

April 26, 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 pleased to transmit the report of the Industry Trade Advisory Committee on Small and Minority Business (ITAC 11) on the U.S.-Korea Free Trade Agreement (FTA), reflecting consensus on the proposed Agreement.

Sincerely,

George M. Keller
Chair, Industry Trade Advisory Committee
on Small and Minority Business (ITAC 11)

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

Report of the Industry Trade Advisory Committee on Small and Minority Business (ITAC 11)

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Advisory Committee Report to the President, the Congress and the United States Trade Representative on **The U.S.-Korea Free Trade Agreement (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 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, ITAC 11 hereby submits the following report.

II. Executive Summary of the Committee Report

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the FTA, in most areas, will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

ITAC 11 cannot support the Agreement, in totality, as proposed because of the severe restrictions on U. S. Parties described in Annex I and Annex II – Korea’s Restrictions to Chapter (Cross-Border Trade in Services) and Chapter (Investments). Korea’s restrictions in investment and ownership in land, particularly, farmland, as well as in law and accounting firms severely restricts the opportunities for small, medium and minority U. S. farmers and business professionals to initiate or expand their ownership in business operating in Korea. These restrictions and limitations will ensure large U. S. farm corporations, legal and accounting firms will achieve disproportionate benefits and opportunities under the FTA that will not be afforded to U. S. small, medium and minority businesses. Furthermore, Korea’s ability to maintain or adopt restrictions on software and technology investment and development in Korea by foreign Parties will have a significantly larger impact on small, medium and minority entrepreneurs in their attempts to expand technology businesses in Korea.

ITAC 11 recommends the U. S. government immediately seek elimination of the restrictions on investment in farms, farmland, legal, accounting and technology businesses that discriminate against U. S. entities especially U. S. small, medium and minority businesses. The restrictive practices proposed by the Korean government as herein described will severely limit a large number of U. S. small, medium and minority farmers and business professionals from participation in the enhanced business opportunities of the U.S.-Korea Free Trade Agreement.

III. Brief Description of the Mandate of ITAC 11

The objective of the committee is to provide timely policy and technical advice, information, and recommendations to the Secretary and USTR regarding trade barriers, implementation and overall concern as it pertains to the operations and international competitiveness of small and minority business.

IV. Negotiating Objectives and Priorities of ITAC 11

The priorities of the committee are to represent the views of small business with the objective to enhance job growth and exports of goods and services by this business sector of the U.S. economy. As a further objective, the committee expresses an ongoing concern that cross-border trade be as fair as possible, transparent, and open to small and minority business.

V. Advisory Committee Opinion on Agreement

National Treatment and Market Access for Goods Chapter

ITAC 11 supports the expansion of international trade opportunities afforded small, medium or minority businesses under the U.S.-Korea FTA. We believe that Section C, Article X.6 should be modified to cover Repair or Alteration or Re-Manufacture of Articles (emphasis added). In this article, an item 3.(c) should be added that requires the essential characteristics of articles be consistently defined by both parties. Additionally, Section F, item 4. should have an item (d) added that would require the committee on Trade in Goods publish definitions of essential characteristics of articles to insure consistent treatment in repair, alteration and re-manufacture of goods.

ITAC 11 recommends that, subject to the above described changes, that Chapter X of the U.S.-Korea FTA Agreement be accepted as proposed.

Agriculture Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 believes a thorough review of all Tariff Rate Quotas should be completed prior to signing of the FTA. ITAC 11 specifically requests evaluation of the Tariff Rate Quota applied to tobacco products imported from Korea. Under the existing U.S. Harmonized Tariff Schedule, Note 5.(a), unmanufactured tobacco and certain manufactured tobacco products imported from Korea are included under the tariff rate quota ("TRQ") limitation of 3,000 metric tons per year for all "other countries or areas". The FTA does neither schedule phase out of this TRQ limitation nor does it make it transparent that such a limitation exists.

