The U.S.-Korea Free Trade Agreement

Report of the
Labor Advisory Committee for Trade Negotiations and Trade Policy
(LAC)

April 27, 2007

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

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I. Purpose of the Committee Report

Section 2104(e) of the Trade Act of 2002 (TPA) requires that advisory committees provide the President, the U.S. Trade Representative (USTR), and Congress with reports required under Section 135(e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement. Under Section 135(e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002. The committee report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the relevant sectoral or functional area of the committee. Pursuant to these requirements, the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) hereby submits the following report.

The LAC would like to lodge a formal protest over the procedures followed by USTR in this instance, namely its failure to provide sufficient time or the complete text – both of which are absolutely necessary to participate meaningfully in this consultation process. Advisory committee reports are meant to present Congress with an informed and meaningful opinion on the substantive provisions of a *fully* negotiated trade agreement.[1] Under § 2104(e) of the Trade Act, advisors are to be given thirty days to produce these reports. However, the LAC was only notified of the President's intent to sign the agreement on April 2 and was only given until April 27 to submit the report. The various chapters of the agreement, many in partial form, were released piecemeal over the first two weeks of April. The entire text of the agreement was not released until April 16th. Indeed, the agricultural and manufacturing tariff schedules were not released until over half of the time allotted to write the report had expired.

Most important, the KORUS FTA may be subject to potentially substantial changes. USTR negotiators have indicated to the press that there may be changes made to several chapters in pending trade agreements. In failing to resolve these critical issues prior to March 31, 2007, the Bush Administration has further divested civil society of its ability to review a final agreement and give its fully informed opinion.

[1] Although a notice was submitted near midnight on April 1, 2007, it is abundantly clear that substantive issues remained unresolved after that date. We therefore do not believe that this agreement qualifies for fast-track treatment regardless of the pro-forma notification.

II. Executive Summary of the Committee Report

This report reviews the mandate and priorities of the LAC, and presents the advisory opinion of the Committee regarding the KORUS FTA. It is the opinion of the LAC that the agreement fails to meet the negotiating objectives laid out by Congress in TPA and will not promote the economic interest of the United States. Indeed, in terms of our national economic interest, the KORUS FTA presents the potential for significant negative economic impact on the United States, particularly on jobs and wages. In this respect, the KORUS FTA is the most economically problematic trade agreement negotiated since NAFTA.

The labor provisions of the KORUS FTA, as with all other FTAs negotiated by the Bush Administration, will not protect the fundamental human rights of workers in either the United States or Korea. The provisions continue to represent a step backwards from the Jordan FTA. The KORUS FTA's labor chapter explicitly excludes any enforceable obligation for the government to meet international standards on workers' rights. The KORUS FTA also contains no enforceable provisions preventing countries from waiving or weakening existing labor laws in order to increase trade.

The agreement's provisions on investment, procurement, and services constrain both governments' ability to regulate in the public interest, pursue legitimate social objectives through responsible procurement policies, and provide affordable and high quality public services. Rules of origin and safeguards provisions invite producers to circumvent the intended beneficiaries of the trade agreement and fail to protect workers from the import surges that are likely to result. In many cases, provisions on these issues worsened. USTR failed to incorporate any of the constructive proposals with respect to labor, environment, procurement and intellectual property rights put forward by Ways and Means Committee Chairman Charles Rangel and Trade Subcommittee Chairman Sander Levin. The failure to meaningfully engage with Congress on these issues throughout the process demonstrates contempt for the democratic process and has left us with another flawed and unacceptable trade deal.

III. Brief Description of the Mandate of the Labor Advisory Committee

The LAC charter lays out broad objectives and scope for the committee's activity. It states that the mandate of the LAC is:

> To provide information and advice with respect to negotiating objectives and bargaining positions before the U.S. enters into a trade agreement with a foreign country or countries, 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.

The LAC is the most broadly representative committee established by Congress to advise the administration on U.S. trade policy. The LAC is the only trade advisory committee

that includes labor representatives from the manufacturing and high-tech sectors, in addition to the service, transportation, and government sectors. The LAC includes representatives from unions at the local and national level, together representing more than 16 million American working men and women.

IV. Negotiating Objectives and Priorities of the Labor Advisory Committee

As workers' representatives, the members of the LAC judge U.S. trade policy based on its real-life outcomes for working people in America. Our trade policy must be formulated to improve economic growth, create good jobs, raise wages and benefits, and allow all workers to exercise their rights in the workplace. Too many trade agreements have had exactly the opposite result.

Since NAFTA went into effect, for example, our combined trade deficit with Canada and Mexico grew from $9 billion to more than $137 billion, leading to the loss of more than one million job opportunities in the United States. Under NAFTA, U.S. employers took advantage of their new mobility and the lack of protections for workers' rights in the agreement to shift production, hold down domestic wages and benefits, and successfully intimidate workers trying to organize unions in the U.S. with threats to move to Mexico. Furthermore, the North American Agreement on Labor Cooperation (NAALC) has proved to be an ineffective tool to improve labor conditions in the U.S., Mexico or Canada given the lack of political will to see it work.

In order to create rather than destroy good jobs, trade agreements must be designed to reduce our unsustainable trade deficit by providing fair and transparent market access, preserving our ability to use domestic trade laws, and addressing the negative impacts of currency manipulation, non-tariff trade barriers, financial instability, and high debt burdens on our trade relationships. In order to protect workers' rights, trade agreements must include enforceable obligations to respect the core labor standards of the International Labor Organization (ILO) – freedom of association, the right to organize and bargain collectively, and prohibitions on child labor, forced labor, and discrimination – in their core text and on parity with other provisions in the agreement.

The LAC is also concerned with the impact that U.S. trade policy has on other matters of interest to our members. Trade policy must protect our government's ability to regulate in the public interest; to use procurement dollars to create good jobs at home, promote economic development and achieve other legitimate social goals; and to provide high-quality public services. Finally, we believe that American workers must be able to participate meaningfully in the decisions our government makes on trade, based on a process that is open, democratic, and fair.

V. Advisory Committee Opinion on the Agreement

The KORUS FTA fails to meet the basic goals outlined above. Instead, the FTA largely replicates the NAFTA, which has cost the U.S. more than one million jobs, allowed violations of core labor standards to continue, and resulted in numerous challenges to laws and regulations designed to protect the public interest. In the past five years, American workers have lost roughly 3 million manufacturing jobs, many due to the failures of our trade policy. These same policies resulted in another record-breaking trade deficit last year, of $764 billion.

In several prominent cases in which the United States has concluded a comprehensive "free trade agreement" with another country, the impact on our trade balance has been negative, despite promises to the contrary. The U.S. ran a $13.4 billion trade deficit with Korea last year, of which $11.7 billion is concentrated in the autos and auto parts sector. Despite the concentration of the trade deficit in a single sector, and its sheer size, the USTR refused to table the proposals offered by labor, industry, and by Congress to rectify this trade imbalance. The auto provisions of this agreement are unlikely to open the door for more than a handful of vehicles from U.S. auto companies. Even fewer of those vehicles are likely to be made in the United States, further undermining any potential benefits for American workers.

Aside from the auto sector, Korea and the U.S. have had a long and acrimonious relationship on steel. However, little attention was paid to this issue. The U.S. also runs a significant trade deficit with Korea in textiles, paper, iron and steel, construction machinery, and appliances. Although the U.S. continues to export a significant amount (in terms of value) of semiconductors, machinery, and civilian and military aircraft to Korea, more and more of that production is at risk of moving overseas. Even in those cases where the market access provisions of the agreement may not have much of an impact on our trade relationship, these provisions when combined with rules on investment, procurement, and services could further facilitate the shift of U.S. investment and production overseas, harming American workers.

The LAC is not opposed in principle to expanding trade with Korea, if a trade agreement could be crafted that would promote the interests of working people and benefit the economies of both countries. Unfortunately, the U.S. Trade Representative failed to reach such an agreement with Korea. Moreover, the labor provisions of the KORUS FTA make little progress beyond the ineffective NAFTA labor side agreement and actually move backwards from the labor provisions of our unilateral trade preference programs and the Jordan FTA. Meanwhile, the commercial provisions of the agreement do more to protect the interests of U.S. multinational corporations than they do to promote balanced trade and equitable development.

A. Comments on Selected Chapters of the KORUS FTA Text

1. Labor Chapter

The KORUS FTA's combination of unregulated trade and increased capital mobility not only puts jobs at risk, it places workers in both countries in more direct competition over the terms and conditions of their employment. High-road competition based on skills and productivity can benefit workers, but low-road competition based on weak protections for workers' rights drags all workers down into a race to the bottom. Congress recognized this danger in TPA, and directed USTR to ensure that workers' rights would be protected in new trade agreements. One of the overall negotiating objectives in TPA is "to promote respect for worker rights … consistent with core labor standards of the ILO" in new trade agreements. TPA also includes negotiating objectives on non-derogation from labor laws and effective enforcement of labor laws.

USTR has consistently failed to negotiate a labor chapter that meets the objectives of TPA. The KORUS FTA currently contains a placeholder that is essentially the same flawed labor chapter found in DR-CAFTA. In the KORUS FTA, only one labor rights obligation – the obligation for a government to enforce its own labor laws – is actually enforceable through dispute settlement. All of the other obligations in the labor chapter are explicitly not covered by the dispute settlement system and are thus completely unenforceable.

Like the DR-CAFTA, the KORUS FTA:

- Does not contain enforceable provisions requiring that the government meet its obligations under the ILO core labor standards.

