



EMERGENCY COMMITTEE FOR AMERICAN TRADE

TESTIMONY OF

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ON THE U.S.-KOREA FREE TRADE AGREEMENT NEGOTIATIONS

BEFORE

THE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS

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Thank you for the opportunity to testify at today's hearing on the progress of the Korean-U.S. (KORUS) free trade agreement (FTA) negotiations. I am testifying today on behalf of the Emergency Committee for American Trade – ECAT – an association of the chief executives of leading U.S. business enterprises with global operations. ECAT was founded four decades ago to promote economic growth through expansionary trade and investment policies. Today, ECAT's members represent all the principal sectors of the U.S. economy – agriculture, financial, high technology, manufacturing, merchandising, processing, publishing and services. The combined exports of ECAT companies run into the tens of billions of dollars. The jobs they provide for American men and women – including the jobs accounted for by suppliers, dealers, and subcontractors – are located in every state and cover skills of all levels. Their collective annual worldwide sales total \$2 trillion, and they employ approximately five and one-half million persons. ECAT companies are strong supporters of negotiations to eliminate tariffs, remove non-tariff barriers and promote trade liberalization and investment worldwide.

ECAT strongly supports the conclusion of a comprehensive, high-standard and commercially meaningful KORUS FTA that creates concrete new trade and investment opportunities for U.S. companies, farmers, workers and their families. Such an agreement should promote liberalization throughout all key economic sectors, including through the elimination of tariff, regulatory and other barriers; high-standard protections for investment and intellectual property rights; broad transparency obligations; efficient dispute resolution procedures; and effective implementation.

The importance of concluding a comprehensive and commercially meaningful KORUS FTA is amplified by the strength of the existing trade and investment relationship. Korea is the United States' seventh largest trading partner, with two-way goods trade in 2006 of \$88.3 billion. U.S. goods exports to Korea totaled \$32.5 billion in 2006, with significant exports in machinery, agricultural products, aircraft and chemicals. U.S. goods imports from Korea totaled \$45.8 billion in 2006, with significant imports of automobiles, telecommunications and electrical equipment and machinery. U.S. cross-border services exports to Korea totaled \$10.3 billion, and U.S. imports of services from Korea totaled \$6.3 billion in 2005. U.S. foreign direct investment in Korea in 2005

reached approximately \$18.6 billion, and Korean investment in the United States equaled \$6.2 billion.

KEY ISSUES IN THE NEGOTIATIONS

Investment. Foreign investment by U.S. companies, supported by the core investment access and protections discussed below, is a critically important driver of economic growth and productivity and strongly supports broader U.S. national interests.

Economically, U.S. foreign direct investment spurs U.S. productivity, economic growth and U.S. exports. Indeed, the largest market for U.S. exports is foreign-based subsidiaries of U.S. companies. As examined in depth in ECAT's *Global Investments, American Returns (GIAR)* (1998) and the *1999 Update*, as well as other major studies, foreign direct investment of American companies has *complemented*, rather than substituted for, economic activity in the United States in areas determinative of productivity, such as research and development and capital investments. In addition, over 70 percent of the total income earned by the foreign affiliates of U.S. firms is repatriated. In short, U.S. foreign investment complements U.S. business activity, supporting higher paying U.S. jobs, greater productivity, a higher standard of living and economic growth in the United States.

More broadly, U.S. investment abroad is critical not only for the competitiveness of U.S. companies, but for broader national U.S. interests, such as developing stable sources of energy supplies, continuing the United States' leadership in creating new and advanced technologies and promoting stability, economic development and the rule of law.

Investment, therefore, has figured prominently in U.S. trade agreement negotiating objectives from 1984 onward and investment is one of the primary negotiating groups in the KORUS FTA negotiations. Three primary issues are being discussed by U.S. and Korean negotiators: access for investment (such as foreign equity limits), commitments to core investment protections that are based on protections already found in the United States, and the provision of investor-state dispute settlement.

Investment Access. As in the services negotiations, the KORUS investment negotiations are taking place on a so-called negative list basis where full access to investment is the norm, and exceptions are taken.