ITAC 11 recommends that tariff elimination be coupled with a strict evaluation and elimination of non-tariff barriers for all agricultural articles exported between the parties. Evaluation of all quotas, TRQ's, etc., must occur for free trade to be expanded. ITAC 11 supports the text of the Agricultural Chapter of the U.S.-Korea FTA subject to the completion of a thorough TRQ review of all products under the Harmonized Tariff Schedule.

Textile and Apparel Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 recommends the following modifications be made to the text of the Chapter:

Article 1, Item 1: Add, clarify, a description of textile good or article and HTS item of the applicable to article or good found as causing serious injury.

Article 1, Item 2: Add an item that requires notification be given by either Party to the other Party ninety (90) days prior to implementation of penalty duties for any item found to be causing serious injury.

Article 3, Item 2: The reference to the “competent authority” for Korea the Ministry of Commerce, Industry and Energy or its successor (emphasis added) shall mean an entity of the Korean government only. No delegation of this activity to a private, non-government entity, can be made without prior approval of the U. S. government.

Customs Administration and Trade Facilitation Procedures

ITAC 11 agrees with the draft text as proposed. We believe the chapter on Customs Procedures will enhance these opportunities while affording protections to small, medium and minority businesses in the U. S. and Korea.

Sanitary and Phytosanitary Measures Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Chapter on Sanitary and Phytosanitary Measures will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Trade Remedies Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Chapter on Trade Remedies will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

ITAC 11 recommends the following changes to the Chapter as present be made:

Article X.2, Item 5(c): Application of the safeguard measure may be applied up to the expiration date of the transition period without the consent of the other Party (emphasis added) so long as a Party has determined and published results to the other Party that injurious actions affecting certain imports continue to occur.

Article X.2, Item 6: Application of a safeguard may be applied to the same good more than once so long as the injurious actions causing the safeguard measures have not been corrected.

Government Procurement Chapter and Annex

ITAC 11 agrees with the Government Procurement Chapter and Annex as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Government Procurement Chapter and Annex will enhance these opportunities while affording certain protections to small, medium and minority businesses in the U. S. and Korea.

Investment Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Investment Chapter will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Annex I - Korea’s Reservations to Chapter (Cross-Border Trade in Services) and Chapter - (Investment)

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe that Annex I – Korea’s Reservations to Chapter – (Cross-Border Trade in Services and Chapter – (Investment) will generally enhance these opportunities while affording protections to businesses in the U. S. and Korea except in the service sector areas as follows: Sector 21 (Legal Services), Sector 24 (Accounting and Auditing Services) and Sector 25 (Professional Services-Tax Accountant). ITAC 11’s position that Korea’s prohibitions against foreign investments in Korean farms are discriminatory against small, medium and minority U. S. farmers and will restrict their opportunities under the FTA. Furthermore, Korea’s prohibition

of investment in Korean law firms or Korean accounting firms by other than Korean licensed lawyers or accountants, respectively, is also discriminatory and will restrict their opportunities under the FTA.

ITAC 11 strongly recommends these restrictions on foreign investment be deleted from the text of the Annex. Failure to modify the Annex or Investment to eliminate the above cited prohibitions will severely restrict the business opportunities for small, medium and minority farmers, lawyers and accountants from participating in benefits of the U.S.-Korea Free Trade Agreement.

Annex II - Korea's Reservations to Chapter (Cross-Border Trade in Services) and Chapter - (Investment)

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe that Annex II – Korea's Reservation to Chapter – (Cross-Border Trade in Services and Chapter – (Investment) will generally enhance these opportunities while affording protections to businesses in the U. S. and Korea except in the areas as follows: Sector 4 (Acquisition of Land), Sector 41 (Legal Service-Foreign Legal Consultant) and Sector 46 (Business Services). ITAC 11's position that restrictions or limitations may be adopted or maintained regarding acquisition of farmland by U. S. Parties is discriminatory against U. S. small, medium and minority businesses and farmers and will restrict their opportunities under the FTA. Furthermore, Korea's restriction on foreign-country licensed lawyers is also discriminatory against U. S. small, medium and minority law firms by placing restrictions on their ability to perform services in Korea. The restrictions that may be or have been adopted must be transparent and must not restrict U. S. business opportunities in Korea. Finally, Korea's ability to adopt or maintain control over software and technology developed in Korea severely discriminates against U. S. small, medium and minority technology companies by limiting/prohibiting their ability to conduct business in Korea.