- Does not prevent Korea from "weakening or reducing the protections afforded in domestic labor laws" to "encourage trade or investment." Under the agreement, Korea could roll back its labor laws without threat of fines or sanctions.

- Does not require that Korea effectively enforce its own laws with respect to employment discrimination, a core ILO labor right.

Contrary to TPA, the dispute settlement mechanisms in the KORUS FTA are wholly inadequate and much weaker than those available to settle commercial disputes arising under the agreement.

- The labor enforcement procedures cap the maximum fine at $15 million and allow Korea to pay those fines to itself with little oversight. This directly violates TPA, which instructs our negotiators to seek provisions in trade agreements that treat all negotiating objectives equally and provide equivalent dispute settlement procedures and equivalent remedies for all disputes.

- Not only are the fines for labor disputes capped, but the level of the cap is so low that the fines will have little deterrent effect. The cap in the Korea agreement is $15 million – about 0.02% percent of our total two-way trade in goods with Korea last year.

- Finally, the fines are robbed of much of their effect by the manner of their payment. While the LAC supports providing financial and technical assistance to help countries improve labor rights, such assistance is not a substitute for the availability of sanctions in cases where governments refuse to respect workers' rights in order to gain economic or political advantage. In commercial disputes under the KORUS FTA, the deterrent effect of punitive remedies is clearly recognized – it is presumed that any monetary assessment will be paid out by the violating party to the complaining party, unless a panel decides otherwise. Yet for labor disputes, the violating country pays the fine to a joint commission to improve labor rights enforcement, and the fine ends up back in its own territory. No rules prevent a government from simply transferring an equal amount of money out of its labor budget at the same time it pays the fine. And there is no guarantee that the fine will actually be used to ensure effective labor law enforcement, since trade benefits can only be withdrawn if a fine is not paid. If the commission pays the fine back to the offending government, but the government uses the money on unrelated or ineffective programs so that enforcement problems continue un-addressed, no trade action can be taken.

Aside from these major, structural problems, the placeholder labor chapter also includes several minor modifications that potentially weaken the functioning of the agreement. For example, the Labor Advisory Council, referenced in Article X.4, is no longer comprised of cabinet level officials, but merely senior officials. Additionally, the text no longer explicitly requires that the decisions of the Council be made by consensus and be made public. The functions of the Council are no longer enumerated, as in previous FTAs. Finally, in Article X.1, the parties no longer reaffirm the full respect for their constitutions.

In sum, the labor provisions in the Korea FTA are woefully inadequate, and clearly fall short of the TPA negotiating objectives. They will be extremely difficult to enforce with any efficacy, and monetary assessments that are imposed will probably be inadequate to actually remedy violations.

Labor Situation in Korea[2]

There is a common misperception that labor relations in South Korea are free of the repression, violence and strife commonly found in less-developed countries around the world. Indeed, when South Korea joined the Organization for Economic Cooperation and Development (OECD), it was expected that the country would move quickly to reform the many laws and practices established during the dictatorship that undermined fundamental trade union rights. However, even a cursory glance at recent ILO reports on South Korea would reveal that the labor laws are not "friendly to unions" and that labor relations are nothing like those of "France," as recently posited by Gary Hufbauer, Senior Fellow at the Peterson Institute for International Economics.[3]

In fact, dozens of trade unionists are languishing in prison for exercising basic labor rights,[4] and riot police recently bolted shut the doors of one of the largest public sector unions and ejected the occupants of the central and regional union offices by force. The ILO has also repeatedly criticized the government over several laws and practices that are far out of line with international standards.[5]

a. Using Arrests and Lawsuits to Limit Trade Union Activity

The arrest of workers in Korea is a serious problem. In 2006, the total number of those already arrested or being pursued by the police was close to 200. This number includes three vice-presidents of the KCTU, and ten members of the union leadership. Many of these arrests are undertaken in the course of industrial action, such as strikes or protests. To the extent that those arrests were undertaken to, or had the effect of, suppressing legitimate trade union activity, such arrests violate the right of free association of those trade union activists and their union.

In addition to imprisonment, a trade unionist and/or a union may be fined for what is called the "obstruction of business" – in some cases for millions of won. The use of the obstruction of business" law, § 314 of the Criminal Code, was reviewed by the ILO Committee on Freedom of Association in 2006.[6] The ILO made special note of two cases. Oh Young Hwan, President of Busan Urban Transit Authority Workers' Union, had not been accused of any act other than going on strike, with about 200 other union members, in, as the government claimed "the pursuit of illegal purposes, such as demanding the company to increase its workforce, cancel the entrustment of ticket sales

[2] The sources of information for this section include: Trade Union Advisory Committee (TUAC), Follow-Up to the OECD Council Monitoring Mandate on Korean Labor Law and Industrial Relations Reform, OECD (April 19, 2007); Korean Confederation of Trade Unions (KCTU), *10 Years After Affiliation to OECD* (Oct 2006); ICFTU General Survey 2006 (Korea); ILO Committee on Freedom of Association, Report No. 340, Case 1865, and the Korea International Labor Foundation.

[3] Peter Goodman, S. Korea, U.S. Reach Trade Deal, Last-Minute Pact Faces Tall Hurdles, Wash. Post, April 3, 2007.

[4] Attached hereto as Annex I is a recent list of imprisoned trade unionists.

[5] Attached hereto as Annex II are recommendations of the ILO Committee on Freedom of Association for the Republic of Korea for 2006.

[6] ILO Committee on Freedom of Association, Report No. 340, Case 1865.

to a private company, withdraw from its outsourcing contracts, reinstate dismissed workers, etc. By doing so, (he) obstructed passenger transportation services." He was fined 10 million Korean won (roughly $10,750).

In another case, Yoon Tae Soo, first Executive Director of Policy of the Korea Financial Industry Union, has not been accused of any violent act but of having gone, along with approximately 5,000 other workers, "on a strike in the pursuit of illegal purposes, such as opposing the sale of the Government's stakes in Chohung Bank pursued as a government policy, without undergoing mediation process, and (causing) 270 workers and its Computer Centre to walk out of their workplaces, thereby obstructing the bank's loan and deposit business and payment services." He was sentenced to one year in prison.

In addition to chilling trade union activity, these fines can drive individuals to bankruptcy and, in some cases, to suicide for not being able to support their families. As the ILO concluded, "The cases noted above illustrate the Committee's concern that section 314 as drafted and applied over the years has given rise to the punishment of a variety of acts relating to collective action, even without any implication of violence, with significant prison terms and fines." The government previously promised to reform the way in which it enforces this law but so far has failed to do so.

b. Recent Amendments to the Labor Law

On December 22, 2006, the National Assembly passed the Law on Industrial Relations Advancement. However, the law runs afoul of ILO norms in many respects, or delays for three years the law conforming to ILO norms. Below are some of the most problematic provisions.[7]

1. Outlawing Multiple Trade Unions at the Enterprise Level

In Korea, trade union pluralism at the enterprise level is prohibited. While this prohibition was supposed to be lifted in 2007, the ban will be extended for an additional three years - until 2010. The extension of the prohibition on trade union pluralism at the enterprise level violates the right of free association. It will also deter the organization of workers at small and medium enterprises, as well as irregular workers.

2. Ban on Paying Wages to Full-Time Trade Union Staff

The government had passed legislation to prohibit an employer from paying wages to full-time trade union staff, a law that was supposed to go into effect on January 1, 2007. The new law pushes back the effective date to 2010. However, the issue of payment of wages for full-time staff is properly a subject of bargaining, not of legislation. Thus, legislation prohibiting an employer and union from bargaining over the payment of union staff runs afoul of ILO Convention 98. Importantly, the vast majority of trade unions in

[7] Although there was some disagreement between the two major trade union federations over whether to oppose the legislation, the two federations are in agreement that these provisions violate ILO norms.

Korea have fewer than 300 members. When the law does go into effect, basic trade union activities will be severely affected at small- and medium-size enterprises, as they will be least likely to support full-time staff.

3. ILO Definition of Essential Public Services

Pursuant to ILO jurisprudence, trade union activities in essential public services may be limited, particularly as to strikes. However, a service is not properly deemed essential unless the interruption of those services would endanger the life, personal safety or health of the whole or part of the population. In Korea, however, the scope of essential public service is impermissibly broad, covering sectors that are not essential in the strict sense. However, under the new law, the scope of "essential" public services has been expanded to include air transport, blood supply, water purification, and steam and hot water supply.

Moreover, even though compulsory arbitration was recently repealed, workers in the "essential public services" such as transportation and public health will be subject to the imposition of Emergency Mediation, which includes compulsory arbitration with additional obligations to maintain minimum services. Most troubling, the law no allows the use of a replacement workforce of up to 50% of the workers on strike.

4. Unjust layoffs/ Redundancy Dismissal

The law was amended to strike penal sanctions for unjust dismissals, and in its place established a scheme of monetary compensation. Without compulsory reinstatement in the case of unjust dismissals, there will of course be increased incentives for employers to unjustly dismiss workers. In the case of redundancy dismissals, the advance notification period has been reduced from 60 to 50 days. Considering that this is a period in which the worker will need to prepare for a change of job or unemployment status, the reduction of the notification period can threaten the livelihood of such workers.

c. Use of Irregular Employment Relationships to Deny Workers Basic Labor Rights

1. Temporary Contracts

According to the Korean National Statistical Office *Supplemental Survey of the Economically Active Population*, irregular workers constitute 55% (8.45 million) of the South Korean workforce. The survey also found that 67.7% of women workers (about 7 out of 10) are employed as irregular workers. Wage inequality among workers is increasing. Wage disparity, based on the total monthly wage, between the top 10% and the bottom 10% has increased from 4.6 times the wages of the bottom 10% in 2001 to 5 times in 2006, and wage disparity based on hourly wages has increased from 4.8 times in 2001 to 5.4 times in 2006. Also, the numbers of low-wage workers (earning less than 2/3 of the average wage) has reached 3.97 million workers out of 15.35 million workers (25.8% of the workforce), and 4 out of 10 of those in low-wage work are employed as irregular workers. Because their employment is "temporary," these workers suffer from

constant job insecurity and discrimination, and are prevented from exercising rights under the labor law.

