

April 26, 2007

The Honorable George W. Bush  
President of the United States  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) on the U.S. – Korea Free Trade Agreement, reflecting the opinion the ACTPN on the proposed agreement.

The ACTPN endorses the U.S. –Korea Free Trade Agreement. We believe the agreement meets the negotiating objectives laid out in the Trade Act of 2002, and believe it to be strongly in the best economic interest of the United States. We also believe the U.S. – Korea agreement is a comprehensive state-of-the-art agreement that not only will benefit the U.S. and Korean economies and employment opportunities, but also will provide a strong base on which to construct additional bilateral or regional agreements in the Pacific region.

This is the most significant bilateral agreement negotiated since the NAFTA agreement, and it is clear that each side had to make compromises in order to reach final agreement. The ACTPN believes the agreement overall is an excellent one that will benefit U.S. exports and the U.S. economy even though concessions had to be made. The ACTPN regrets that rice was excluded from the agreement, but understands this was necessary or there would have been no final agreement. The ACTPN strongly urges that all steps be taken to prevent this exclusion from being used as precedent for exclusions in future agreements.

The agreement should be enacted into law as soon as possible, so American farmers and ranchers, factories, services providers, and consumers can begin to receive the benefits of this agreement at the earliest possible date.

Sincerely,

A handwritten signature in black ink that reads "Bill Frenzel". The signature is written in a cursive, slightly slanted style.

Bill Frenzel  
Chairman, Advisory Committee  
for Trade Policy and Negotiations

**The U.S. – Korea Free Trade Agreement (KORUS)**

**The Report of the  
Advisory Committee  
for Trade Policy and Negotiations  
(ACTPN)**

**April 26, 2007**

**The Advisory Committee  
for Trade Policy and Negotiations (ACTPN)**

**Report to the President, the Congress,  
and the United States Trade Representative on the**

**U.S.-Korea Free Trade Agreement (KORUS)**

**I. Preface**

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)(I) 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 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 principal negotiating objectives set forth in the Trade Act of 2002.

Pursuant to these requirements, the Advisory Committee for Trade Policy and Negotiations hereby submits its report.

**II. Executive Summary of Committee Report**

The ACTPN believes the U.S. - Korea agreement meets the negotiating principles and objectives laid out in the Trade Act of 2002, and believes the agreement is strongly in the interest of the United States. It will substantially level the playing field for America's farmers and ranchers, factories, and service establishments in one of America's largest markets. It will provide increased market access for American goods and services. Appropriate transition and adjustment times have been built into the agreement.

The ACTPN believes the agreement will advance the expansion of trade and economic relations between Korea and the United States. The agreement provides for new consultation mechanisms to expand possibilities for improving trade cooperation and heading off disputes.

Additionally, the Korea agreement provides strong intellectual property provisions, ensures fair and effective protection for investors, provides improved business facilitation, greatly improves access for service providers, and contains state-of-the-art treatment for new forms of doing business, including e-commerce. The agreement provides greatly improved transparency provisions in a separate chapter and in other chapters including Technical Barriers to Trade. It is important that all of these provisions be fully implemented by Korea.

The agreement also incorporates labor and environmental protections into the body of the agreement that meet the requirements of the Trade Act of 2002.

Finally, the agreement requires antitrust agencies to have settlement authority in administrative and civil enforcement cases, and includes significant new due process protections and transparency provisions that reach well beyond competition-related obligations in past FTAs.

### **III. Description of the Committee**

The Advisory Committee for Trade Policy and Negotiations (ACTPN) is the U.S. government's senior trade advisory panel. It was established to provide the U.S. Trade Representative with policy advice on: (1) matters concerning objectives and bargaining positions of proposed trade agreements; (2) the implementation of trade agreements once they are in force; and (3) other matters arising in connection with the trade policy of the United States. The ACTPN provides an overview of trade policy and issues. Advice on matters affecting individual sectors or policy areas is expected to be provided by several Policy Advisory Committees in the areas of agriculture, non-Federal governments, labor, environment, and the Industry Technical Advisory Committees (ITACs).

