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March 24, 2006

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Re: Request to Eliminate Tariff and Non-Tariff Barriers Affecting Herbalife's U.S. Exports in U.S.-Korea FTA Negotiations

Dear Ms. Blue:

Herbalife International of America ("Herbalife") is pleased to submit the following comments in response to the February 9, 2006 *Federal Register* notice (71 *Fed. Reg.* – 6820), which respectfully request U.S. negotiators to eliminate tariff and non-tariff barriers impeding access of its products to the Korean market.

The U.S.-Korea Free Trade Agreement (FTA) negotiations present an extraordinary opportunity to eliminate long-standing tariff and regulatory barriers that have impeded Herbalife's ability to compete in one of its most important international markets. Notwithstanding these restrictive trade practices, Korea is our seventh largest export market (in terms of net sales for 2005) due, in part, to its citizens' affinity for our health, nutrition and personal care products. Removing these barriers would result in estimated duty and other cost savings of over \$1 million and increased retail sales of \$20 million annually, creating and sustaining U.S. jobs in California and New Jersey where most of Herbalife's Korean-imported products are produced.

About Herbalife

Herbalife is a global network marketing company that sells weight-management, nutritional supplement and personal care products intended to support a healthy lifestyle. Herbalife products are sold in 62 countries through a network of more than one million independent distributors. In 2005, the company had net sales of \$1.6 billion.

Herbalife Korea has operated since November 1996. In less than ten years, Herbalife Korea has overtaken, on a sales volume basis, country operations in Canada, Australia, the Netherlands and the United Kingdom to become the company's eighth largest market worldwide.

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Tariff Barriers

Herbalife seeks immediate and reciprocal elimination of Korea's prohibitive 40% duty on two key Herbalife herbal tea products – Herbal Instant Beverage (tea) and NRG Tea – which constitute a significant barrier to the growth of U.S. exports of Herbalife's nutritional products to Korea. The retail value of Herbalife's tea product sales in Korea, which largely enter under HS 2101.20, was \$[*****] in 2005.

Product Description	Korea HS Tariff No.	Korean Duty Rate	Total U.S. Exports to Korea (2005)
Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate - Containing sugar, lemon or substitutes	2101.20.10	40%	\$1,788,912
Extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté – Other	2101.20.90	40%	

According to the Korea Customs Service, total Korean tea imports under HS 2101.20 were valued at \$14.2 million in 2005. However, U.S. exports were only about \$1.8 million (based on FAS value), or about a 13% share of imports. Thus, while tea might be considered a "sensitive" Korean product, the benefits of eliminating the 40% duty on U.S. tea imports would be confined to Herbalife and other small U.S. producers which largely do not compete with more "traditional" teas and tea products. In other words, immediate elimination would not result in a flood of Korean tea imports or significantly impact domestic producers.

Based on the value of tea exported to Korea in 2005, if the Korean duty were 0%, Herbalife and other U.S. tea exporters would have saved \$715,500. The standard duty in Korea is now at 8% for most items. Based on that rate, duty savings for U.S. tea exports to Korea would have been \$572,400. Elimination of the 40% duty, a non-trivial product cost, would also make Herbalife's tea products more price-competitive and significantly boost its Korean retail sales volumes.

As for the impact on U.S. trade, immediate and reciprocal tariff elimination would minimally impact U.S. tea imports. In 2005, U.S. tea imports from Korea were valued at \$192,943 (actual dollars), less than 1% of total U.S. imports of \$105 million.

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Non-Tariff Barriers

Korean use of non-tariff barriers to unfairly restrict market access is well-known. Its restrictions pertaining to multi-level marketing (MLM) companies are particularly onerous and the application of various regulations and procedures can be arbitrary and overly time-consuming. Given Korean affinity for Herbalife products, the company believes that the lifting of these non-tariff barriers would result in increased retail sales volume of up to \$20 million and generate substantial savings to the cost of doing business in Korea. With this in mind, Herbalife requests that U.S. negotiators undertake the following actions as it negotiates with Korean counterparts:

(1) Revise Restrictive and Arbitrary Licensing Requirements

Korea's Food Safety Law regulates the composition, quality and labeling of nutritional products that either are made in Korea or imported into Korea. Herbalife proposes the revision of (or clarification of) certain Food Safety Law practices that unfairly restrict trade without any discernable public health or otherwise meaningful purpose. For the first three issues highlighted below, we propose that frequency of submitting such identity preserved documents be reduced to quarterly or annually and that signed and notarized copies be allowed.

- The Korean Food Sanitary Law requires that every shipment of our ShapeWorks™ Formula 1 shake mixes and every shipment of our ShapeWorks™ Formula 3 Personalized Protein Powder be accompanied by original non-genetically modified guarantee letters from the manufacturer, as well as by a signed original certificate that the manufacturer used non-genetically modified identity-preserved soy protein isolate, and copies of the soy seed company's receipt, elevator and grower purchase agreements, a copy of the Archer Daniels Midland-elevator purchase agreement, and a certificate from the identity-preserved soy supplier.
- The Korean Food Sanitary Law also requires that every shipment of our ShapeWorks™ Formula #1; ShapeWorks™ Formula #3; Active Fiber; Instant Herbal Beverage; N.R.G Tea; Chewable Vitamin A, C and E; Cell-U-Loss Vitamin C; and our Louis Ignarro Niteworks™ powder be accompanied by an original copy of Full Disclosure Formula (with manufacturing date and expiration date) on the manufacturer's letterhead (one Full Disclosure per each manufacturing date) and a copy of the manufacturing process flow chart (on the manufacturer's letterhead).
- The Korean Food Sanitation Law also requires that every shipment of Cell-U-Loss Vitamin C supplements be accompanied by a signed, original letter regarding Starlink genetically modified corn and an artichoke leaf powder specification.
- Two or more different products cannot be packed together in the same cargo container if they have different product category classifications. This restriction is unique among the 62 countries in which Herbalife conducts business. We believe this restriction should be eliminated.
- Sub-ingredient limitations should be lifted.

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(2) Revise Restrictive and Punitive Regulations in the Korean Door-to-Door Sales Act

The Korean Door-to-Door Sales Act, which regulates the operation of MLM companies in Korea, contains several provisions that unfairly restrict and burden trade and should be amended and/or administered in a more balanced manner.

- The 1.3 million won (US\$ 1,300) selling price ceiling should be removed.
- The 35% sponsoring allowance ceiling (i.e., the maximum compensation allowed for distributors who recruit active down-lines of other distributors as part of their business organization) should be removed or eased.
- Dual liability (i.e., where MLM companies are liable for the misbehavior of individual distributors) should be abolished.
- Distributor qualification restrictions (currently, corporations, teachers, and government officers are prohibited from becoming distributors) should be removed.

(3) End Direct Selling Mutual Aid Cooperative Requirements

The Korean government requires that MLM companies operating in Korea join the Direct Selling Mutual Aid Cooperative and purchase its "guarantee" insurance. As a result, Herbalife Korea has paid in \$1.3 million annually (and \$80,000 annually in insurance premiums) to the Cooperative without any operational benefits or financial returns. This is unfair burden and additional cost to Herbalife and other MLM companies and should be ended.

Herbalife looks forward to following up with, and working with, the U.S. trade negotiating team over the next several months and thanks you in advance for your careful consideration of this request.

Sincerely,

/s/

John Venardos