On September 11, 2004, the government announced its intention to enact two bills on irregular workers -- the "Act on the Protection of Fixed-term and Short-term Workers" and the revision of the "Act on Protection of Dispatched Workers." On November 30, 2006, the two bills were passed. The law should have established the principle that employers employ irregular workers only in those cases where the nature of the work is truly temporary or otherwise not regular. However, the law on fixed and short-term workers excludes this principle. Employers may hire an employee under short-term contracts for up to 2 years. Those workers that approach the 2-year limit are often not offered regular employment but are instead fired.

Irregular workers in Korea are discriminated against in wages, work conditions, and application of social insurance. As of August 2006, irregular workers earn only about half the salary of regular workers: an average of only 1.16 million won ($1,100) per month, compared to the average of 2.26 million won ($2,200) for regular workers. Only 30% of irregular worker are enrolled in the 4 basic social insurance schemes. To effectively reduce the discrimination faced by irregular workers, equal pay for work of equal value should be stipulated. Although the law forbids "unreasonable discrimination" with regard to wages and working conditions, it is insufficiently clear to address this type of discrimination.

2. Indirect Employment Schemes

In 1998, the "Act on the Protection of Dispatch Workers" was enacted, which regulated the manner by which workers can be hired by a dispatching company for work at a third-party employer.[8] It most cases, the owner of a dispatching business would constantly dispatch workers and a recipient company would use dispatched workers for a maximum of 2 years. Under the law, workers could be dispatched for any of 26 jobs, including work requiring expert knowledge and technology. However, they are not to be employed in the operation of the direct production process in the manufacturing industry. The owner of a dispatching company and the owner of a recipient company enter into a written contract on issues such as work hours, wages, health and safety, etc.

In practice, dispatch work is insecure because principal employers terminate the contracts and yet are not held accountable as employers. Dispatch workers also tend to earn less than regular workers. Additionally, it is very difficult for a worker under such an arrangement to join or form a union and participate in union activities, as their contract can easily be terminated. Even though the contracting company decides their working conditions, dispatch workers do not have the right to bargain with the user firm since the direct employment relationship is with the dispatcher. Employers at these firms, when

[8] According to the Korea International Labor Foundation, the are 1,103 temporary service companies (agency employers): 879 of them are with fewer than 50 employees, and 36 with 300 employees or more.

faced with pressure to bargain, will often simply terminate the contract without any legal repercussions.

Under the new law, the scope of occupational categories where dispatch labor is legal can be expanded by presidential decree.

3. Denial of Rights to So-called 'Self-Employed' Workers

Freight workers, golf-course caddies, insurance salespeople, numbering more than a million in Korea when combined, are not able to receive the protection of the labor law because they are considered as part of an independent enterprise. They are also banned from forming trade unions and do not have the right to collectively bargain. In practice, however, these workers work under an individual labor contract with an employer who controls their wages, hours and working conditions.

d. Violent Repression of KGEU

In January 2006, the "Act on the Establishment and Operation of Public Officials' Trade Unions" came into effect. Although touted by the government as guaranteeing the rights of government employees, it instead limited them.[9] Under the Act, many government employees are simply not permitted to associate. The right to bargain collectively is also substantially limited, as collective agreements are not binding as to wages and working conditions, including hiring, firing, salary and other remuneration.

The ILO adopted recommendations on government employees' trade union rights in March 2006, criticizing the law for curtailing the union rights of public sector employees. In response, the Ministry of Government Administration issued the "Directive to Promote the Transformation of Illegal Organizations into Legal Trade Unions." This directive identified the Korean Government Employees Union (KGEU) as an illegal organization on the basis that it had not submitted its registration under the 2006 Act (which violates ILO core labor standards). The Ministry directed that there be no collective bargaining with the KGEU and instructed all government offices to issue orders to employees to "voluntarily" withdraw membership from KGEU. The Ministry even instructed local governments to threaten KGEU members with disciplinary action for failure to comply with the orders.

On August 3, 2006, the Ministry issued another directive that specifically requested that all government offices take firm actions against KGEU in order to "take thorough countermeasures including forceful closing down of the illegal organizations' offices

[9] Current law excludes all government employees above the grade 6 level, and of those eligible for affiliation, approximately 25% are deprived of their right to join unions (for example, firefighters, supervisors, and managers). Furthermore, a government employees' union cannot engage in strikes, work slowdowns, or any action that disturbs the normal conduct of operations. Public officials are allowed to organize a workplace association, if they are of grade 6 or higher and do not belong to special services. These associations do not have the right to collectively bargain but are entitled to be consulted with respect to some working conditions.

nationwide." It also demanded that offices exclude KGEU members from personnel committees, to actively encourage the KGEU members to withdraw from the union, to prohibit union dues check-off, and to block any financial support to the union.

On August 30, while the ILO Asia Regional Meeting was taking place in Busan, Korea, a KGEU local office was forcefully closed down. From September 22, attacks started throughout the country. Riot police armed with fire extinguishers, hammers, drills, and power saws raided the union offices. Over 100 KGEU local offices have been shut down, and in many cases, doors and walls of union offices were broken through while doors to union offices were sealed off, in some cases even welded, with iron plates or bars. KGEU members inside the offices were violently expelled. More than 100 KGEU members and supporters were arrested, and some of them have been seriously injured.

In Suncheon City of Jeonnam province, shortly after the forced closure of the union office, the local government ordered the heads of departments and agencies to collect an "Application for Voluntary Withdrawal from KGEU" from all KGEU members. This "application," which was distributed by local government officials, is a pledge to withdraw from the union. It also clearly states that those who sign would also stop paying union dues through personal bank accounts. Of 1,065 KGEU members in Suncheon, only 7 members did not sign the application. In Samcheok of Gangwon province, the number of union members decreased from 640 in September to 229 in October. The local government has ordered all government employees to withdraw from the union and submit confirmation bank slips to 'prove' that they had stopped paying their union dues.

2. Intellectual Property Rights

In TPA, Congress instructed our trade negotiators to ensure that future trade agreements respect the declaration on the Trade Related Aspects on Intellectual Property Rights (TRIPs) agreement and public health, adopted by the WTO at its Fourth Ministerial Conference at Doha, Qatar. However, the KORUS FTA contains a number of "TRIPs-plus" provisions on pharmaceutical patents, including on test data and marketing approval. These provisions, in combination with other provisions of the agreement, provide excessive patent protection for the pharmaceutical industry, leaving consumers and public health departments to pick up the tab for industry profits that exceed what could otherwise be earned under existing national and international laws. A Pharmaceuticals and Medical Devices Chapter, stronger than the text negotiated for the U.S.-Australia FTA (Annex 2-C), poses additional challenges to access to affordable medicines. Below are just some of the most troubling provisions.

1. Under this FTA, the scope of what is subject to patentability is quite sweeping, excluding only diagnostic, therapeutic and surgical procedures, as well as those inventions of which the prevention of commercial exploitation is necessary to protect public order or morality. A party cannot, however, exclude such commercial exploitation under the agreement simply because such exploitation is currently prohibited by law. Everything else, including the patenting of plants and animals, is covered.

2. This agreement provides for the granting of a new patent on products that are already known if a new use or method of using the product is discovered. This clause was excluded from past agreements over the obvious concern that a patent could be extended for decades beyond the initial inventive step. In essence, this clause grants additional monopoly rights without any innovation. As discussed below, this also means that data exclusivity would be granted for the second patent.

3. The pharmaceutical industry has argued that the process needed to obtain marketing approval of new chemical entities reduces the effective term of patent protection and the possibility of recovering research and development costs. Thus, they have lobbied for and obtained the right to extend the patent term to compensate for delays in granting marketing approval as well as delays in the examination of the patent application. No maximum period is provided for this extension. Moreover, the right to extend the term of the patent for delays in patent approval is triggered after four years under the KORUS FTA, not five as in previous FTAs, and there is no minimum defined period that will trigger patent extension for delays in granting marketing approval.

4. Although TRIPS requires members to protect undisclosed test data on pharmaceutical products against unfair competition, it does not require members to grant exclusive rights over data. However, the KORUS FTA obliges parties to grant exclusive rights for at least five years from the date of marketing approval in the party, regardless of whether it is patented or not or whether the data are undisclosed. The agreement also provides that data exclusivity extends to information used to obtain marketing approval for a new pharmaceutical product in a third country. The protection for data is also not affected by the expiration (or non-existence of) a patent, potentially granting additional protection beyond the patent life or in absence of any patent. Finally, the agreement allows a producer to obtain consecutive periods of data exclusivity, which would extend the protection well beyond 5 years.

5. In those cases where a party requires a pharmaceutical producer to submit new clinical information for marketing approval when the producer is seeking protection for a second usage of the same chemical entity that was previously granted marketing approval in another product, the party must refuse to authorize another producer to market a similar product for three years based on the new clinical information submitted by the original producer, or evidence or marketing approval based on the new clinical information. In essence, this language extends additional data protection to a producer when a second use is found for the original drug.