ECAT continues to support the reduction and binding elimination of foreign equity limitations in all major sectors, from telecommunications and broadcasting operations to distribution of agricultural and manufactured goods. Given the strong relationship between U.S. exports and U.S. investment abroad, ensuring strong and sustained access is critical for consumer and industrial goods and agricultural products. Access for U.S. investment in distribution services, including brokerage and wholesaling for agricultural and manufactured goods, must be a minimum. For services, some of the primary restrictions are in the investment area and their substantial reduction and elimination will determine whether U.S. companies can compete on a level playing field in key services sectors.

Investment Protections. The investment protections contained in U.S. bilateral investment treaties (BITs) and FTA investment chapters are critical to ensure that U.S. investors abroad are

treated equally with foreign and domestic investors in the United States, who benefit from a strong set of core protections, based on the U.S. constitution, federal and state laws and common law. Following the guidance on investment protections provided in the Trade Act of 2002, the U.S. model investment text contains very detailed rules on core issues, derived directly from U.S. jurisprudence.

The objective of the KORUS investment negotiations is to ensure that U.S. investors in Korea have the same levels of protection for their investments that are already available for U.S. and Korean investors in the United States, including protections related to national treatment and most-favored-nation treatment, expropriation, fair and equitable treatment, full coverage of investment agreements, full protection and security, the free transfer of capital, and no performance requirements.

Negotiations on these issues have intensified in recent weeks, although we understand several issues remain outstanding. In this regard, it is critical to U.S. competitiveness that the United States reject proposals to limit protections against discriminatory, arbitrary or expropriatory government activity, to permit restrictions on the transfer of capital, or to create exceptions from the key protections. Such diminutions to the high-standard model U.S. text would deny U.S. investors precisely the type of protections that are needed to address the barriers that have long pervaded the Korean economy, undermining the ability of U.S. companies to compete on a level playing field across all major sectors. For financial institution investors, in particular, the expropriation protections are absolutely vital since the United States has not sought to ensure rights of such investors to bring claims with respect to discrimination, which are available to every other major sector. It is perplexing that at the same time the United States seeks to take steps to increase the competitiveness of its capital markets and financial service firms, our understanding is that some provisions in the agreement would do exactly the opposite. Similarly, the type of capital control provisions incorporated in the Singapore FTA are simply not appropriate in the Korean context and could undermine the very investment access provisions being negotiated.

It is notable that many of the United States' major competitors in the Korean market already have broad investment protections through their own bilateral agreements with Korea. If U.S. negotiators do not insist on protections equal to those provided by Korea to the United Kingdom, the Netherlands, and Germany, to name just a few, U.S. companies and workers will be the losers. Lower protections will mean that U.S. investors would be put at a competitive disadvantage with many of their major competitors and will lose significant economic opportunities. Indeed, a diminution of investment protections would essentially provide Korean investors in the United States with greater rights than U.S. investors would have in Korea. The final outcome of these negotiations, therefore, must be to put U.S. companies and their workers on a level playing field with high-standard protections across the board.

Investor-State Dispute Settlement. Investor-state dispute settlement is critical to ensure that U.S. investors have access to the same type of objective, rules-based and fulsome review of complaints that U.S. and foreign investors already have in the United States. These investor-state provisions are in thousands of international instruments, including the investment treaties and free trade agreements that Korea has concluded with other major trading partners.

Investor-state dispute settlement is required for all U.S. industries, from agriculture to manufacturing to services, to be able to address barriers and government actions that would deny effective access in the Korean economy. The ability to bring such cases must apply fully to

investors in each of these sectors and for all breaches of the FTA, as well as breaches of investment authorizations and of the special type of investment agreements that govern much of U.S. investment abroad in natural resources, infrastructure and other major areas. Proposals to limit such rights must be rejected.

As noted above, given the strong protections and investor-state rights provided by Korea to many of the United States' major economic competitors, any diminution in rights for U.S. investors would put the United States at a competitive disadvantage.