In keeping with its broad charter, the membership of the ACTPN is representative of key economic sectors affected by trade. Members are drawn from business, industry, agriculture, small business, service industries, retailers, and consumer interests. The membership of the ACTPN is appended to this report.

### **IV. Advisory Committee Opinion on Agreement**

The ACTPN (or "the committee"), fully endorses the U.S. – Korea Free Trade Agreement ("KORUS" or "the agreement") as negotiated by the President's U.S. Trade Representative. We believe the agreement promotes the economic interests of the United States and achieves the overall and principal negotiating objectives set forth in the Trade Act of 2002.

We believe KORUS will substantially improve market access in Korea for American farm products, industrial and other non-agricultural goods, and services. We also believe it will expand two-way trade opportunities and will benefit employment and living standards for both parties. We further believe the agreement will reduce the Pacific area disadvantage to the United States stemming from the proliferation of intra-Asia FTAs being negotiated and help offset increased intra-Asian trade led by China and India. Finally, we believe the agreement will further strengthen the strategic relationship between two countries that have been allies for over half a century.

Korea is by far the largest of the countries with which the United States has negotiated a free trade agreement in recent years – the largest since the NAFTA agreement. Korea is the seventh largest market for U.S. exports, accounting for \$33 billion of American exports in 2006. The United States is Korea's second largest market, after China, and America's \$46 billion of imports from Korea accounted for about 13 percent of Korea's total exports.

The ACTPN notes that the United States is already a very open market to Korea. Over half of all Korean exports to the United States already enter duty-free and free of all trade barriers. The average U.S. duty on dutiable imports from Korea is only 3.5 percent. Korea's market is considerably more closed than the U.S. market. Korea's duties on dutiable imports average 7 percent. Since Korean tariffs are assessed on the C.I.F. value, and Korea's 10 percent Value Added Tax (VAT) is levied on the C.I.F. duty-paid value, the effective Korean import duty is actually closer to 9 percent. This is a significant barrier. Korea's notorious non-tariff barriers add even more to the trade barrier wall that American exporters must crawl over.

Thus, full implementation of the KORUS agreement will substantially level the playing field, particularly if implementation and follow-up to the agreement focuses on the elimination of onerous non-tariff barriers. Additionally, with American exporters gaining what is in effect an average 9 percent price advantage over other foreign competitors in the Korean market, KORUS is likely to result in an increased U.S. share of the Korean import market as U.S. products become more competitive relative to those of producers in other countries.

The ACTPN's more detailed views on salient parts of the agreement follow. We urge the Administration and the Congress to act expeditiously so that the agreement may come into effect as soon as possible.

**Consumer and Industrial Products --** Almost 95 percent of U.S. exports of manufactured goods – principally consumer and industrial products will enter Korea duty free within three years of the agreement's entry into force. The ACTPN views this as a very important accomplishment, particularly in view of the fact that the effective duty on dutiable U.S. industrial exports to Korea is close to 9 percent. Over 80 percent of America's merchandise exports to Korea are manufactured goods and as U.S. exporters face stiff competition from China, other Asian competitors, and European firms, the price advantage U.S. firms will gain from KORUS is a very important factor. Many of America's top exports to Korea, including machinery, electrical machinery, turbines, auto parts, and chemicals will benefit.

The ACTPN also notes that unlike other recent FTA's certain textile products are scheduled for a gradual phase out of duties ( three and five year baskets) while most textile and apparel products are immediately phased out. ACTPN suggests in future agreements that the U.S. pursue mutual and immediate textile tariff elimination.

**Agriculture –** Overall, the ACTPN sees the breadth and magnitude of trade benefits in this agreement, and the size of the Korean market, as making this potentially one of the most significant and positive trade agreements for the U.S. farm and agri-business sectors.

The ACTPN endorses the agricultural provisions in the Korea FTA. The Agreement will mean that nearly \$2 billion in current U.S. farm exports to Korea will become duty-free immediately upon entry into force of the Agreement, with most of the tariffs and TRQs on remaining trade phased out over the first ten years of the agreement.