6. Finally, the FTA requires a linkage between the drug registration and patent protection, which is not found in TRIPS. Consequently, the national health authority must refuse to grant marketing approval to a generic drug if a patent is in force. Such "linkage" gives any person or entity claiming a patent on a pharmaceutical the power to stop it from reaching the market, even if the patent is invalid. Generics can come on the market much faster if they are able to obtain marketing approval before the patent

expires, ensuring that their product is ready for market introduction as soon as any patent barrier to introduction is withdrawn.

Another serious problem with linkage is that it requires the agency responsible for drug safety to be responsible for verifying the patent status of the product and informing the patent holder, a function outside that agency's mandate or expertise. Moreover, the government will be held liable if marketing approval is granted to a product that is later found to have a valid patent, when it should be the violator (e.g. generics company) that should be held liable. The government should not be tasked with protecting the rights of brand-name pharmaceutical companies over generics companies.

In addition to these provisions, the parties negotiated a *Chapter on Pharmaceutical Products and Medical Devices*. Experts expressed concern over similar, and weaker, language in Annex 2-C of the U.S. Australia FTA, which posed a threat to the ability of governments to use preferred drug lists to control costs of pharmaceuticals. Preferred drug lists (PDLs), like Korea's positive list formulary and a similar list used by the U.S. Veteran's Administration, provide for price negotiations between pharmaceutical companies and the state as a condition of a drug's inclusion on a preferred list for reimbursement.[10] Although much further analysis is required to determine the potential impact of this chapter on federal health care programs, or national health care in Korea, the LAC is concerned that the pharmaceutical prices could increase – to the benefit of the pharmaceutical industry and at the expense of the taxpayer and the consumer.

Of particular concern is Article 2 – "Access to Innovation," which directs a party to reimburse pharmaceutical producers at "competitive market-derived prices" or to "appropriately recognize the value of patented pharmaceutical products" and to apply for "an increased amount of reimbursement." Article 3, Transparency, also requires a party to solicit comments from pharmaceutical makers about any proposed laws and regulations of general application that may affect the pricing, reimbursement and regulation of pharmaceutical products. This provision does not exist in Annex 2-C. Further, pharmaceutical product makers can demand an independent review if they are unhappy with a pricing and reimbursement determinations.

3. Government Procurement

In general, KORUS FTA's rules on procurement have the potential to restrict public policy aims that may be met through procurement policies at the federal level. These rules could be used to challenge a variety of important procurement provisions including domestic sourcing preferences, prevailing wage laws, project-labor agreements, and responsible contractor requirements. The LAC believes that all governments must retain their ability to invest tax dollars in domestic job creation and to pursue other legitimate social objectives, and that procurement rules which restrict this authority are inappropriate. To that end, commitments made in the government procurement chapter

[10] Medicaid was specifically carved out in footnote 3, sparing states from potentially significant increases in drug spending.

should be designed to ensure there is no obstacle to the use of federal and, if applicable, state dollars to promote good jobs at home. Commitments that do not promote this goal should not be undertaken.

Below are just some of the most troubling provisions of this chapter.

1. Of importance to the LAC is the ability of governments to use procurement dollars to promote local employment and to discourage outsourcing of the goods and services upon which the government relies. Article III of GPA, National Treatment, would prevent any discrimination to be made between two bidders on a procurement contract based upon where those goods or services came from. In other words, a government could not prefer a bidder that employed only local employees or used U.S.-made goods, or discriminate against a bidder that proffers outsourced goods or services.

2. Under Article X.2, the number of exclusions is substantially reduced from previous procurement chapters, such as with Peru, Panama, Colombia and DR-CAFTA. For example, in recent agreements, government provision of goods or services to persons or to regional or local level governments; purchases funded by international grants, loans, or other assistance (where the provision of such assistance is subject to conditions inconsistent with the procurement chapter); and hiring of government employees and related employment measures, were all excluded from coverage. Not so with the KORUS FTA. Also of note is that government assistance in the form of subsidies is not excluded, although it has been in numerous previous agreements. We object to these changes in the KORUS FTA.

3. Article VI of the GPA, as modified by Article X.7, establish the rules on technical specifications. Accordingly, the agreement prohibits the preparation, adoption or application of technical specifications that "lay down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labeling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities" if they have the intent or effect of "creating unnecessary obstacles to international trade." While Article 7 provides an exception for technical specifications to promote the conservation of natural resources or protect the environment, numerous other public interest regulations could still be challenged. This is unacceptable.

4. Article VIII of the GPA and Article 5 of the FTA set forth the supplier qualifications provisions. Article X.5 provides that "a procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial abilities to undertake the relevant procurement." We are concerned that this provision could, for example, prohibit sweat-free procurement rules that require a company to certify its production does not utilize sweatshop labor, as is the exclusion of companies based on their international human rights and environmental records. Other conditions, such as the payment of a prevailing or living wage, could be put in jeopardy. Finally, it is unclear whether articles

X.5 (3)(c) or (d) are sufficient to bar bidders that have seriously or repeatedly violated federal labor laws.

5. The Government Procurement Annex may also presents some cause for concern. It appears that Section C of the Annex incorporates the procurement of services under Appendix I of the GPA. Annex 2 of Appendix I of the GPA is a list of the *states*' commitments on procurement, undertaken in 2002, that are intended to be covered under the rules of the GPA. Thus, it appears that USTR may have bound 37 states to the additional rules on procurement under the KORUS FTA. Further clarification of this provision is needed.

4. Safeguards

Workers have extensive experience with large international transfers of production in the wake of the negotiation of free trade agreements and thus are acutely aware of the need for effective safeguards. A surge of imports from large multinational corporations can overwhelm domestic producers quickly, causing job losses and economic dislocation that can be devastating to workers and their communities. The safeguard provisions in the KORUS FTA are simply not sufficient. In the case of autos, for example, the current safeguard is practically useless. Should auto exports from Korea, the majority of which enter the country duty free upon the implementation of the agreement, cause serious injury to the U.S. auto industry, the only tool the U.S. has is a snap-back provision – imposing a 2.5% tariff. That tariff has posed little to no barrier to the over 500,000 autos exported to the U.S. in 2006.

Korea made several demands of the U.S. during the negotiations on trade remedies. Fortunately, those demands were largely rejected. For example, Article 5 of the trade remedy provisions of the FTA does not contain an exemption from future global safeguard actions that the U.S. may undertake. Nor does Article 5 give Korea the right to have the impact of its exports on the U.S. industry assessed separately from that of other countries' exports also covered in a trade remedy dispute. However, the FTA does extend to Korea a "permissive safeguard" under which the U.S. may exempt Korea from a future global safeguard.

The safeguard provisions of an FTA simply should not expire. Although bracketed, it appears that the safeguard provisions of the KORUS FTA will expire 10 years following the entry into force of the agreement. The KORUS FTA also provides that a safeguard measure may be applied for a period not to exceed three years, which is one year less than found in many other recently negotiated FTAs. Given that the Korean economy poses a much greater risk to the U.S. than the economies of Central America or the Andean region, reducing the effectiveness of the safeguard makes no sense whatsoever.

There are several new provisions in Section B on Antidumping and Countervailing Duties. Article 1.3 obligates the U.S. to notify Korea of an antidumping or countervailing duty application and afford Korea a meeting regarding the application prior to any investigation. If, after the investigation, a preliminary affirmative

determination is made, the U.S. must inform Korea of its right to seek a suspension agreement in either an antidumping or countervailing duty case. In an antidumping case, for example, Korea will have the right to negotiate a price undertaking. In a CVD case, Korea will have the right to negotiate a quota and price arrangement.
Section C requires the formation of a Committee on Trade Remedies, comprised of officials of each party that have responsibility for trade remedy matters. While some of the vague functions outlined appear innocuous, the LAC is concerned that the committee is charged with oversight of the trade remedies chapter, and compliance with the notification, consultation and undertakings provisions of Section B. The potential for Korea to unduly influence the outcome of decisions as to whether trade remedies should be applied is disconcerting. The mandate of this committee ought to have been more clearly defined and appropriately limited in scope.

Together, Sections B and C tend toward converting what should be a trade enforcement chapter into a trade negotiation chapter. While negotiations may bring about positive resolutions to conflicts, they should not stand as a barrier to vigorous enforcement when necessary. If either party violates anti-dumping or countervailing duty laws, those laws must be enforced. All too often, this Administration has opted for negotiation over enforcement, allowing domestic industries to suffer the consequences.

5. Services

The LAC believes that important public services should be performed by the government, not privatized or, in some cases, outsourced. Maintaining public control over these services is essential to maintaining accountability to the local consumers of those services. As in previous agreements, the KORUS FTA does not contain a broad, explicit carve-out for these essential public services. Rather, public services provided on a commercial basis or in competition with private providers are generally subject to the rules on trade in services, unless specifically exempted. There are few public services within the United States, however, that would qualify for the exception as it is written.

Unfortunately, the specific exemptions for services in the KORUS FTA fall short of what is needed to protect these important sectors. There are, for example, no U.S. exceptions for energy services (except atomic), water services, sanitation services, public transportation, education or health care. Even for those services that the U.S. did make exceptions for, the exemption only applies to some of the core rules of the FTA, not all. Any trade agreement should preserve the ability of federal, state and local governments to regulate services for the public benefit, allowing distinctions between domestic and foreign service-providers and setting appropriate qualifications or limitations on the provision of those services.

