

Oral Statement of
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On the
Proposed United States-Korea Free Trade Agreement

For the
Trade Policy Staff Committee
Office of the U.S. Trade Representative

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Members of the Committee,

Thank you for giving the National Association of Manufacturers the opportunity to testify on the U.S.-Korea Free Trade Agreement. I have submitted a written statement for the record. My remarks today will highlight several key priorities that the NAM believes are especially important for manufacturers.

U.S. manufacturers see great potential for expanded trade and new business opportunities with Korea, the world's 10th largest economy. But to realize that potential, we believe that the FTA must remove both tariff and non-tariff barriers.

The tariff reductions will be rather straightforward. But the non-tariff barriers will be more challenging as they are imbedded in a regulatory system that is more complicated and opaque and less consistent than what we have in the United States. Yet unless these non-tariff barriers are addressed, the benefits of an FTA with Korea will be seriously compromised and, for some industry sectors, may be minimal at best.

My written testimony identifies a number of issues, aside from tariffs, that are important for manufacturers. /Today, however, I would like to give special attention to two areas that have been particularly troublesome for our members and that may require extraordinary measures, including sector-specific ones, to achieve meaningful results.

The first area relates to non-tariff barriers. These barriers result primarily from administrative actions, regulatory policies, standards-setting practices and tax policies that have the effect of limiting market access. They include, for example, the complex of standards and certification requirements for automobiles; duplicative testing for pharmaceutical products; Korea-only technical standards for example in telecommunications equipment; and gerrymandered taxes that fall disproportionately on imported products.

At the heart of the problem is the lack of transparency and openness in the Korean regulatory system. This is felt most heavily in the auto sector and clearly is a significant factor in the huge trade imbalance in transportation equipment. But other sectors also experience problems because of this, including appliances, pharmaceutical products and others.

A re-commitment to the principles contained in the WTO Technical Barriers to Trade or TBT Agreement is essential but not enough. The TBT chapters in the Australia and Peru FTAs provide welcome additional commitments on transparency but need to go even farther in Korea's case. To limit the possibility of regulatory and administrative trade barriers, manufacturers would like to see our trade agreement ensure:

- Genuine openness through the publication of proposed regulations with all relevant information in a national official gazette like our Federal Register well in advance of the decision date;
- An opportunity for all "interested persons" to participate in the process through written comments, presentation of data and, where possible, participation at public hearings;
- Justification of regulatory decisions through evidence based on "sound science" and, where relevant, economic cost/benefit analysis;
- Responses by regulators to opposing viewpoints in the regulatory determination;
- A readily accessible public record of findings and conclusions;
- And, perhaps most importantly, a mechanism to appeal unreasonable regulations.

These high standards of good regulatory and administrative practice are found in the U.S. Administrative Procedures Act and policies of important U.S. regulatory agencies, such as EPA.

To further bolster confidence in the fairness of the Korean regulatory process, U.S. negotiators should also explore the possibility of other special mechanisms, for example, independent review bodies for resolving of industry-specific disputes. We note in the 2005 trade barriers report that the United States had suggested an independent appeals process to deal with pharmaceutical pricing and regulatory issues in Korea. Perhaps, this might serve as a concept to build on. In short, the standard FTA provisions will not be adequate in Korea's case. We need to think outside of the box.

Korea is in many respects already an advanced industrial economy. We should expect that its regulatory and administrative processes aspire to high standards comparable those in the United States, its principal trading partner for manufactured goods.

The second area that merits special attention is “competition policy.” Anti-competitive behavior has presented a difficult challenge for U.S. companies doing business in Korea. Historically Korea has failed to prevent a wide range of anti-competitive practices by large industrial conglomerates, the so-called “chaebols.” Unless effectively addressed, these anti-competitive practices will nullify the FTA’s tariff and non-tariff concessions for some industries.

We urge special attention to three areas: first, improving transparency on the implementation of Korean law; second, ensuring that competition laws actually promote competition and prevent restrictions on trade; and third, improving U.S.-Korean cooperation to harmonize how both sides implement competition policy. On this last point, the excellent cooperation between the Justice Department, FTC and European Commission competition authorities could serve as a useful model in Korea’s case.

If U.S. negotiators can address these difficult challenges—non-tariff barriers and competition policy, we believe this will go a long way to ensuring a successful agreement that benefits U.S. businesses, workers and consumers and also promotes Korea’s own competitiveness and economic development.