The Committee notes with disappointment that no market access improvement was achieved for rice. The ACTPN, while regretting this exclusion, believes the benefits of the agreement far outweigh the cost of the alternative – which would have been failure to reach an agreement. Nevertheless, the ACTPN urges that the exclusion of a sector not be precedent for excluding sectors in future agreements. Noting that Korea's imports of rice are increasing under a current agreement in the World Trade Organization (WTO), the ACTPN urges the Administration to redouble efforts to capture more of Korea's overall rice import growth under that agreement.

The U.S. and Korea also reached agreement on sanitary and phytosanitary measures under which Korea will recognize the equivalence of the U.S. food safety inspection system for meat and poultry. Although Korea has not yet lifted its current ban on imports of U.S. beef, it did agree to recognize the controlled-risk BSE status of the United States and to respect the World Organization for Animal Health Guidelines (OIE). The Committee expresses its hope that Korea will move expeditiously in line with the OIE guidelines to be issued in May 2007 and to fully reopen its beef markets quickly.

**Services --** The ACTPN views the agreement's services commitments as being particularly strong. Korea's market opening in services covers nearly all major sectors, and importantly include both the cross-border supply of services and the right to invest and establish a local service presence. The ACTPN endorses the breadth of the sectors accorded substantial market access under the agreement's "negative list" approach. It is the ACTPN's belief that the agreement will provide substantial opportunities for U.S. business in the services sector. Important services sectors being liberalized include express delivery services, legal services, accounting, and health care.

U.S. financial institutions benefit especially. The agreement will enable U.S. financial institutions to establish or acquire financial institutions in Korea to supply a complete range of financial services. U.S. banks, insurance firms, and others may establish branches in Korea, and U.S. firms have the right to supply specified financial services cross-border, including portfolio management services.

Korea will also permit U.S. telecommunications companies to own up to 100 percent of an operation in Korea, and the agreement provides U.S. operators access to the services and facilities of Korean phone companies, including their submarine cable stations, facilitating U.S. companies' ability to build competing networks to serve customers in Korea.

**E-commerce --** The e-commerce and digital products provisions provide state-of-the-art recognition of the increased importance of this issue. The e-commerce provisions and the liberal treatment of services in this agreement continue the high standard that has been set for these provisions in other recent U.S. trade agreements. The committee draws particular attention to the fact that the agreement establishes guarantees of non-discrimination and a binding prohibition on customs duties on products delivered electronically, and creates a favorable environment for the development of increased e-commerce.

**Investment** – Investment for consumption in the local market is the predominant form by which U.S. companies sell globally. Korea, as a high-income country, and a member of the OECD (Organization for Economic Cooperation and Development) is an attractive location for American investment, and Korean companies are beginning to invest growing amounts in the United States. Bilateral investment flows are likely to increase rapidly, making the investment chapter of KORUS extremely important.

The ACTPN is aware that the investment chapter was among the most difficult to negotiate, and congratulates the negotiators for their excellent achievement. The committee believes the FTA fully meets the investment requirements laid out in the Trade Act of 2002, and applauds the comprehensive nature of the investment provisions. The committee stresses the importance of covering both investment authorizations and agreements -- particularly contracts and concessions. This was a vital part of what the ACTPN views as the overall necessary goal for the FTA. The ACTPN believes that an excellent job was done in improving the investment climate and protections for investors while simultaneously addressing the concerns that had been raised for possible abuse of investor-state provisions.

The Agreement provides for rights that are consistent with U.S. law and also contains fully transparent dispute settlement procedures that are open to the public and that allow interested parties to provide their input. The ACTPN endorses the inclusion of investor-state provisions that provide access to impartial third-party arbitration of investor disputes with governments, which provide an important safety net and provide assurances of fair treatment of possible disputes. This is an extremely important accomplishment.