The services chapter does make a modest improvement as to domestic regulation by eliminating the requirement that measures relating to qualification requirements be "not more burdensome than necessary." Additionally, the article recognizes the "right to regulate and to introduce new regulations on the supply of services in order to meet

national policy objectives." We welcome this change to the services chapter, which we have sought for some time.
Finally, the text of the agreement on services is not complete. The agreement contains bracketed language on the IMF and on a provision incorporating a balance of payments exception under Articles 11 and 12 of GATS.

6. Dispute Settlement

The LAC has consistently opposed the creation of a second-tier procedure to resolve disputes related to labor and the environment. However, our concerns regarding the Chapter on Institutional and Dispute Settlement do not end there. We are also troubled by changes made to the chapter with respect to commercial disputes, and find Annex X-B (discussed below in Section B.1), which establishes alternative procedures for automotive product disputes, of little additional benefit, if any, for American workers or the US auto industry. The threat of a 2.5% tariff, albeit important, is insufficient to open the hermetically sealed Korean auto market.

Indeed, the KORUS Dispute Settlement Chapter in many respects is inexplicably weaker than even our most recently negotiated trade agreements, such as the Peru FTA. The accumulations of several minor additions or deletions to the text significantly alter the character of the dispute resolution process. Below are some of the most troubling changes.

1. In the first sentence of Article X.4, negotiators inserted the clause "or as the parties otherwise agree." The effect of this clause, which does not exist in, e.g., the Peru FTA, is to allow the parties to alter the scope of what is subject to dispute resolution – potentially expanding, restricting, or prohibiting the kinds of actions that may be brought under the chapter.

2. In previous FTAs, one could bring a claim to challenge an "actual or proposed measure of another party." Under Article X.4 of KORUS, a claim can only be brought against a "measure." Thus, a party may not invoke dispute resolution procedures to challenge a potentially damaging proposed measure, and must instead wait until the proposed measure becomes an actual one, potentially injuring U.S. interests in the process.

3. In the Peru FTA, if the parties are unable to agree on compensation, or if a party believes that the other party has failed to observe the terms of an agreement, a party may suspend the application of benefits of an equivalent effect. However, in considering what benefits to suspend, the complaining party should first seek to suspend benefits in the *same sector or sectors* as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of the agreement or to have caused nullification or impairment. If that is not practicable or effective, a party may suspend benefits in other sectors. Under Article X.13 of KORUS, however, any sector may be the subject of the suspension of benefits, even if that sector is wholly unrelated to the dispute.

4. Article X.9 of KORUS eliminates the requirement found at Article 21.9(c) of the Peru FTA, namely that a party "endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute."

Procedural Delays

Throughout the dispute resolution chapter, the agreement extends procedural deadlines such that it may extend for months beyond the maximum period established under FTAs with far less developed countries. The accumulation of delays throughout the dispute resolution process could have a materially injurious affect upon a complaining party. For example:

Article X.8: Referral to the Joint Committee: KORUS requires a party to wait 20, not 15, days (as under the Peru FTA) to take a claim from consultation to the Joint Committee when a dispute concerns perishable goods. An additional five days delay could be meaningful in some cases.

Article X.9, Establishment of Panel: Under KORUS, the joint committee has twice the time to deliberate and resolve a dispute, 60 days – not the 30 days in the Peru FTA. Further, should the dispute go to a panel, the allotted time for selecting panelists is much lengthier, substituting 28 days for the various 15-day periods set out in the Peru FTA.

Article X.11: Panel Report: The procedural timeline is much longer, giving the panel an additional two months to prepare the initial report and an additional 15 days to present the final report.

7. Investment:

As with previous FTAs, the agreement's rules on expropriation, its extremely broad definition of what constitutes property, and its definition of "fair and equitable treatment" are not based directly on U.S. law, and annexes to the agreement clarifying these provisions also fail to provide adequate guidance to dispute panels. As a result, arbitrators could interpret the agreement's rules to grant foreign investors greater rights than they would enjoy under our domestic law. In addition, the agreement's deeply flawed investor-to-state dispute resolution mechanism contains none of the controls (such as a standing appellate mechanism, exhaustion requirements, or a diplomatic screen) that could limit abuse of this private right of action.

8. Outward Processing Zones - Kaesong

Inclusion of goods from the Kaesong Industrial Complex (KIC), a free trade zone located in North Korea, has been one of the most politically sensitive issues in the negotiations. General opposition to the inclusion of such goods has three key components: 1) grave

concerns over the lack of basic labor rights in the complex,[11] 2) the impact on jobs and wages of the exports of these goods -- produced at wages even lower than in China, and 3) security concerns related to nuclear missile development and/or providing a market (and much needed hard currency) to the government of North Korea. In response to such concerns, USTR repeatedly stated that products from Kaesong would not be eligible under the FTA.

> Schwab said the U.S. position that goods from Kaesong could not be eligible for access to the U.S. market under the FTA will not change. Deputy USTR Karan Bhatia at a July 20 hearing had assured House International Relations Committee Chairman Henry Hyde (R-IL) that the Kaesong goods would not be eligible under the FTA.[12]

Despite these assurances, the USTR returned from Seoul with Annex X-X, Committee on Outward Processing Zones on the Korean Peninsula. Although the Annex does erect hurdles that would have to be overcome before any product from the KIC could enter the U.S. market under the FTA, we have serious concerns that this door, which was said to be locked shut, was left open.[13]

Under this Annex, the parties will establish a committee to "review whether conditions on the Korean Peninsula are appropriate for further economic development through the establishment and development of outward processing zones." The Committee will meet on the anniversary of the agreement's entry into force, and at least once annually thereafter. The Committee is empowered to identify geographic areas that may be designated as an OPZ, the goods of which may therefore be considered "originating goods" for the purposes of the rules of origin chapter of the agreement.

The Committee is required to establish criteria that must be met before goods from any outward processing zone may be considered "originating goods." These criteria include, but are not limited to: "progress toward the denuclearization of the Korean Peninsula; the impact of the outward processing zones on intra-Korean relations; and the environmental standards, labor standards and practices, wage practices and business and management practices prevailing in the outward processing zone, with due reference to the situation prevailing elsewhere in the local economy and the relevant international norms."

Although "labor standards and practices" and "wage practices" are included among the listed criteria (assuming that these are mandatory criteria), the annex does not specify which "labor" or "wage" standards. The text also directs the committee to give "*due*

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[11] See, e.g., Human Rights Watch, *North Korea: Workers' Rights at Kaesong Industrial Complex*, Oct. 2, 2006; James Brooke, *An Industrial Park in North Korea Nears a Growth Spurt*, NY Times, Feb. 28 2006.

[12] *Schwab Raises Doubt About Concluding All Outstanding Free Trade Agreements*, Inside US Trade, Aug. 18, 2006.

[13] Additionally, we are very concerned about the potential for transshipment of North Korean made goods to South Korea and subsequently to the United States. It does not appear from the text that this issue was adequately addressed. Effective enforcement of rules of origin must be undertaken in order to prevent such illegal transshipment.

reference to the situation prevailing elsewhere in the local economy." In the case of Kaesong, North Korea, the labor standards prevailing elsewhere in the local economy fall far short of international standards (indeed, they are practically non-existent), and wages are even lower in the surrounding area. As to international norms, they should not be given mere due reference but rather should be a deciding factor.

It is our firm position that no goods from the KIC be able to enter the U.S. market until workers there have the right to freely exercise their internationally recognized worker rights, and that the government effectively enforce those rights. Failure to do so would have to be subject to dispute resolution under the KORUS FTA, despite the fact that North Korea is not a party to the agreement. However, our opposition should not be read as opposition to economic opportunity for the impoverished people of North Korea. We fully understand that employment of any kind is scarce, and that living conditions are very dire. Further development of North Korea is also undoubtedly important to any future reunification of North and South Korea. However, we believe that traded goods and services must be produced or performed under internationally recognized labor standards. Only in this way will working people obtain a fair share of any potential gains from trade.

B. Sectoral Concerns

1. Automotive

Bilateral auto trade between the U.S. and Korea is seriously unbalanced. In 2006, the U.S. ran a $13.4 billion trade deficit with Korea, of which $11.7 billion is concentrated in the autos and auto parts sector. In units sold, that translates into 750,000 Korean vehicles sold in the U.S., 554,000 of which were exported from Korea. The US only exported 4,000 vehicles to Korea. To deal with this reality, a five-point proposal supported by labor, industry and Congress was delivered to USTR as a roadmap for a successful automotive negotiation. The proposal included a 15-year phase-out on U.S. auto tariffs and the exclusion of trucks from any tariff reduction, tariff reduction incentives for opening the Korean auto market, enhanced safeguards, elimination of non-tariff barriers, and a mechanism to address future non-tariff barriers. The USTR incorporated non of these provisions.

a. Tariffs

The **United States** will immediately eliminate its 2.5% tariff on autos under 3000ccs, which accounts for the vast majority of Korean autos. The U.S. will also immediately eliminate its 2.5 % tariff on most auto parts. The 2.5% tariff on autos over 3000ccs will be phased out over three years. The 25% tariff on pickups will be phased out over 10 years.

Korea will immediately eliminate its 8% tariff on autos greater than 1500ccs, and phase out said tariff over three years on autos less than 1500ccs and all diesel passenger cars. Korea will also eliminate immediately its 10% tariff on trucks.

