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March 23, 2006

Ms. Gloria Blue  
Secretary Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20250

By Electronic Submission: [FR0607@ustr.eop.gov](mailto:FR0607@ustr.eop.gov)

**Subject: Request for Comments Concerning Proposed Free Trade Agreement with Republic of Korea, 71 Federal Register 6820, February 9, 2006**

Dear Ms. Blue:

The Food Products Association (FPA) appreciates this opportunity to submit comments on the initiation of negotiations with the Republic of Korea on a Free Trade Agreement (FTA) as notified in the Federal Register (71 FR 6820, February 9, 2006). FPA strongly supports negotiations between the U.S. and Korea and is optimistic that an FTA with Korea will provide U.S. food processors with greater access to the growing Asian marketplace and facilitate trade between the U.S. and Korea.

FPA is the voice of the \$500 billion food processing industry on scientific and public policy issues involving food safety, food security, nutrition, technical and regulatory matters and consumer affairs. FPA's scientific centers, its scientists and professional staff represent food industry interests on government and regulatory affairs and provide research, technical assistance, education, communications and crisis management support for the Association's U.S. and international members. FPA members produce processed and packaged fruit, vegetable, and grain products, meat, poultry, and seafood products, snacks, drinks and juices, or provide supplies and services to food manufacturers. FPA members import and export processed food ingredients, and finished products and are keenly interested in the Korean market. The Association's specific area of expertise is in scientific, technical and regulatory issues affecting the processed food industry. Our comments on foreign trade barriers, therefore, relate primarily to sanitary and technical issues: standards, testing, labeling and certification.

### **General Comments**

According to the data of the USDA Foreign Agriculture Service (FAS), U.S. exports of processed products to South Korea in 2005 were \$1.07 billion; this represents a 37% decrease from 2003 reflecting the Korean ban on U.S. beef.

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Even so, Korea remains the 5<sup>th</sup> largest single market for U.S. processed food products. Excellent opportunities for expanding this market exist but access is hindered by high tariffs and technical trade barriers.

South Korea has an increasingly affluent population that recognizes the high quality and value of U.S. processed foods. Dense population in urban areas facilitates food distribution to a retail sector growing in sophistication. Korea imports more than 60% of its agricultural needs. These factors contribute to the attractiveness of this market for U.S. manufacturers of processed foods and the importance of this negotiation.

However, U.S. exporters of high value food products to Korea are faced with numerous barriers to trade. Bound tariffs on agricultural products average 64 percent. Applied tariffs to processed foods are among the highest in the world, often in excess of 50%. Some products, such as popcorn, face import restrictions such as quotas. Specific examples that have been brought to our attention include: (1) tariffs on grape juice is 45%; some other fruit juice tariffs are as high as 54%; (2) tariffs on french fries, potato chips and other vegetable preparations are 18 - 20%; (3) tariffs on jams and jellies are 30% and (4) tariffs on processed chesses and related snacks are 36% . A value-added tax of 10 percent is also applied.

Removing tariffs on these and other processed products as quickly as possible including any quantitative restrictions is important. However, market access for U.S. processed foods to Korea cannot be improved without addressing non-science based sanitary, regulatory and technical barriers to trade. Korea has banned access for U.S. beef and beef products since December 2003 and continues this ban as other Asia Pacific countries have begun opening those markets. Other general issues of concern include transparency, import procedures, unnecessary restrictions on the use of food additives and flavorings, infringement on intellectual property, and labeling and certification requirements that discriminate against products derived from biotechnology. Many processed food companies report that unnecessary restrictions on the use of food additives and flavorings are the single largest impediment to entering the Korean market.

Addressing existing sanitary, phytosanitary, and technical barriers to trade is an extremely important component of every trade agreement. In this regard, FPA stresses the importance of establishing dedicated committees under the umbrella of the Korean Agreement similar to those in previously concluded agreements with Chile, Singapore, Central America (CAFTA), and Australia. It is paramount that committees be established to promote adherence to the disciplines within the Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Agreements and to continue to resolve ongoing and developing concerns are particularly important in the context of the Korean agreement.

### **Transparency in Regulation and Enforcement**

FPA strongly believes that a transparent regulatory process that provides an opportunity for consultation with all parties is good for consumers, the regulated industry, and the enforcement agencies. FPA has been monitoring food regulatory developments in Korea for

many years and believes that regulatory transparency (specifically as it relates to the Korea Food and Drug Administration) is improving. However, we continue to find that regulations often lack clarity and that an insufficient timeframe is provided for comments. It is also not apparent that comments are taken into consideration, as often the final regulations reflect little or no improvement. In addition, Korean regulations tend to be implemented and enforced with some inconsistency.