**Intellectual Property Rights (IPR)** – The ACTPN has viewed intellectual property rights (IPR) protection as one of the most important parts of any trade agreement, for America's competitiveness and its productivity depend upon innovation and technology which in turn depend upon strong intellectual property protections. The members of the ACTPN commend the U.S. negotiators for obtaining what appears to be the strongest ever bilateral protections for intellectual property in large part because they tackle in a meaningful way the problems associated with Korea's lack of certain effective enforcement mechanisms. We view this as an extremely important outcome and a very strong part of the agreement. It should serve as the model from here on out.

The ACTPN applauds and endorses the state-of-the-art IPR provisions in the agreement. The protection of patents, trademarks, geographic indicators, internet domain names and copyrighted works are particularly important. The ACTPN also commends the strong IPR enforcement mechanisms and penalty provisions, particularly the criminalization of end-user piracy and counterfeiting and Korea's guarantees of authority to seize and destroy not only counterfeit goods but also the equipment used to produce them.

The committee wishes to stress the importance of full IPR protections including those for trademarks and states its full support for the excellence of the agreement in this respect. Important achievements in the trademark area are the provisions stipulating that trademark recordal is not required for any purpose, including the assertion of any rights, and a requirement to accede to the Trademark Law Treaty by 2008. The parties also agree to accede to the WIPO internet treaties.

Among the important features, from the perspective of the ACTPN, are the strong provisions to criminalize copyright piracy and trademark counterfeiting. Not just the pirated or counterfeited goods are to be destroyed, but also the equipment used to produce them. Importantly, customs enforcement will be provided against goods in transit, including in free trade zones – which in many parts of the world have been hotbeds of distribution of counterfeit goods. Additionally, and very importantly, customs officials can bring about IPR enforcement actions without having to wait for formal complaints from right-holders, who may not even know their goods have been counterfeited.

Copyright protection is also greatly improved under the agreement. KORUS provides for extended terms of protection for copyrighted works and establishes anti-circumvention provisions to prohibit removing codes or other devices designed to prevent piracy. Government agencies are required to use only legitimate computer software, setting a positive example for private users.

The agreement is also notable for its intellectual property provisions that will facilitate high-quality health care, including through continued access to innovative products by ensuring fair, transparent, and non-discriminatory treatment for U.S. pharmaceutical products and medical devices.

**Promoting the Competitive Process** – The competition chapter goes beyond the antitrust related obligations set forth in prior FTAs, and as such, it will help promote the competitive process. The ACTPN believes this achievement is very important and hopes this chapter will set a solid precedent for other FTAs with Asian countries in which antitrust law could be applied in a discriminatory manner against foreign investors.

There is a clear obligation in the FTA that each Party must have the authority to resolve administrative or civil enforcement actions by settlement (mutual agreement) with the subject of such actions. This is the first time such a provision has appeared in a U.S. FTA, and will facilitate efficient and market based resolution of antitrust investigations. Although the final settlement language does not apply to criminal enforcement actions, foreign investors are most concerned about civil cases involving unilateral firm conduct. The settlement language in the FTA is a critical tool for breaking the Korean domestic stalemate on this issue and ensuring that its Assembly grant the Korea Fair Trade Commission (KFTC) settlement authority.

The competition chapter also contains state of the art due process provisions. The FTA clarifies that a person should be able to cross-examine witnesses and review all documents on which the charges against it (or the sanction or remedy) are based. Specifically, an entity under investigation will have an opportunity to present evidence in its defense, including a reasonable opportunity to review and rebut evidence and other collected information on which any determination or remedy would be based. There also is an opportunity to cross-examine any witness or other person who testifies. This language regarding cross-examination and review of documents is more specific than in prior FTAs.

Lastly, the FTA includes an obligation that each Party publish rules of procedure for administrative hearings, including rules for introducing evidence. This obligation is a very useful addition to the text that helps address concerns regarding fair and transparent procedures in enforcement actions. In brief, having clear obligations on settlement authority, due process, and transparency will contribute to fairer treatment of U.S. companies by the KFTC.