These terms are unacceptable. Indeed, the LAC is absolutely opposed to any immediate reduction of tariffs. Any tariff reduction should not commence until after there is a verifiable and significant opening of the Korean auto market, measured against objective criteria. The U.S. tariff on pickup trucks should not have been considered in the KORUS FTA negotiations, but only in multilateral negotiations.

The LAC believes that these terms will trigger a surge in auto imports from Korea. It will be relatively easy for Korean automakers to ramp up production for export to the U.S. Recently, the government of South Korea stated that it expects the proposed free trade deal to boost its auto trade surplus with the U.S. by $1 billion, and result in the export of Korean pickup trucks to the U.S.[14] Furthermore, Japanese and other foreign auto companies will have an incentive to locate production in Korea and use it as a platform to export pickup trucks duty-free into the U.S.

At the same time, the KORUS FTA simply establishes a toothless process for addressing non-tariff barriers. There is absolutely no guarantee that the process will produce any concrete, measurable access to the Korean auto market. In our judgment, this new process is likely to prove as ineffective as the similar promises made in the failed 1995 and 1998 agreements. There is every reason to believe that Korea will continue to find new non-tariff barriers that it can use to keep its market closed to U.S.-built automotive products.

b. National Treatment and Market Access for Goods

Article 12: Engine Displacement Taxes

Proposed Article X.12 concerns the treatment of Korea's Special Consumption Tax and Annual Vehicle Tax, two non-tariff barriers (NTBs) that facially discriminate against large engine vehicles and have a disparate impact on U.S.-manufactured automobiles.

In the 2006 National Trade Estimate Report on Foreign Trade Barriers, USTR stated,

> "The United States has also expressed concern that Korea's current system of auto taxes discriminates against the larger vehicles that exporters tend to sell in the Korean market. Noting the MOU commitment to restructure and simplify the automotive tax regime in a manner that enhances market access for imported vehicles, the U.S. Government has urged the Korean government to lower the overall tax burden, reduce the number of taxes assessed on vehicles, and move away from engine-displacement taxes towards a value-based system."

[14] See Yonhap News, *FTA to boost S. Korea's auto-related surplus by US$1billion*, April 11, 2007. "The ministry said at a meeting co-hosted by the Korea Automobile Manufacturers Association in the port city of Gunsan that exports of finished cars may shoot up around $810 million due to Washington's scrapping of its 2.5 percent tariff for South Korean cars. Imports could rise $72 million after Seoul removes its 8 percent tariff, giving South Korea a surplus of about $740 million a year."

Unfortunately, the agreement allows engine displacement taxes to persist indefinitely, and allows for discrimination between those engines above and below 1000ccs.

As to the *Special Consumption Tax*, the agreement contemplates a permanent discrimination between engines smaller than 1000ccs and those that are larger. In the first three years, engines between 1001ccs and 2000ccs (the majority of Korean cars) will face a tax of no more than 5%. Engines larger than 2000ccs (the majority of U.S. cars) will face a tax of no greater than 8%. After three years, all engines larger than 1000 ccs will be taxed at a single rate of no greater than 5%.

As to the *Annual Vehicle Tax*, the agreement maintains a discriminatory tax structure disadvantageous to U.S. autos. An auto with an engine of 1000 ccs or less will face a tax of no more than 80 won ($.08) per cc. A vehicle with an engine between 1001 and 1600 (mostly Korean autos) will face a tax of no more than 140 won per cc ($.15, or $150 on a 1001 cc engine). One with an engine larger than 1600 ccs (mostly U.S. autos) will face a tax of no more than 200 won per cc. ($.21, or $336 on a 1600cc engine).

As to the Subway Bond Tax, the FTA only discourages any increase in discrimination based on engine size; it does not eliminate the existing problem, nor prevent the adoption of a different, but similarly discriminatory mechanism, for this tax.

The proposals of the United Auto Workers (UAW), the U.S. auto industry and Congress have all demanded that these taxes be eliminated immediately, to the extent they discriminate against imported vehicles.

c. Dispute Resolution

Although touted by trade officials as a significant tool for the enforcement of the auto-related provisions of the KORUS FTA, Annex B does little more than expedite slightly the joint committee review and arbitration process. At best, the autos dispute resolution process: 1) obviates the need for consultations, 2) requires the joint committee to resolve a matter within 30, not 60, days (like most FTAs), and 3) expedites the seating of the arbitration panel, as well as the hearing and rendering of a final report. However, even this process could take several months to complete.

Below are our central concerns with Annex B.

1. The special dispute resolution procedures does not allow for participation by non-governmental interested parties, including unions.

2. The threshold for stating an actionable claim is higher in this case. As to non-auto related disputes, the dispute settlement procedures may be applied "with respect to the avoidance or settlement of all disputes between the parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this

Agreement;

(b) the other Party has otherwise failed to carry out its obligations under this Agreement; or

(c) a benefit the Party could reasonably have expected to accrue to it under this Agreement is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement."

The draft autos annex largely conformed to this language, finding that a penalty could be assessed where "the panel determines that the party complained against has not conformed with its obligations under the agreement or that its measure is causing nullification or impairment." Annex B now requires a further showing of injury, namely that "the non-conformity or the nullification or impairment that the panel has found has materially affected the sale, offering for sale, purchase, transportation, distribution, or use of originating goods of the complaining Party." As explained in a footnote, "If the panel determines that the non-conformity or the nullification or impairment that the panel has found has not materially affected the sale, offering for sale, purchase, transportation, distribution, or use of originating goods of the complaining Party, the procedures provided for in Articles x.12 and x.13 [for non-auto related disputes] shall apply."

3. The dispute panel does not utilize panelists with automotive knowledge and experience.

4. The proposed penalty is ill equipped to address the central problem – the Korean government's restrictions on access for imports in the Korean auto market. If, for example, Korea fails to harmonize and/or reduce or eliminate its engine displacement taxes as promised, or otherwise fails to allow a significant level of imports into its market, raising U.S. tariffs to pre-FTA levels does nothing to improve the situation for exporters of U.S.-manufactured vehicles. The inability to go beyond the imposition of the pre-FTA tariff would also prevent the collection of duties that would offset the value of the damage to U.S. exports caused by the Korean government's import barriers.[15]

5. If the panel determines that an actionable violation has occurred, the complaining party can only apply the prevailing MFN rate on autos (8703), not to light trucks (8704) (which was included in a previous draft of this annex).

6. It is unclear how long the safeguards may last, although they could sunset in as early as ten years. Section Eight notes that the safeguard will not expire if a panel has found that a party has failed to conform with its obligations under the agreement. It does not explain whether such a finding merely extends the effective life of the safeguard or converts it into a permanent safeguard. In any case, the LAC believes that the safeguard should be permanent.

d. Technical Barriers to Trade

[15] Further, it is our position that there should be no immediate reduction in tariffs, and thus no room for a tariff snapback, until a significant level of market presence has been established.

The Automotive Working Group Annex does not appear to take on any additional function other than what currently exists in the context of the WP-29. Moreover, civil society, and in particular trade unions, have no role, formal or otherwise, in the process. Unions do and should continue to play a part in review and setting of motor vehicle standards. Although a union could be included when a party deems it to be necessary and appropriate, we have little confidence that the current Administration would automatically include us in this process. At best, labor may send comments pursuant to a federal register notice should such notice and comment be necessary. We therefore do not perceive any real advantage from the inclusion of this article.

Indeed, the U.S. government established a similar working group with the government of Japan to address market access restrictions more than 10 years ago, but no meaningful progress was made over many years of meetings. The limitations of this proposal, including the narrow definition of "good regulatory practice," would not produce the market-opening results that U.S. negotiators expected from the U.S.-Japan process and that have been identified as the goal of the negotiations with Korea.

USTR also negotiated a letter on additional non-tariff barriers, entitled "Confirming Letter to U.S.-Korea (KORUS) FTA (K-ULEV, OBD II, Self-certification)." The LAC is concerned that this confirming letter, and the other autos provisions, will not effectively end the Korean government's ongoing efforts to use technical standards as a tool to discriminate against imported automotive products.

e. Auto Conclusion

USTR had a very practical proposal, supported by labor, industry and congress that would have conditioned new market access for Korea on the creation of new market access for U.S. manufacturers. Unfortunately, that proposal was ignored. More frustrating, USTR had at one time proposed language that conditioned US tariff reductions on Korean auto and truck imports reaching a "significant" level. Although insufficient, it was a step forward. In the rush to reach an agreement, that modest proposal was also abandoned. As a result, the auto provisions of the KORUS FTA put our domestic auto industry and thousands of U.S. auto jobs in jeopardy. The LAC strongly opposes these provisions in the agreement and will not support any future agreement that does not adequately address these concerns.

2. Steel

Few issues in the bilateral economic relations between the U.S. and Korea have been as politically charged as steel. Following the Asian Financial Crisis in 1997, South Korean steel exports to the United States provoked a number of anti-dumping and countervailing duty cases, and Presidents Clinton and Bush each granted safeguard relief for U.S. steel producers. The major issue in bilateral steel trade with Korea is not tariffs, but rather non-tariff barriers that block access to the Korean market and the extent to which unfair trade practices in Korea, such as the dumping of excess steel capacity and use of government subsidies by the steel industry, harm U.S. producers and their workers.

In 2006, the U.S. steel trade deficit with Korea was $2.1 billion, exceeding the peaks reached after the Asian financial crisis. In addition to the antidumping (AD) and countervailing duty (CVD) orders against steel from South Korea, trade remedy laws have also been essential in redressing unfair trade practices affecting imports of several key steel product lines from South Korea. There is also an indirect steel trade deficit with Korea, owing to the trade deficit faced in industries that consume U.S. steel, such as the auto industry, machinery makers and other manufacturing sectors. Imbalanced trade in these products, due to high tariff and non-tariff barriers on these goods in South Korea and a relatively open market in the U.S., directly harms the U.S. steel industry and its workers.

