body decision last June. It is critical that a U.S.-Korea FTA create a level playing field for manufacturers in both countries, so any agreement must ensure that the Korean government withdraws direct and indirect lending and other forms of financial assistance to its domestic industries and allows market mechanisms to determine the level of production and exports. Additionally, it will be important for a U.S.-Korean FTA to establish an effective monitoring mechanism to ensure the end of these subsidy practices.

Medical Technology

Korea's current reimbursement policies create incentives to re-use medical devices designated for a single use with attendant risks of cross contamination and degradation of product quality. Korea also maintains inappropriate requirements to re-register products following a change in manufacturing location.

Trade Facilitation

Some members report difficulties with Customs clearance, e.g., processed food products, with some goods waiting as much as two weeks at ports. For products with a limited shelf life such delays have the effect of blocking trade.

- Measurement of goods release time should be continually applied by the Korean Customs Service (KCS) as a tool to improve efficiency and achieve further reductions in release times.
- Valuation. Members report that the KCS often rejects transaction value in favor of the deducted value methodology to determine value. It often applies an unverifiable "representative industry average" when determining the applicable deductive value rather than the more common calculation of profit and general

- expenses of the importing company. In addition, the appeal process for the deductive value approach is often skewed against importing companies.
- The arbitrary classification of goods for tariff assessment needs to be addressed. For example, the KCS is unable to distinguish between imported ingredients and imported products. Where companies import ingredient components for production of a finished product in Korea, the KCS is repeatedly assessing duties as if the imports constituted a finished product, instead of ingredient components.
 - The requirements for local trade associations to certify import documentation should be eliminated.
 - Rules of origin should be based to the maximum extent possible on substantial transformation principles.

Investment

- The U.S. should seek to have limitations on FDI removed, including existing limitations of foreign capital to 50% or less in specified sectors. Korean limitations on U.S. investment in Korea should be no worse than U.S. limitations on FDI.
- Insure that the standards of the model bilateral investment treaty are adhered to. In particular, we note that in recent agreements there has been some slippage on the transfers provision permitting the host country to delay the outward flow of capital. We believe that U.S. negotiators should return to the provisions of the model BIT rather than continuing exceptions that impede the outward (or inward) transfer of capital.
- Moving beyond traditional elements of the model BIT, we note that the economic landscape in Korea, and the ability of foreign firms to compete with Korean firms is significantly impacted by the influence of the *chaebol* (see the Competition heading below). The IMF has commented extensively on this influence in its 2004 Article IV Report. Given that a free trade agreement signifies a “special relationship” and an integration of two economies, we urge the USG and Korea to agree on established goals to be undertaken by the government of Korea to rationalize Korea’s bankruptcy system, to reduce the gap between ownership and control, to adopt a “comply or explain” system for its Corporate Governance Code, and to introduce and implement measures to improve the accuracy and timeliness of information to the market.

Intellectual Property Protection

- High levels of counterfeiting and copyright piracy persist, due in part to non-deterrent penalties and lack of sufficient enforcement.
- Burdens on market access related to the protection of intellectual property rights need to be addressed, e.g., the pharmaceutical industry reimbursement guidelines that hinder rights holders.
- Korea fails to comply with the WIPO Internet Treaties’ standards regarding technical protection measures for copyrighted materials and application of reproduction rights to temporary copies.
- An effective criminal prohibition and legal remedy against the widespread practice of camcording motion pictures in theaters for widespread distribution should be put in place.

- Korean customs authorities require very extensive product descriptions on imported ingredients for beverage production, which force companies to reveal sensitive intellectual property relating to ingredient components. This intrusive practices has led some companies to change their business practices to protect their intellectual property.
- Korea should extend the current copyright protection from the *minimum* standard of 50 years to 95 years for all copyright works, including films and sound recordings. Korea should also fulfill its obligations under the Berne Convention for the Protection of Literary and Artistic Works and the TRIPS Agreement to provide a full term of protection to existing works and other subject matter whose copyright protections has expired in Korea but that remain protected in their country of origin.
- In order to ensure uniform rules and maximum protection for trademarks, intellectual property protections with respect to geographical indications should protect trademarked goods by codifying the principle of “first in time, first in right”.

Competition

While acknowledging the good relationship enjoyed by U.S. and Korean competition authorities and welcoming recent key measures taken by Korean authorities to strengthen their competition regime, USCIB notes the important and beneficial role that international comity considerations can play in reducing uncertainty and transactions costs for business by lessening the likelihood of divergent outcomes in antitrust investigations conducted in multiple jurisdictions.

USCIB suggests, therefore, that the FTA with Korea include a competition chapter encouraging greater reliance on comity principles by, for example, calling upon U.S. and Korean competition authorities to take into account each other’s important interests in cross-border competition cases and creating mechanisms for consultation aimed at reaching mutually agreeable conclusions in such cases.