### **Product Registration and Certification**

Korea requires pre-market registration for new products. This process entails a burdensome and detailed documentation submission including a requirement that food manufacturers provide proprietary information on processes and product formulation, including percentage ingredient information. Registration requires exact formulas for all ingredients in processed foods including flavorings and seasonings blends. Since it is common practice is to provide only a "range" formula, processors may have to turn to ingredient suppliers for formula information of the ingredients, infringing on proprietary rights of the processors and their suppliers. These detailed information submissions discourage exporters from entering Korea.

Registration requires certification with specific attestations about product analysis (formulation and microbiological analysis), product origin, shelf life, and residue content. In addition to the attestations required for registration, health or wholesomeness certificates and certificates to document "GMO-free" must also accompany food products. Minor changes in a product formulation require a new registration process as if the product was new to the market.

As part of this negotiation, Korea should modify documentation procedures to respect confidential information.

### **Food Regulations are More Restrictive than International Standards**

On several occasions in recent years, FPA has submitted comments to identify proposed regulatory changes that are not justified by food safety concerns, based on risk or that are inconsistent with international standards. Often they are unnecessarily restrictive or discriminatory. Several examples follow:

1. Korea maintains very restrictive standards concerning the use of food additives, colors and flavorings even when these ingredients have been subject to international scientific review for food use and are commonly used in other major markets. The additive list is product specific and non transparent. U.S. food processors are often forced to reformulate products to enter this market due to standards that are not science-based. Commonly used safe food additives such as potassium sorbate, calcium stearate, calcium silicate and sodium benzoate are not permitted in Korea or are permitted only in a limited range of products.

2. In 2005 labeling regulations were amended to further complicate the use of food additives by requiring food labels to include the technical reason for use of the additives in a food product. This information is proprietary in nature and is not material to consumers. A food additive often has more than one use and consequently, this information could confuse consumers. The U.S. should encourage Korea to accept those additives generally recognized as safe (GRAS) in other major markets, particularly those already evaluated and approved through appropriate international forums such as the WHO Joint Expert Committee on Food Additives (JECFA).
3. Korean Customs, unlike other major markets, requests detailed information on the main components of flavorings. Again, processors oppose disclosing flavoring information and, consequently, this unnecessary requirement effectively blocks many products from the Korean market. The food industry strongly encourages the U.S. government to recommend that Korea accept the Flavorings and Extract Manufacturers Association (FEMA) GRAS list approved flavors.
4. In 2002, Korea implemented a mandatory labeling regime for foods derived from biotechnology. As a result, consumers, and importers have demonstrated a reluctance to embrace biotechnology and to accept U.S. products derived from biotechnology. The regulation clearly identifies specific products to be labeled if one of the five major ingredients and if the biotech component is greater than three per cent. Yet, exporters are consistently asked for GMO information on minor ingredients including refined oils, sugars and starches. The mandatory process-based labeling, coupled with GMO-free certification for unlabeled products, imposes a "defacto" tracing regime for all products. This complicates the entry of U.S. food products into the Korean market.
5. In 2005, Korea amended labeling provisions for all products of animal origin. These amendments require ingredient declarations in percentages, date of slaughter, manufacture, and "sell by" dates. The required shelf-life dating is inconsistent with Codex standards. Percentage labeling requires the disclosure of proprietary information. Slaughter dating for processed products is impossible to provide without an extensive tracking and recordkeeping system in place. For example, consider a soup product that would be made from frozen or further processed meat. FPA believes that Korea's labeling requirements should be consistent with international regulations and that processed meats should be exempt from slaughter dating.
6. In 2004, Korean Food and Drug Administration (KFDA) proposed amendments to require "high caffeine content" labeling for foods containing caffeine in excess of 0.15 mg/ml or mg/g. This is a very restrictive standard is inconsistent with those of Codex or other national regulations. This regulation will discriminate unnecessarily against certain product categories like chocolate and is not supported by a valid risk assessment.

7. In 2005, KFDA proposed to permit a health claim for the use of soy protein. Even though KFDA recognized the 25g per day as the beneficial level, the use of the claim was limited in order to be relevant only for products containing 50% digestible protein such as tofu or soybeans. As written, the health claim cannot be used for protein concentrates; consequently this is a claim that is beneficial to domestically produced products but not those produced in the global market.

### **The Food Code is Antiquated**

Food standards and requirements are complicated by an antiquated food code that establishes rigid conformity standards for a large number of food products including canned foods, condiments, confectionary products and desserts. Rigid standards for products or product categories define permitted ingredients and additives, microbiological criteria, moisture content and more. They compound the restrictions on the use of additives and flavorings and discourage technological innovation and competition in the market. Since the conformity standards are based on domestically produced products and often differ from U.S. production, they also discriminate against global competition. Some of the microbiological criteria within these standards are unachievable and not justifiable for food safety reasons. One FPA member company reported rejection of products due to the presence of "organisms" in commercially sterile products but Customs officials did not identify the nature of the "organism" or provide any specific laboratory analyses.

