

Korea-United States Free Trade Agreement

**Report of the
Industry Trade Advisory Committee on Standards and
Technical Trade Barriers (ITAC 16)**

April 25, 2007

April 25, 2007

Industry Trade Advisory Committee on Standards and Technical Trade Barriers (ITAC 16) Advisory Committee Report to the President, the Congress and the United States Trade Representative on the Korea-United States Free Trade Agreement

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the ITAC 16 hereby submits the following report.

II. Executive Summary of Committee Report

ITAC 16 conditionally supports the text of the Korea-United States Free Trade Agreement (KORUS) concluded on March 31, 2007, with the understanding that U.S. negotiators will obtain further clarification of certain provisions in the Technical Barriers to Trade (TBT) Chapter with the Korean Government to address concerns the Committee has about how the chapter will be implemented. The Committee notes that KORUS contains several important improvements in the TBT provisions over previously negotiated free trade agreements, notably with regard to transparency in the development of standards, technical regulations and conformity assessment procedures. The Committee commends U.S. negotiators for achieving these advances. Nonetheless, the Committee still has serious concerns about the effectiveness of the TBT provisions in enabling the United States to address a wide range of technical trade barriers in Korea that continue to limit market access to U.S. industry. To satisfy the Committee's concerns and strengthen the utility of the TBT Chapter in meeting the market-opening objectives of KORUS, U.S. negotiators should obtain agreement with the Korean Government to clarifying the duties and structure of the TBT Committee so that the Committee or a special Working Group of the Committee can meet promptly and with appropriate professional expertise to resolve TBT issues on an ongoing basis. The agreement could seek to create a technical working group composed of U.S. subject matter experts who can meet with U.S. negotiators prior to, during, and following TBT committee meetings. This model was used successfully in MRA negotiations the EU, APEC and CITELE in the 1990s. A suggested side letter that includes key points to be clarified is attached to this report.

III. Brief Description of the Mandate of ITAC 16

The Committee shall perform such functions and duties and prepare reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to the sector and functional advisory committees.

The Committee advises the Secretary of Commerce and the USTR concerning the trade matters referred to in Sections 101, 102, and 124 of the Trade Act of 1974, as amended; with respect to the operation of any trade agreement once entered into; and with respect to other matters arising in connection with the development, implementation, and administration of the trade policy of the United States including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order 12188, and the priorities for actions thereunder.

In particular, the Committee provides detailed policy and technical advice, information, and recommendations to the Secretary and the USTR regarding trade barriers and implementation of trade agreements negotiated under Sections 101 or 102 of the Trade Act of 1974, as amended, and Sections 1102 and 1103 of the 1988 Trade Act, which affect the products of its sector; and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of ITAC 16

ITAC 16 discussed negotiating objectives and priorities for the KORUS on several occasions. The Committee repeatedly stressed the importance of addressing technical barriers to trade in KORUS because of the Korean Government's history of using TBTs to limit market access by U.S. manufacturers and thereby to protect the Korean market from meaningful foreign competition. The Committee reiterated these concerns in a letter to U.S. Trade Representative Schwab and Commerce Secretary Gutierrez on March 6, 2007, following its most recent meeting. Individual ITAC members also reinforced these points during meetings and teleconferences with U.S. negotiators in the final rounds of negotiation of KORUS.

The Committee concurred on the following key objectives and priorities for KORUS. The objectives and priorities build on existing WTO disciplines but go beyond these and encompass additional areas that address unique TBT concerns in Korea, notably with regard to the lack of openness and transparency in the Korean regulatory system and government control over conformity assessment bodies.

1. The ITAC 16 urged U.S. negotiators to reinforce transparency obligations of the Korean Government. This was largely achieved in the negotiated text. Improvements include agreement on: providing additional national treatment for U.S. persons to participating in the development of standards technical regulations and conformity assessment procedures; explaining the objectives of proposed regulations and how regulations will address the proposals; making available to the public all comments received; allowing 60

ITAC 16 Report on KORUS

Page 3

days for written comments; publishing notices of proposed and final regulations in a single official journal; and responding to significant comments in the final regulation, along with an explanation of revisions made to the original proposal. The Committee appreciates the success of U.S. negotiators in obtaining these important improvements.

2. ITAC 16 urged U.S. negotiators to obtain national treatment in the application of standards and technical regulations. This was achieved in the negotiated text. Concerns remain, however, on whether timely action can be taken under the agreement to ensure national treatment when, as expected, there are many industry-specific disputes over its practical application.
3. ITAC 16 urged U.S. negotiators to obtain an agreement that would provide access to and national treatment of U.S. testing and certification bodies in Korea. While the negotiated text provides national treatment to U.S. testing and certification bodies, this provision is of limited usefulness because Korean Government bodies and quasi-governmental bodies have responsibility for testing and certifying a wide range of products and thus may not be covered by this provision. The scope for recognition of U.S. testing and certification bodies, therefore, appears to be severely limited. ITAC 16 has very serious concerns about the limited access of U.S. testing and certification bodies in Korea and the fact that Korean bodies did not always provide timely, unbiased and cost-efficient services in the past.
4. ITAC 16 supported U.S. negotiations that would seek an opportunity for direct participation on a non-discriminatory basis in the development of Standards-Related Measures (not covered by WTO rules; cf NAFTA 909.7). KORUS met this objective in the transparency provisions of the TBT Article 6.1.
5. ITAC 16 urged U.S. negotiators to seek to establish informal mechanisms for rapid resolution of disputes on TBT issues. This objective was not specifically achieved in the negotiations. The TBT Committee, however, has the potential to serve this purpose but only if there is a further interpretative clarification that this TBT Committee or other similar body has the authority and resources to resolve TBT disputes on a timely basis. We do not believe it is enough that this TBT Committee should have the ability to meet, but that it must also have the responsibility to resolve any disputes involving transparency, national treatment or other TBT issues.
6. ITAC 16 recommended that the five-year implementation period for transparency obligations be minimized or eliminated in future agreements. The Committee appreciates the success of U.S. negotiators in gaining Korean Government agreement to apply the transparency and TBT obligations in KORUS immediately after the agreement goes into effect.
7. ITAC 16 noted the importance of addressing concerns relating to technical barriers to trade in the auto sector. The Committee acknowledges efforts of U.S. negotiators to address concerns in special automotive provisions. The Committee, however, defers to

