April 27, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Executive Office of the President
Washington, D.C. 20508

Dear Ambassador Schwab:

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 transmitting the report of the Industry Trade Advisory Committee on Steel (ITAC 12) on the United States-Republic of Korea Free Trade Agreement (FTA), reflecting a consensus opinion on the proposed agreement.

Sincerely,

William J. Pendleton
Chair, ITAC 12

The U.S.-Korea Free Trade Agreement (KORUS FTA)

Report of the
Industry Trade Advisory Committee on Steel
(ITAC 12)

April 27, 2007

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Industry Trade Advisory Committee on Steel (ITAC 12)

Advisory Committee Report to the President, the Congress and the United States Trade Representative on U.S.-Korea Free Trade Agreement (KORUS FTA)

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) 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 principal 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, ITAC 12 Steel hereby submits the following report.

II. Executive Summary of Committee Report

The KORUS FTA reviewed by ITAC 12 does not provide for changes in U.S. AD-CVD statutes and, as regards AD-CVD law, each party under the KORUS retains its rights and obligations under WTO. However, the AD-CVD part of the trade remedies section of the KORUS would result in changes to the related legal processes with regard to AD-CVD in three key areas: (1) pre-initiation notification and consultation requirements; (2) undertakings; and (3) establishment of a bilateral Committee on Trade Remedies. The full integrity of vital U.S. laws against dumped and subsidized imports remains, far and away, the most important concern for ITAC-12, and we strongly object to all three of these AD-CVD provisions:

- The notification and consultation provision would delay and improperly politicize the consideration of a trade remedy petition filed by a U.S. industry in a process that is already transparent and open to all parties. We are particularly concerned about the application of this provision to an antidumping case.

- The provision on undertakings would encourage the use of suspension agreements and the injection of foreign governments into the trade law process, after the point where a domestic industry has already invested significant time and effort in a trade remedy investigation. As with the consultation provision, we are particularly concerned about the application of this provision to an antidumping case.

- The provision to establish a bilateral Committee on Trade Remedies is unprecedented, unnecessary and would provide yet more opportunities for South Korea to try to weaken U.S. trade law enforcement.

The KORUS FTA provisions on safeguards and government procurement reflect the "boiler plate" texts ITAC 12's predecessor, ISAC-7, and ITAC-12 reviewed previously in the FTAs with Singapore, Chile, Australia, Central American countries, including the Dominican Republic, Bahrain, Oman, Peru and Colombia. These provisions create no particular problems for ITAC 12.

ITAC 12 is concerned that the KORUS FTA fails to address the possibility of the re-uniting of the present states of South and North Korea and, in that event, how exports from the territory of the current North Korea to the U.S. would be treated. We are concerned, for example, that the proposed "industrial park" in Kesong, North Korea, would become, in the event of Korean unification, a major source of disruptive and unfairly traded exports to the United States.

In addition, ITAC 12 is concerned that the KORUS FTA does not address adequately a number of our other priority concerns, which affects our sector's economic interests and the equity and reciprocity for the U.S. overall that we seek in U.S. trade agreements. They include: steel rules of origin (ROO), which in ITAC 12's view should be the original NAFTA ROO; exchange rate policies, which are not addressed at all in this FTA (for example, Korea was cited in the past by the U.S. Treasury Department for currency manipulation); and real market access for major U.S. customers (for example, we are concerned by recent comments from representatives of U.S. motor vehicle manufacturers that this FTA does not go far enough in removing non-tariff barriers (NTB's) in South Korea). A re-statement of ITAC 12's priority concerns is shown below.

Based on our significant concerns and the information released to date -- especially with regard to the proposed AD-CVD provisions -- ITAC 12 cannot conclude at this time that the KORUS FTA promotes the economic interests of the United States and provides for equity and reciprocity within the steel sector.

ITAC 12 BASIC NEGOTIATING PRIORITIES

1. The current international trade rules with regard to the right to initiate trade actions against the unfair trade activities of foreign producers and the prosecution thereof must be preserved. Any proposed changes to the rules must improve, and not weaken in any way, the disciplines on unfair trade practices and the right to initiate trade actions against them.