Other countries, such as Australia, the U.S. and New Zealand, are moving away from these conformity standards or standards of identity and replacing them with standards that are performance based, and that address food safety as opposed to production criteria. Korea should be encouraged to review the current Food Code to bring it in line with current science and technology to encourage competitive opportunities in the market place.

### **Customs Procedures**

FPA believes that the U.S./Korean FTA provides an excellent opportunity to enhance the efficiency of the Korean Customs Service (KCS). FPA member companies report difficulties in customs clearance, with some goods waiting for as much as two weeks at ports. For products with limited shelf-life these delays can be a major barrier. Companies also report difficulties with customs valuation in Korea. The KCS often rejects the transaction value methodology for customs collection in favor of an opaque deducted value method. While we recognize the validity of the deductive value methodology under the WTO Valuation Agreement, we question the need for its use when the transaction value is often far more reliable, predictable and transparent. We note that the KCS often applies an unverifiable "representative industry average" when determining the applicable deductive value as opposed to the more routine profit and general expenses of the importing company. Finally, we note that the appeal process for the deductive value approach is often biased against importing companies.

## **Inspection Procedures Create Port Delays**

Food products are subject to testing and inspection at port of entry. New guidelines, introduced in 1996 and then revised in 2004, incorporate a random testing procedure intended to be more risk-based. As a result, the delays at entry seem to have been reduced except for those products that are new to the market. Companies report that new products have been subject to a thirty day quarantine inspection. Any slight change to product or packaging is defined as a new product. Other products are still often subject to duplicate inspection procedures and analysis methods and analyses are not always based on internationally accepted methods. The type of testing often appears to be at the discretion of customs officials and is not transparent. Requirements are often applied arbitrarily and lack transparency, making it difficult for U.S. exporters to assure compliance or appropriately respond to analytical results from laboratories in order to bring products into compliance. Korea should be encouraged to achieve faster clearance for low-risk products, to respect proprietary information and to reduce the documentation submission requirements.

## **Rules of Origin**

As with all bilateral trade agreements, FPA opposes negotiating special rules of origin under the Korea FTA. FPA strongly endorses the concept of substantial transformation to confer origin and believes that the general rule that a change in Harmonized Tariff Schedule (HTS) chapters confers origin should be respected to the maximum extent. Special rules of origin have the greatest impact on food processors, but they are designed primarily with producer interests in mind. Rules of origin that are developed to provide protection to a certain commodity product adversely impact the global competitiveness of value-added products that are dependent upon that commodity as an ingredient. They limit sourcing options for processors and impose burdensome requirements for marking and certifying exports containing ingredients that are affected by special origin rules.

U.S. processed foods represent over 40% of total U.S. agricultural exports and, consequently, this industry is a key contributor to the economic welfare of the U.S. agricultural producing sector. The overall economic effect of special rules of origin adversely affects U.S. agriculture in entirety. FPA urges USTR to recognize the broader negative impact of special rules of origin on the food processing industry and to consult closely with food processors before negotiating special rules with Korea.

## **Sensitive Products**

FPA endorses the "no exclusion" policy of the recently completed Central American Free Trade Agreement (CAFTA) for all future trade agreements: all issues and products should be included in trade and tariff negotiations. FPA references the 2002 Trade Act that provides for: "reasonable adjustment periods for United States import-sensitive products" to be considered before initiating tariff negotiations. Longer tariff phase-outs, tariff-rate quotas and other temporary measures may be necessary to ease the adjustment for a limited number

of sensitive commodity interests in both countries, but it is critical that trade agreements be viewed as an opportunity to eliminate tariffs for **all** products within reasonable time frames.

### **Summary**

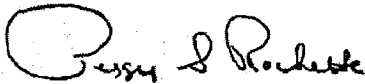
In conclusion, FPA strongly supports negotiations with South Korea towards a Free Trade Agreement. Korea is an excellent market for U.S. processed food products and, with a successful negotiation, offers excellent opportunity for growth.

The following issues should be addressed within the context of the negotiation:

- Transparency in regulation and enforcement including ensuring opportunity for comment preparation and consideration;
- Opening the market to U.S. beef products including processed beef products and pet food;
- Simplifying registration and documentation for market entry, particularly as related to the provision of proprietary information;
- Developing trade facilitation measures to enhance the efficiency and transparency of the Korean Customs Service.
- Implementing risk based inspection procedures at port of entry to facilitate entry and reduce delays;
- Creating a process that recognizes safe food ingredients used in the global market including food additives and flavorings; and
- Establishing ongoing SPS and TBT committees to address trade concerns in a timely manner.

FPA believes that an FTA with South Korea is exciting and timely and we welcome the opportunity to work with the USTR trade policy staff to achieve good results for U.S. processed food products.

Sincerely,



Peggy S. Rochette  
Sr. Director of International Policy

cc: FAS  
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