ITAC 16 Report on KORUS

Page 4

ITAC 2 Automotive Equipment and Capital Goods in assessing whether the provisions adequately address concerns in this sector.

V. ITAC 16 Opinion on the KORUS

The ITAC 16 has deliberated over the final text of KORUS and limits its comments to the sections that specifically address Technical Barriers to Trade. The Committee finds that the objectives and priorities it has recommended to U.S. negotiators have only been partially addressed. KORUS contains several important improvements in the TBT provisions over previously negotiated free trade agreements, notably with regard to transparency in the development of standards, technical regulations, national treatment and conformity assessment procedures. The Committee commends U.S. negotiators for achieving these advances.

Nonetheless, the Committee still has serious concerns about the effectiveness of the TBT provisions in enabling the United States to address a wide range of technical trade barriers that continue to limit Korean market access to U.S. industry. The Committee, therefore, gives only conditional support to the text of the Korea-United States Free Trade Agreement (KORUS) concluded on March 31, 2007. We strongly recommend that U.S. negotiators seek further clarification of certain provisions in the Technical Barriers to Trade (TBT) Chapter with the Korean Government to address concerns the Committee has about how the chapter will be implemented. This could come in a “side letter” or “operational guidelines” of the TBT Committee. (See the attached example.)



Korea TBT side letter
example 4-25-07.doc

Specifically, we would like to have Korea’s commitment to:

- Clarify the understanding that the TBT Committee will assist on an ongoing, real-time basis, in resolving TBT disputes.
- Agree that the TBT Committee should meet in a timely manner to address issues raised by either Party (e.g., within 30 days).
- Allow for the formation of a special TBT Working Group to promptly address specific issues on such areas as transparency, national treatment or conformity assessment access.
- Have identifiable officials on the TBT Committee and a list of available subject experts from non-governmental bodies who can assist in resolving issues relating to Korean technical barriers to trade.
- Allow for the designation of additional special TBT Working Group members (e.g., three individuals) to assist the Group on industry-specific issues. The individuals should

ITAC 16 Report on KORUS

Page 5

be professionals who have relevant expertise and experience and have no pecuniary, professional or personal interest in the specific issues under review that might affect their conduct or decisions with respect to the issues under consideration.

- Give authority to the TBT Committee to receive additional information, including technical information during its review, and to recommend alternative approaches to technical requirements and conformity assessment procedures.
- Recognize that the TBT Committee will take into account the elements of “good regulatory practice” contained in Article 10 of KORUS.
- Make clear the mandate of the TBT Committee to seek resolution of disputes.

ITAC 16 believes that these additional clarifications would significantly strengthen the utility of the TBT Chapter in meeting the market-opening objectives of KORUS. Ideally, the Committee would like to see the text of the TBT Chapter changed to reflect these commitments. Alternatively, the Committee would find acceptable the inclusion of these commitments in an interpretative side letter or operational guidelines of the TBT Committee on the condition that the Korean Government recognizes them as part of KORUS. With these clarifications, the committee would be able to fully endorse KORUS and affirm that the agreement effectively promotes the economic interests of the United States and achieves the overall and principal negotiation objectives set forth in Section 2102 of the Bipartisan Trade Promotion Authority Act of 2002. Likewise, we could also affirm that the agreement adequately provides for equity and reciprocity regarding standards and technical trade barriers.

We appreciate the efforts of U.S. negotiators to address the complex issues in the agreement related to technical barriers to trade but stress that effective TBT provisions are vital for ensuring that the objectives of KORUS for U.S. industry are met.

VI. Membership of ITAC 16

Wayne Morris (Chair), Association of Home Appliance Manufacturers
Joan Cassidy (Vice-Chair), American Council of Independent Laboratories
Steven Butcher, Rubber Manufacturers Association
Thomas Catania, Whirlpool Corporation
Robert Daniels, Tile Council of America
Darrin Drollinger, Association of Equipment Manufacturers
Robert Glowinski, American Forest and Paper Association
Joe Bhatia, American National Standards Institute
John Meakem, National Electrical Manufacturers Association
June Ling, ASME International
David Miller, American Petroleum Institute
Robert Noth, Deere and Company
William Primosch, National Association of Manufacturers

ITAC 16 Report on KORUS

Page 6

Matt Williams, Aerospace Industry Association

Ronald Reimer, Rockwell Automation

Peggy Rochette, Food Products Association

Ann Marie Rollins, Information Technology Industry Council

James Thomas, American Society of Testing and Materials International

Peter Unger, American Association for Laboratory Accreditation

Jerome Walker, Institute of Electrical and Electronics Engineers, Inc.