ITAC 11 strongly recommends the restriction cited above be eliminated from the text of Annex II to the U.S.-Korea Free Trade Agreement. Failure to modify this Annex will severely limit the opportunities for small, medium and minority farmers, business and consultants to participate in the benefits of the FTA.

Financial Services Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Financial Services Chapter will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Telecommunications Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Telecommunications Chapter will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Electronic Commerce Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Electronic Commerce Chapter will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Labor Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Labor Chapter will enhance these opportunities; however, we are concerned over the commitment of the Parties to protect worker labor rights in the U. S. and Korea.

ITAC 11 recommends that **Annex XX-A, Item 4**, be amended to require that “The Parties shall (emphasis added) undertake cooperative activities through the Labor Cooperative Mechanism...” The current wording in the Chapter only states that the Parties may undertake cooperative activities to protect fundamental rights of workers in the U. S. and Korea.

We believe the parties should be committed to protecting fundamental worker rights in both countries and that the rights of workers can only be protected with a firm commitment by the Parties to do so.

Environment Chapter and Environment Side Letters

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Environment Chapter and Environment Side Letters will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

ITAC 11 recommends that the Environment Chapter be provided to all Parties for review and comment once discussions, consultations and amendments provided by the U. S. Congress are made to this Chapter.

Intellectual Property Rights Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Intellectual Property Rights Chapter will enhance these opportunities while affording certain protections to businesses in the U. S. and Korea.

Chapter on Pharmaceutical Products and Medical Devices and Pharmaceutical Side Letter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Chapter on Pharmaceutical Products and Medical Devices and Pharmaceutical Side Letter will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Transparency Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Transparency Chapter will enhance these opportunities; however, we are concerned over the commitment of the Parties to provide transparency of its laws, regulations, procedures and administrative rulings that will afford protections to businesses in the U. S. and Korea.

ITAC 11 recommends that **Article X.1: Publication** be amended to include that the Parties will include access to all laws, regulations, procedures and administrative rulings be available electronically through the internet. Access through the internet will enable all interested persons to access government information that will affect the conduct of business activities and transactions between interested persons in the U. S. and Korea.

Competition-Related Matters Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Competition-Related Matters Chapter will enhance these opportunities while affording certain protections to businesses in the U. S. and Korea.

Institutional and Dispute Settlement Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Institutional and Dispute Settlement Chapter will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Final Provisions Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Final Provisions Chapter will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

ITAC 11 recommends that **Article X.2:** Amendments be modified to include a requirement that all amendments to the agreement will be published in a transparent manner, including on the internet, in order to seek input from all interested persons regarding amendments to the agreement. The Parties will allow a minimum comment period of at least thirty (30) days for all proposed amendments to the agreement. Further, the Parties will take into consideration all comments received on the proposed amendments and modify such proposed amendments, where applicable, based on comments received.

Exceptions Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Exceptions Chapter will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Rules of Origin Chapter

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Rules of Origin Chapter, as published, will enhance these opportunities while affording protections to businesses in the U. S. and Korea

ITAC 11 recommends the following changes to the Rules of Origin Chapter be made in order to better serve companies in both the U. S. and Korea.

Article 6.15, Item 5: ITAC 11 recommends a certificate of origin should be valid for a period of two (2) years (emphasis added), not four (4) years as shown in the agreement.

Alternatively, **Item 5** should be amended to require immediate revocation of a certification of origin if the underlying processes, procedures or materials used in support of the certification have changed.

Article 6.19, Item 4: This item should be changed to specify that a Party shall, not may (emphasis added), require an importer who claims preferential treatment under the agreement to provide a declaration regarding originating goods status at the time of importation.