2. The disparity in the treatment of direct and indirect taxes under WTO rules with regard to border adjustability, which is one of the most egregious distortions facing US producers in both US and export markets, must be eliminated.

3. A precondition to entering into any trade agreement should be the clear absence of any governmental currency intervention or manipulation, as well as the development of an appropriate form of review process to eliminate any governmental subsidies.

4. The current WTO Dispute Settlement system, particularly as it can dilute U.S. laws and sovereignty, is in critical need of reform. A primary example of the need for reform is the rejection by the WTO of the U.S. use of "zeroing" methodologies in antidumping cases.

5. Foreign non-tariff barriers (NTB's) that prevent or obstruct fair access to foreign markets by U.S. producers should be eliminated.

6. Agreements must be entirely free of language that facilitates circumvention (such as changes to rules of origin) or in any way prevents or limits the redress of violations of agreements.

III. Brief Description of the Mandate of ITAC 12 for Steel

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

The Committee advises the Secretary and the USTR concerning 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 and 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 12 for Steel

Negotiating Objectives and Priorities for Steel in the multilateral Doha Round and in bilateral Trade Promotion Agreements such as this TPA include the preservation and strengthening of international trade rules with regard to the right to initiate trade actions against unfair trade activities by foreign producers. The paramount objective is to ensure that the availability and enforceability of trade remedies provided under U.S. law are not in any way, shape or form weakened by, or as a result of, this or other negotiated trade agreements.

Another key and related objective is the reform of the current WTO dispute settlement process, particularly as it dilutes U.S. laws and sovereignty. It is critical that neither this nor any other TPA compromise this objective.

A third key objective is the elimination of non-tariff trade barriers (NTB's) that prevent or deter fair foreign market access by U.S. producers of steel and steel-containing goods manufactured in the United States. This would include policies that would create any bias against U.S. exports. It is critically important that all TPAs move in the direction of supporting the elimination of NTB's.

A fourth, equally important objective is to ensure that, in the implementation of trade agreements, market forces (without any governmental manipulation) determine currency exchange rates.

Fifth, the disparity in treatment of direct and indirect taxes under WTO rules with regard to border adjustability must be eliminated, immediately and effectively. At a minimum, agreements should have provisions for adjustments made to foreign countries' border adjustable/value added tax systems for their export advantage that could change (and have changed) after an agreement has come into effect.

Sixth, agreements must be entirely free of language that facilitates circumvention (such as changes to rules of origin) or in any way prevents or limits the redress of violations of agreements.

The above ITAC 12 objectives/priorities are crystallized in the text of Part II above.

V. ITAC 12 Opinion on the Agreement

ITAC 12 members have reviewed and discussed the U.S –Korea FTA and have concluded as follows:

1. While ITAC 12 is concerned that that KORUS FTA: (1) departs from the NAFTA steel rules of origin (ROO); (2) does not deal satisfactorily with the treatment of possible exports from Korea after eventual unification with North Korea; (3) does not address at all exchange rate policies; and (4) does not address adequately South Korean non-tariff

barriers (NTB's) affecting major U.S. customers (e.g., motor vehicle manufacturers), the main reason why ITAC 12 must withhold support from the KORUS at this time is the AD-CVD part of the agreement's trade remedies section.

2. ITAC 12 finds that the AD-CVD part of the KORUS' trade remedies section does not promote our sector's economic interests or those of the U.S. economy overall. These AD-CVD provisions do not achieve the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002 or provide for equity and reciprocity within ITAC 12's sector. There is a strong risk that these provisions could seriously jeopardize the integrity and enforceability of U.S. AD/CVD statutes, which in our opinion are the linchpin of U.S. trade policy. These provisions are not necessary and they could potentially inject politics into future AD-CVD cases involving South Korea. They will also set a very dangerous precedent for future FTAs.

Therefore, because of our ongoing questions and concerns regarding the AD-CVD provisions of the KORUS FTA, ITAC 12 opposes the proposed agreement.

VI. Membership of the Committee

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