One of the key concerns for the LAC is the KORUS FTA's rules of origin as they apply to steel. In the past, the U.S. steel industry made it very clear that rules of origin language patterned after CAFTA would be unacceptable in the KORUS FTA, as such rules would allow certain Chinese steel products galvanized in Korea or subject to other minimal processing in Korea to enter the U.S. as a Korean product. The rules of origin for steel contained in the NAFTA, however, generally require a greater amount of processing in order to confer origin. Any weakening of the NAFTA rules of origin for steel in an FTA with a country such as Korea – a country that is located in a major steel producing region and has its own significant steel processing capabilities – is unacceptable.

Although the U.S. already grants duty-free treatment to many steel products on a most-favored nation basis even to countries without preferential FTA access, the KORUS FTA, with its CAFTA-modeled rules of origin, could help countries in the region with booming steel capacity, such as China, circumvent antidumping and countervailing duty orders by shipping steel to Korea for minimal processing before export to the U.S. Such minimally processed steel would be treated as of Korean origin under the FTA and receive duty-free access to the U.S. market. While the Department of Commerce has the ability to include such minimally processed steel from Korea within the scope of an existing antidumping or countervailing duty order on steel from China, it is not clear how the lax rules of origin in the Korea FTA may affect the Department's treatment of such goods in an anti-circumvention proceeding. In addition, if Chinese producers take advantage of the FTA's weak rules of origin to ship steel to the U.S. through Korea (with minor processing), it could make it more difficult for the U.S. steel industry and its workers to meet legal thresholds regarding injury or import surges directly attributable to China when bringing future trade remedy cases against imports from China.

VI. Conclusion

The LAC recommends that the President not sign the KORUS FTA. It is obvious that USTR, tasked with negotiating the most significant trade agreement in over a decade, failed. In the waning moments of eligibility for trade promotion authority, it appears that concern for the economic futures of workers both in the United States and Korea were ignored. This is an unacceptable manner to conduct economic policy. Negotiations with

one of our largest trading partners must be handled with far greater deliberation and consultation with civil society and Congress.

If the President does send the agreement to Congress in its current form, Congress should reject the agreement, and send a strong message to USTR that future agreements must make a radical departure from the failed NAFTA model in order to succeed. American workers are willing to support increased trade if the rules that govern it stimulate growth, create good jobs, and protect fundamental rights. The LAC is committed to fighting for better trade policies that benefit U.S. workers, our global counterparts and the U.S. economy as a whole. We will oppose trade agreements, including the KORUS FTA, that do not meet these basic standards.

VII. Membership of the Labor Advisory Committee

Tim Brown, President, International Organization of Masters, Mates & Pilots (MMP)

Thomas Buffenbarger, International President, International Association of Machinists & Aerospace Workers (IAM)

Chuck Canterbury, National President, Fraternal Order of Police (FOP)

John Connolly, former President, American Federation of Television and Radio Artists (AFTRA)

Ron Davis, President, Marine Engineers' Beneficial Association (MEBA)

Leo Gerard, International President, United Steelworkers of America (USW)

Ron Gettelfinger, President, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)

Cheryl Johnson, President, United American Nurses (UAN)

Gregory Junemann, International President, International Federation of Professional & Technical Engineers (IFPTE)

Thomas Lee, President, American Federation of Musicians (AFM)

Bruce Raynor, General President, Union of Needletrades, Industrial & Textile Employees-Hotel Employees & Restaurant Employees International Union (UNITE HERE)

Michael Sacco, President, Seafarers International Union (SIU)

John Sweeney, President, American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)

Duane Woerth, former President, Air Line Pilots Association (ALPA)

USTR list as of Feb. 2007

Annex I

Korean Confederation of Trade Unions (KCTU)
LIST OF WORKERS IMPRISONED DUE TO TRADE UNION ACTIVITIES
(As of January 2007)

No.	Name	Union	Title	Charge/Incident	Legal Status
1.	Yoo Ki Soo	KFCITU	General Secretary	Pohang Local Union Strike (August 9 Rally)	Sentence: 2 years. On appeal
2.	Cho Ki Hyun	Daegu Local	President	Daegu Local Union Strike (June 2006) Extortion/Bribery in signing CBAs	Sentence: 3 years.
3.	Kang Woo Seung	Daegu Local	Member	Daegu Local Union Strike (June 2006)	Undergoing Trial
4.	Lee Ji Kyung	Pohang Local	President	Pohang Local Union Strike (Sit-down demonstration at POSCO)	Sentence: 3 years and 6 months. On appeal
5.	Jung Eun Sik	Pohang Local	First Vice President	Pohang Local Union Strike (Sit-down demonstration at POSCO)	Sentence: 2 years and 6 months. On appeal.
6.	Jung Seung Jong	Pohang Local	Vice President	Pohang Local Union Strike 12it-down demonstration at POSCO)	Sentence: 2 years and 6 months. On appeal.
7.	Kim Byung Kyul	Pohang Local	First Organizing Director	Pohang Local Union Strike (Sit-down demonstration at POSCO)	Sentence: 2 years and 6 months. On appeal.
8.	Sim Jin Bo	Pohang Local	Second Organizing Director	Pohang Local Union Strike (Sit-down demonstration at POSCO)	Sentence: 2 years and 6 months. On appeal.
9.	Kim Myung Seun	Pohang Local	Strategic Director	Pohang Local Union Strike (Sit-down demonstration at POSCO)	Sentence: 2 years and 6 months. On appeal.
10.	Kim Bong Tae	Pohang Local	Campaign Director	Pohang Local Union Strike (Sit-down demonstration at POSCO)	Sentence: 2 years and 6 months. On appeal.
11.	Kwon Young Dae	Pohang Local	Campaign Leader	Pohang Local Union Strike (Sit-down demonstration at POSCO)	Sentence: 1 year and 6 months. On appeal.
12.	Ji Kap Ryul	Pohang Local	Vice President	Pohang Local Union Strike	Sentence: 2 years and 6 months. On appeal
13.	Choi Kyu Man	Pohang Local	General Secretary	Pohang Local Union Strike	Sentence: 2 years and 6 months. On appeal
14.	Jin Nam Soo	Pohang Local	Strategic Director	Pohang Local Union Strike (August 17 Rally in Seoul)	Sentence: 2 years. On appeal

15.	Byun Moon Soo	Remicon Truck Drivers Local	Team Leader	Woori Remicon Strike (2007)	Undergoing Trial
16.	Han In Koo	Dump Truck Drivers Local	Branch Director	Pyontaek Demonstration	Undergoing Trial
17.	Chang Seuk Chul	Kyonggido Local	First Vice-President	Extortion, Bribery in Signing CBAs in Kyonggido Region	Undergoing Trial
18.	Jung Seung Hoon	Kyonggido Subu Local	Organizer	Extortion, Bribery in Signing CBAs in Chunahn Region.	Undergoing Trial
19.	Park Hae Wook	Ulsan Local	President	Ulsan Local Union General Strike (April to June, 2005)	Imprisonment. 2 years & 6 months
20.	Choi Seuk Young	Ulsan Local	Union Delegate	Ulsan Local Union General Strike (April to June, 2005)	Imprisonment. 2 years & 6 months
21.	Kang Sang Kyu	Ulsan Local	Union Member	Ulsan Local Union General Strike (April to June, 2005	Imprisonment. 1 year & 6 months.
22.	Kim Hyun Ho	Film Industry Union, KPSU	Policy Director	Protest Against the Tripartite Agreement	Sentence: 1 year
23.	Kwon Soo Jeung	Hyundai Motors Asan Subcontract Workers Local, KMWU	Former President of Union Local	Hyundai Motors Asan Subcontract Workers Union Struggle	Sentence: 8 months. On appeal.
24.	Park Jung Hoon	Hyundai Hysco Irregular Workers Local, KMWU	President of Union Local	Hyundai Hysco Irregular Workers Union Struggle	Sentence: 1 year and 6 months.
25.	Hwang Woo Chan	Korean Metal Workers' Union	Chair of KMWU Pohang Branch	Pohang Local Union Strike	Sentence: 2 years. On appeal.
26.	Kim Moon Young	Korean Metal Workers' Union	Union Delegate	Pyongtaek Demonstration	Sentence: 1 year and 6 months.
27.	Hong Jin Seung	Korean Metal Workers' Union	Union Delegate	Pyongtaek Demonstration	Sentence: 1 year and 6 months
28.	Kim Ki Young	Korean Metal Workers' Union	Organizing Director	Anti-KORUS FTA demonstration.	Undergoing Trial
29.	Kim Moon Seub	Korean Metal Workers' Union	Union Delegate	Anti-KORUS FTA demonstration.	Undergoing Trial
30.	Bae Eon Gil	Korean Metal Workers' Union	Branch Director	Anti-KORUS FTA demonstration.	Undergoing Trial
31.	Ryu Bong Sik	Korean Metal Workers' Union	Former Organizing Director (Kwangju)	Anti-KORUS FTA demonstration.	Undergoing Trial