Article 6.22 Definitions - Indirect Materials Item (b): Tools, dies and molds are articles generally used directly in the manufacture of an article. The definition of indirect materials should be changed to eliminate the inclusion of tools, dies and molds as an indirect material (emphasis added).

Additionally, certain clarifications are also required in the Annex of Product Specific rules.

Item 2402: Clarification of the meaning of the quantities identified for this item should be clarified to identify the “meaning” of the quantities. Furthermore, the wording of the note for Item 2402 states “The quantitative limitations provided in year 7...” indicates a potential Absolute Quota or Tariff Rate Quota will be applied to quantities of merchandise otherwise qualified for duty free treatment under the Agreement. The Rules of Origin should exclude any reference to quantities limitations under the Agreement.

Annex I - Explanatory Notes to the Schedule of Korea and Annex I - Explanatory Notes to the Schedule of the United States

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Annex I

- Explanatory Notes to the Schedule of Korea and Annex I - Explanatory Notes to the Schedule of the United States will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Annex II Formatting Notes for Investment/Services

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe that Annex II Formatting Notes for Investment/Services will enhance these opportunities while affording protections to businesses in the U. S. and Korea.

Annex x-X Joint Fisheries Committee

ITAC 11 is not in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Annex x-X Joint Fisheries Committee should be assigned the responsibility to establish rules, regulations and laws between the Parties regarding methods for sustaining and safeguarding fisheries. Additionally, the Committee should establish quantitative limitations that provide for sustainable fisheries in the future. We believe that strong, effective and enforced governmental control by the Parties over fisheries will enhance opportunities for businesses in the U. S. and Korea in both the short and long term.

Annex x-X Committee on Outward Processing Zones on the Korean Peninsula

ITAC 11 is in general agreement with the text as proposed. ITAC 11 supports the expansion of international trade opportunities afforded small, medium and minority businesses under the FTA. We believe the Committee on Outward Processing Zones on the Korean Peninsula will enhance these opportunities while affording certain protections to businesses in the U. S. and Korea. We believe that a legislature approval process built into the Annex will ensure that amendments or changes to the Agreement will be thoroughly analyzed and evaluated prior to the implementation of such outward processing zones.

VI. Membership Committee of ITAC 11

Chairman

Mr. George M. Keller
President
Customs Advisory Services, Inc.

Ms. Sarian S. Bouma
Chief Executive Office
Capitol Hill Building Maintenance, Inc.

Vice-Chairman

Mr. John Allen
Chairman and Chief Executive Officer
John Allen and Associates International Ltd.

Ms. Candace Chen
President and Chief Executive Officer
Power Clean 2000, Inc.

Secondary Vice-Chairman

Sharon T. Freeman, Ph.D.
President
Lark-Horton Global Consulting, Ltd.

Mr. Roger N. Dickey, CPA
President
Kensington International, Inc.

John A. Adams, Jr., Ph.D.
President and Chief Executive Officer
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Ms. Karen M. El-Chaar
Corporate Secretary and Treasurer
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Mr. Kent M. Bank
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Ms. Sherie A. Gilchrist
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of Commerce and the National Black
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Mr. Harry M. Bossey, CPA
President and General Manager
Western TradeWinds, Inc.

Mr. Johnny Johnson
President
Johnson Marketing and Management Company

Peter O. Lehman, Esq.
Director, Planning and Business Development
South Carolina State Port Authority

Mr. J. Paul Oxe
Senior Project Director
PBS&J, Inc.
Representing Creative Performance System, Inc.

Ms. Karyn Page
President and CEO
Kansas World Trade Center, Inc.

Mr. Jeffrey W. Ruffner
Vice President and General Manager
MSE Technology Applications, Inc.

Mr. Esteban Taracido
President
Tele-Signal Corporation/Las Americas Financial Services, Inc.

Mr. Jose V. Travez
Chief Executive Officer
Prototype Productions, Inc.

Mr. Donald L. Williams
President and Chief Executive Officer
Princeton Healthcare, Inc.