Several issues, with both respect to the text of the investment chapter and the levels of access for particular sectors, remain outstanding in the KORUS FTA negotiations. ECAT urges U.S. negotiators to reject the weakening of investment protections and the denial of investment access. Rather, it is essential for U.S. negotiators to secure market access and strong protections for U.S. investors and to ensure that U.S. investors are not accorded lesser rights than investors from Korea's major trading partners. An investment chapter that ensures significant access and high-standard protections and investor-state dispute settlement will receive ECAT's strong support.

Services. Services represent a vital portion of the U.S. economy, representing the largest portion of U.S. employment and output. U.S. service providers in a wide range of areas are among the most competitive in the world, providing services through cross-border activity and investment activity abroad. There is a very strong interest in the successful completion of the KORUS FTA by U.S. services companies that see very important new market opportunities as barriers are eliminated.

As noted with investment, the KORUS FTA negotiations are proceeding on a negative list basis, with services presumed open, except where an explicit exception is taken. While Korea has made important strides in opening its services market, there are several major sectors that remain restricted. Dismantling barriers in such areas will have positive economic effects on the U.S. services sector, helping to stimulate growth in one of our most vibrant sectors and enhancing U.S. competitiveness and opportunities for U.S. companies and their workers.

Negotiations in many services areas are progressing well, but several service access issues remain outstanding. Key ECAT objectives of these negotiations include:

- Increased transparency;
- Development of a more positive and pro-competitive regulatory environment;
- Elimination of barriers to all key sectors, including audio-visual, financial services, broadcasting, distribution, information technology and telecommunications.

Market Access for Consumer and Industrial Goods. The KORUS FTA should eliminate all tariff and non-tariff barriers that impede access of U.S. consumer and industrial goods into the Korean market that are very important for the U.S. manufacturing sector. A comprehensive elimination of tariffs would set an important example for future FTA partners, as well as the global Doha Development Agenda negotiations. Progress on tariff elimination has been made, and like the other major negotiating groups, this chapter too must be completed.

Of equal or even greater importance is the need to eliminate non-tariff barriers to trade in the Korean economy, which can take many forms, including monopolies, licenses, labeling and certification requirements, lack of regulatory harmonization and consistency, anti-competitive

pricing and reimbursement policies, costly customs valuation policies and cumbersome customs procedures -- all of which can limit full participation in Korea's economy. Such barriers distort efficient trade flows of goods to the detriment of the United States. Their elimination would help spur U.S. exports and increase efficiency and rationality in the global marketplace. Sectoral frameworks, particularly in the automotive and the pharmaceutical sectors, are extremely important to address comprehensively the barriers these industries face in Korea. At present, it is clear that more work needs to be done to address these barriers.

With respect to automotive trade it is important to recognize that automotive trade alone accounts for 80 percent of the U.S. trade deficit with Korea. Given the closed nature of the Korean auto market, with foreign imports from the world representing just 3.6 percent of the market, there needs to be a comprehensive dismantling of Korea's automotive tariff and non-tariff measures. The United States should utilize all means possible to achieve real and meaningful access to the Korean auto market. Given that this FTA is likely the last opportunity that the United States will have in leveling the auto trade playing field with Korea, the United States must obtain commitments that provide commercial value for America's automakers and workers.

On pharmaceutical issues, Korea's price reimbursement scheme has long represented a barrier to innovative pharmaceutical products from the United States. On March 3, 2006, before starting the KORUS FTA negotiations last year, Korea proposed a new pharmaceutical price reimbursement scheme which would result in further discrimination against U.S. pharmaceutical products. It is important for the innovative U.S. pharmaceutical sector that Korea adopt a more appropriate reimbursement model that recognizes the value of innovative pharmaceutical products and an independent appeals mechanism to resolve any disputes on reimbursement decisions, while also addressing longstanding concerns regarding fair business practices in the Korean market.

Agricultural Market Access. Access for U.S. agricultural products in foreign markets is very important to U.S. farmers and the broader agricultural and food processing industry in the United States.

Korea maintains significant barriers, from tariffs to import restrictions such as quotas and tariff rate quotas, as well as existing and potential investment restrictions that could impede the distribution of U.S. agricultural products. The final KORUS FTA should, therefore, eliminate such barriers and provide concrete and continuing market access for U.S. agricultural and food products, such as beef, pork, grains and others. Sanitary and phytosanitary issues must be fully resolved and investment access and distribution rights provided for U.S. agricultural products.