32.	Yeon Jae Il	Korean Metal Workers' Union	Fired Workers' Union Struggle Director	Protest Against the Tripartite Agreement	Sentence: One year and 6 months.
33.	Kim Chang Geun	Korean Federation of Taxi Workers Union	General Strike Campaign Director	KCTU General Strike (November, 2006)	Undergoing Trial
34.	Kim Mang Kyu	Korean Teachers and Education Workers Union	Reunification Director	National Security Law	Undergoing Trial
35.	Choi Hwa Seob	Korean Teachers and Education Workers Union	Previous Reunification Director	National Security Law	Undergoing Trial
36.	Hong Jong Seon	Korea Cargo Transport Workers Union	Union Member	Jaechun Asia Cement Struggle	Sentence: 8 months
37.	Park Kyung Yeon	Korea Cargo Transport Workers Union	Union Member	JaeChun Asia Cement Struggle	Sentence: 8 months.
38.	Seung Ki Seuk	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
39.	Kim Dae Yoon	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
40.	Kim Tae Sang	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
41.	Park Jae Ho	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
42.	Son Yong Choon	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
43.	Lee Sang Deuk	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
44.	Eom Ki Hyun	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
45.	Choi Sang Jin	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
46.	Lee Tae Jin	Korea Cargo Transport Workers Union	Union Member	KCTWU General Strike (December, 2006)	Undergoing Trial.
47.	Cha Hyun Ho	Korean Chemical Textile Workers Federation	General Secretary	Keunkang Chemical Struggle	Undergoing Trial
48.	Hwang Chi Kyung	Korean Chemical Textile Workers Federation	Union Member	KCTU General Strike againt KOR-US FTA	Undergoing Trial

49.	Hwang Byung Seon	Korean Government Employees Union	Previous Branch Director	KGEU Campaign to stop forced closure of union office.	Undergoing Trial
50.	Kim Byung Il	KCTU: Kyongbook Regional Branch	Branch Director	Pohang Local Union Strike	Sentence: 2 years.
51.	Lee Seung Geun	KCTU: Ulsan Regional Branch	Organizing Director	Protest of passage of Irregular Legislation	Undergoing Trial
52.	Kim Jong Soo	KCTU: Kangwon Regional Branch	Branch Director	Anti KORUS FTA demonstration	Undergoing Trial
53.	Cho Han Kyung	KCTU: Kangwon Regional Branch	Organizing Director	Anti KORUS FTA demonstration	Undergoing Trial
54.	Kim Young Soo	KCTU: Kangwon Regional Branch	Organizing Director	Anti KORUS FTA demonstration	Undergoing Trial
55.	Kang Seung Chul	Fired Workers Union	Previous Acting President	Protest Against the Tripartite Agreement	Sentence: 1 year and 6 months.
56.	Byun Wae Seung	Fired Workers Union	Previous Executive Committee President	Protest Against the Tripartite Agreement	Sentence: 1 year.
57.	Park Sang Gil	Fired Workers Union	Director of Organization	Protest Against the Tripartite Agreement	Sentence: 1 year.
58.	Kwak Young Soo	Fired Workers Union	Union Member	Protest Against the Tripartite Agreement	Sentence: 1 year.
59.	Kim Nam Myung	Fired Workers Union	Union Member	Protest Against the Tripartite Agreement	Sentence: 1 year.
60.	Lee Ki Woong	Fired Workers Union	Union Member	Protest Against the Tripartite Agreement	Sentence: 1 year.
61.	Kim Seung Hwan	Samsung Ilban Union	President	Samsung Ilban Union Struggle	Sentence: 3 years and 5 months.

Note: This list does not include those imprisoned trade unionists from the Federation of Korean Trade Unions (FKTU). That list will be forwarded when available. Both lists will be amended and/or supplemented as needed.

Annex II

Committee on Freedom of Association Report
Republic of Korea (Case No. 1865)

Report No. 340
(Vol. LXXXIX, 2006, Series B, No. 1)

Recommendations

781. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee notes with interest the adoption and entry into force of the Act on the Establishment and Operation of Public Officials' Trade Unions; it requests the Government to give consideration to further measures aimed at ensuring that the rights of public employees are fully guaranteed by:

(i) ensuring that public servants at Grade 5 or higher obtain the right to form their own associations to defend their interests and that this category of staff is not defined so broadly as to weaken the organizations of other public employees;

(ii) guaranteeing the right of firefighters to establish and join organizations of their own choosing;

(iii) limiting any restrictions of the right to strike to public servants exercising authority in the name of the State and essential services in the strict sense of the term;

(iv) allowing the negotiating parties to determine on their own the issue of whether trade union activity by full-time union officials should be treated as unpaid leave.
The Committee requests to be kept informed of any measures taken or contemplated in this respect.

(b) As regards the other legislative aspects of this case, the Committee urges the Government:

(i) to take rapid steps for the legalization of trade union pluralism at the enterprise level, in full consultation with all social partners concerned, so as to guarantee at all levels the right of workers to establish and join the organization of their own choosing;

(ii) to enable workers and employers to conduct free and voluntary negotiations in respect of the question of payment of wages by employers to full-time union officials;

(iii) to amend the list of essential public services in section 71(2) of the Trade Union and Labour Relations Amendment Act (TULRAA) so that the right to strike may be restricted only in essential services in the strict sense of the term;

(iv) to repeal the notification requirement (section 40) and the penalties for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes (section 89(1) of the TULRAA);

(v) to repeal the provisions prohibiting dismissed and unemployed workers from keeping their union membership and making non-union members ineligible to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA);

(vi) to bring section 314 of the Penal Code (obstruction of business) in line with freedom of association principles.
The Committee requests to be kept informed of the progress made in respect of all of the abovementioned matters.

(c) Recalling that the prohibition of third party intervention in industrial disputes is incompatible with freedom of association principles and that justice delayed is justice denied, the Committee trusts that the appeals court will render its decision on Mr. Kwon Young-kil without further delay, taking into account the relevant freedom of association principles. The Committee requests the Government to provide information in this respect as well as a copy of the court judgement.

(d) The Committee expresses its deep regret at the difficulties faced by the 12 dismissed people connected to the Korean Association of Government Employees' Works Councils (KAGEWC), which appear to be due to the absence of legislation ensuring their basic rights of freedom of association, in particular the right to form and join organizations of one's own choosing, respect for which is now largely guaranteed by the entry into force of the Act on the Establishment and Operation of Public Officials' Trade Unions. Noting that four of them have been reinstated, the Committee requests the Government to reconsider the dismissals of Kim Sang-kul, Oh Myeong-nam and Min Jum-ki in the light of the adoption of the new Act and to keep it informed in this respect. It also requests the Government to provide information on the outcome of the pending administrative litigation and requests for examination concerning the dismissals of Koh Kwang-sik, Han Seok-woo, Kim Young-kil, Kang Dong-jin and Kim Jong-yun and expresses the hope that the new legislation will be taken into consideration in rendering the relevant decisions. The Committee finally requests the Government to provide copies of the relevant decisions.

(e) With regard to the application of the provisions concerning obstruction of business, the Committee requests the Government: (i) to continue making all efforts to ensure a practice of investigation without detention for workers who have violated current labour laws, unless they have committed an act of violence or destruction, as indicated in its previous reports; (ii) to review the situation of Oh Young Hwan, President of Busan Urban Transit Authority Workers' Union and Yoon Tae Soo, first Executive Director of Policy of the Korea Financial Industry Union, who appear to have been penalized under this provision for non-violent industrial action and to keep it informed in this respect; (iii) to continue to provide details, including any court judgements, on any new cases of workers arrested for obstruction of business.

(f) With regard to the new allegations made by the ICFTU, the Committee, recalling that the practice of arresting and prosecuting trade union leaders for their activities aimed at greater recognition of trade union rights is not conducive to a stable industrial relations system and that public servants should enjoy the right to strike as long as they are not exercising authority in the name of the State and do not carry out essential services in the strict sense of the term, requests the Government to look at the possibility of reviewing the convictions of KGEU President Kim Young-Gil and General Secretary Ahn Byeong-Soon given that they were convicted under the now repealed Public Officials Act for actions aimed at acquiring recognition, de facto and de jure, of the basic rights of freedom of association of public servants and that their sentences are subject to a two-year suspension. The Committee requests to be kept informed in this respect.

(g) The Committee requests the Government to refrain from any act of interference in the activities of the KGEU and to provide its comments on the ICFTU allegations of violent police intervention in rallies, injury of trade unionists, intimidation and harassment of trade union leaders and members so as to discourage their participation in the strike of 15 November 2004 and finally, the initiation of a "New Wind Campaign" by MOGAHA at the end of 2004 targeting the KGEU and promoting a "reformation of organizational culture, focusing on rearing workplace councils and healthy employee groups".

(h) With regard to the new allegations made by the IFBWW, the Committee expresses its deep regret at the intervention of the police and the criminal prosecution and sentencing of officials of the Korea Federation of Construction Industry Trade Union (KFCITU) to fines and imprisonment. The Committee requests the Government to issue appropriate instructions so that all actions of intimidation and harassment against the KFCITU officials cease immediately. It requests the Government to review all convictions and prison sentences, and to compensate the KFCITU officials for any damages suffered as a result of their prosecution, detention and imprisonment. It further requests the Government to inform it of the outcome of the trial of the three officials of the Kyonggido Subu local trade union and of the current situation of Park Yong Jae, President of the Chunahn local trade union who was convicted to one year imprisonment. The Committee requests to be kept informed on all of the above.

(i) The Committee requests the Government to inform it of the outcome of the appeal lodged against the court decision which found that the collective agreements signed in 2004 did not apply to workers hired by subcontractors; it trusts that the appellate court will take due account of the freedom of association principles mentioned in the Committee's conclusions.