**Technical Barriers to Trade** -- Technical barriers to trade are an especially important issue for U.S. exporters to Korea. The ACTPN is aware of many complaints from U.S. companies who feel that Korea is using technical barriers to protect domestic producers from foreign competition. Accordingly, the ACTPN views this part of the agreement as particularly important. Tariff elimination is of limited value if non-tariff barriers prohibitively raise the cost of exporting to Korea or deny market access altogether.

The ACTPN believes that the agreement made great strides with respect to transparency – it makes Korea’s regulatory process more open and requires more justification for technical regulations. This is a very important achievement, given how opaque Korea’s regulatory process has been to date. Under the agreement, Korea has committed to provide national treatment to U.S. stakeholders allowing them to participate on an equal footing in regulatory proceedings and the development of standards, which was not possible in the past and which sets a good precedent for achieving this same important development in other Asian countries with similar trade barrier issues. Further, the Korean government will have to publish explanations of the objectives of proposed regulations and how the proposed regulations will address those objectives. It will also have to notify proposals for comment, allow 60 days for written comments on proposals, and make available to the public all comments received on proposals. Another significant achievement is that Korea must publish proposed and final regulations in a single official journal.

In areas where Korea recognizes non-governmental bodies to perform testing and certification for compliance with its technical regulations, the Korean government committed to provide national treatment to U.S. conformity assessment bodies and also to provide national treatment when testing and certifying U.S. products. Under Korean law, only governmental and quasi-governmental bodies can perform testing and certification for a broad range of manufactured products, so the Korean government’s overall control of the conformity assessment system remains a serious concern. The agreement, by providing for national treatment here, can improve matters but will require vigorous enforcement.

The agreement establishes a Technical Barriers to Trade Committee to monitor implementation, promote cooperation, and facilitate discussion of such topics as good regulatory practice and alternative regulatory approaches to facilitate the cross-border acceptance of conformity assessment results. This is a potentially useful body for addressing TBT issues. Because it is so important, the ACTPN urges the U.S. government to allocate sufficient resources to ensure that Korea will accept the obligation to use the Committee to resolve TBT disputes in a timely manner and allow participation of technical experts when needed to provide unbiased analysis.

The ACTPN also recommends that the Administration establish a special U.S. government and private sector working group to monitor the operation of the TBT chapter closely and provide a highly visible forum for challenging new Korean regulations that are inequitable and addressing existing ones. In this regard, additional resources in USTR and Commerce for supporting TBT work will be very important.

**Customs Procedures and Rules of Origin** -- KORUS, like any free trade agreement, is a preferential agreement, meaning that the goods and services originating in the other country get more favorable treatment than goods or services originating in third countries not participating in the agreement. One of the keys to making this work is seeing that the proof of origin requirements are simple and easy to use. If the proof of origin procedures are too complex or costly, many firms will simply not use them – particularly smaller firms that don't have large export logistics staffs. The KORUS agreement here is state of the art, with some of the easiest provisions the ACTPN has seen.

Additionally, it does little good for products to be shipped across the Pacific in 12 hours or so and then sit for days to clear customs. The ACTPN is very pleased at the electronic and other modern provision allowed in the agreement, provisions that can even result in goods being cleared through customs before they arrive at the port or airport. Another important part of the agreement is its provisions allowing advance comment on changes in customs rules before they take place, and binding advance rulings on tariff classification, preferential tariff treatment and country of origin marking.

**Government Procurement** -- The ACTPN is pleased with the provisions on government procurement. Both Korea and the United States are already members of the World Trade Organization (WTO) plurilateral agreement on Government Procurement (GPA), so both already have considerable access to each other's government procurement market. The breadth of coverage of Korean government agencies covered, however, was increased significantly. Very importantly the threshold for non-discriminatory access was cut by nearly half of that specified by the WTO GPA. This will significantly increase the number of procurement contracts for which U.S. companies may bid, and provides them privileged access.

As government procurement has been a matter of contention at times in the past, the ACTPN welcomes the fact that a special working group will be established to oversee better functioning of the process so that U.S. companies, particularly smaller and medium-sized firms, may benefit. Along those lines, the ACTPN hopes the Administration will set up a website providing up to date information on potential Korean government contracts that smaller and medium-sized U.S. firms would find easy to use.