We understand that there are significant issues still to resolve regarding agricultural market access and investment and distribution rights in this sector and look forward to working with U.S. negotiators in support of a strong final agreement.

Competition. Another area in which non-tariff barriers threaten to frustrate fair access to the Korean market by U.S. suppliers is competition law. While Korea's competition law is not discriminatory on its face, it is at times interpreted and enforced in a non-transparent manner and in ways that effectively act as a trade barrier to U.S. products. ECAT has strongly, therefore, urged U.S. negotiators to include a robust competition chapter that improves transparency and prevents trade-distorting uses of competition law. Building upon the competition commitments set forth in recent FTAs (*e.g.*, with Australia), the Korea FTA should strengthen obligations for national

authorities not to apply competition rules in a manner that unnecessarily distorts trade or that nullifies the benefits otherwise accruing to exporters under other provisions of the FTA.

We understand that U.S. and Korean negotiators concluded the competition chapter during the eighth round of negotiations, and we look forward to reviewing the language when it becomes available.

Intellectual Property Rights. ECAT strongly supports the negotiation, implementation and enforcement of strong protections for intellectual property rights (IPRs) to build upon and strengthen existing protections and commitments. Such provisions are critical in order to promote innovation and new research in the information technology, pharmaceutical and chemical sectors, to name just a few, and to stimulate a rich and diverse marketplace for the development and publishing of business information and literary, musical and other artistic and creative works. Strong intellectual property rules and effective enforcement are critical to eliminate pirating, counterfeiting and other activities that undermine U.S. research and development, and artistic and other activities.

In particular, the KORUS FTA should provide for intellectual-property protections similar to those found in U.S. law and recent U.S. FTAs, as directed by the Trade Act of 2002, and to ensure conformity with global standards, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) and the Berne Convention. The KORUS FTA should also ensure transparent and consistent intellectual-property enforcement procedures.

While negotiators appear to have resolved several issues in this area, it is very important that the following issues be addressed in the final agreement:

- Concrete commitments to address high levels of counterfeiting and copyright piracy, due in part to non-deterrent penalties and lack of sufficient enforcement; and Korea's failure to comply with the 1996 WIPO Internet Treaties standard.
- Korea should eliminate its pre-registration regime for new products and ingredients, which currently undermines IPR protection.
- Korea should reform its Customs procedures, which require the disclosure of sensitive intellectual property in key areas. Korean customs authorities currently require very extensive product descriptions on imported ingredients for beverage production, which force companies to report the specific ingredient components thereby revealing sensitive intellectual property.
- Korea should commit to patent linkage to prevent the approval of generic forms of patented pharmaceutical products while the patent is still in force. Korea should commit to reform its patent specification requirements, which provide an unnecessarily restrictive burden on patentees.

Electronic Commerce/Information Technology. Electronic commerce (e-commerce) is an increasingly important venue for international trade that is now used in all sectors of the economy and will become increasingly important in the next decade. As a result, it is important to ensure that trade and investment rules promote and do not inhibit the growth of e-commerce and information technology products and services. We understand that U.S. and Korean negotiators were able to conclude this chapter, and we look forward to reviewing the details when the chapter is available.

Trade Facilitation and Customs Procedures. Furthermore, for all U.S. exporters, transparent and predictable Customs processes and procedures are important. U.S. negotiators have sought a strong chapter on Customs Administration and Trade Facilitation similar to that included in other FTAs. As we had indicated to U.S. negotiators at the outset of the negotiations, the KORUS FTA should also address longstanding problems in the operation of the Korean Customs Authority, including misclassifications.

We understand that negotiators were able to conclude that chapter during the eighth round and we look forward to reviewing the details when they are available.

CONCLUSION

ECAT urges U.S. negotiators to continue to work to conclude a comprehensive and commercially meaningful KORUS FTA that protects and promotes investment, intellectual property rights and digital trade and information technology, while eliminating tariffs and non-tariff barriers and liberalizing trade in agricultural and manufactured goods and services. Such an outcome will receive ECAT's strong support.