**Small business Benefits** -- The ACTPN wishes to highlight that KORUS lowers barriers in numerous sectors of trade where small U.S. exporters excel. The agreement also lowers the overall costs of exporting to Korea, which will make many smaller export sales economical for the first time. Such sectors for small American exporters as environmental goods and services, software, medical devices, remanufactured goods, equipment maintenance and repair, audiovisual materials, and consulting services are specifically aided by the agreement. Procurement opportunities for smaller companies are enhanced. The agreement's emphasis on lowering the threshold at which the Korean government must provide nondiscriminatory access to its procurement contracts, and the increased number of Korean government agencies that will be required to provide access, opens up significant sales opportunities for many small U.S. companies.

The agreement's innovations in swifter customs clearance, enhanced use of e-commerce, and the elimination of discriminatory regulations – not to mention lower tariffs and nontariff barriers – will make smaller sales to Korea more feasible economically. That will attract smaller U.S. sellers (and Korean buyers) into the market.

**Labor Provisions** -- The ACTPN believes the U.S. – Korea agreement fully meets the labor objectives in the Trade Act of 2002. The labor provisions follow the TPA-mandated approach that was adopted in other recent agreements and enhance the procedural guarantees to transparency and due process. The ACTPN is aware that Congress is considering further obligations in the labor area, but urges that these efforts not unduly delay consideration of KORUS. The committee believes the benefits of KORUS are very important and urges parties to future labor discussions to develop an approach that all can live with.

The committee endorses the agreement's establishment of a process for cooperating on labor matters, including joint activities to advance common objectives in the context of the ILO Fundamental Principles and Rights at Work. As is the case with other U.S. FTAs, KORUS guarantees in an enforceable manner, as provided for in the Trade Act of 2002, that neither side will fail to enforce their labor laws in a way that could affect trade. They also agree to strive to ensure they do not weaken their labor laws in a manner that would affect trade.

**Environmental Provisions** -- The ACTPN endorses the environmental provisions of the agreement and believes they meet the objectives of the Trade Act. Each party must enforce its own domestic laws in an effective manner so as to avoid having a negative effect on trade. This obligation is enforceable under dispute settlement provisions, with sanctions to be imposed if necessary. Both sides also commit not to weaken their environmental laws in a manner that would affect trade.

**Dispute Settlement** -- The ACTPN believes that effective dispute settlement provisions are essential to ensure that trade agreements are actually implemented and enforced. KORUS provides the same effective procedures for dispute settlement as are contained in other FTAs and meet the provisions and objectives of the Trade Act of 2002.

The committee also believes that the best way to deal with trade disputes is through consultation and mutual understanding, and expresses its support for the provisions in the Korea agreement that seek such amicable resolution of disputes. The agreement also sets high standards of openness and transparency for panel procedures, including opportunities for interested parties to provide views, open hearings, and public release of submissions by parties.

## **Membership:**

### **Advisory Committee for Trade Policy and Negotiations (ACTPN)**

Dr. Craig R. Barrett	Intel Corporation
Mr. Joseph Behar	Univision Music Group
Mr. Michael Campbell	Arch Chemicals, Inc.
The Honorable Calvin Dooley	Food Products Association
Mr. Edward C. Emma	Jockey International, Inc.
The Honorable John Engler	National Association of Manufacturers
The Honorable William E. Frenzel (Chmn)	The Brookings Institute
Mr. Nicholas Giordano	National Pork Producers Council
Ms. Stephanie Harkness	Pacific Plastics and Engineering
The Honorable Mark Kennedy	
The Honorable Scott Klug	Trails Media Group
Mr. Charles E. Kruse	Missouri Farm Bureau
Mr. James W. Morrison	Small Business Exporters Association
Mr. Steve Sanger	General Mills, Inc.
Ms. Maria Taxman	Chesterfield Trading
Mr. Jose Villamil	The Washington Economics Group, Inc.
Mr. James Ziemer	Harley-Davidson, Inc.