

April 25, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Executive Office of the President
Washington, D.C. 20508

Dear Ambassador Schwab:

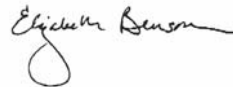
Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Industry Trade Advisory Committee for Services and Finance Industries (ITAC 10) on the U.S.-Korea Free Trade Agreement reflecting consensus support for the proposed Agreement.

Sincerely,



Robert Vastine
Chairman, ITAC 10

Sincerely,



Elizabeth Benson
Vice-Chairman, ITAC 10

The United States-Korea Free Trade Agreement (KORUS FTA)

**Report of the
Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10)**

April 2007

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Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10)

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S. – Korea FTA Agreement.

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002. The report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10) hereby submits the following report.

II. Executive Summary of Committee Report

The committee believes the U.S.-Korea Free Trade Agreement provides very substantial new trade and investment opportunities, investor protections and other benefits, and strongly recommends that Congress implement it.

As in the case of other U.S. trade agreements, the Korea Agreement follows a fairly standard textual model, differing from others mainly in the nature of the reservations taken by Korea.

But the Korea Agreement has a greater significance than any other trade agreement since NAFTA. One reason is that the Korean economy, with a GDP of \$1 trillion, is so very large. Korea has built a dynamic and powerful industrial and service economy in a relatively short span of time, and its people enjoy a good and improving standard of living with increasing purchasing power.

Second, Koreans therefore have an enhanced propensity to increase their consumption of U.S. services in a free trade setting where those services are available and affordable. The Agreement should allow U.S. services companies to substantially increase their cross border sales, as well as sales from their foreign affiliates to Koreans.

Third, the Korean economy has been in many respects closed to competition from U.S. service suppliers. Through regulatory and other barriers the Koreans have kept U.S. participation in their market in check. Many of these impediments will be eliminated once the Agreement enters into force, and others will be addressed over time. In addition, the Agreement establishes institutional arrangements that will facilitate the removal of any remaining impediments.

Fourth, an outstanding attribute of the Korea Agreement is that in some sectors, such as insurance, it achieves a level of openness that goes beyond trade agreements that have been previously negotiated. Benefits accruing to the insurance and other sectors will be discussed more fully below. It is worth noting also that in telecommunications services, significant progress was made toward allowing U.S. companies to fully participate in the Korean market, though only after a two year transition.

Fifth, the Agreement provides that the U.S. will have the benefit of any trade concessions the Koreans win from any new FTA partners. There are a number of bilateral talks in which Korea is engaged, including with Canada, China, and the European Union. Under the KORUS Agreement, the United States will receive any additional benefit these agreements provide to any other Korean FTA partner.

Sixth, the Agreement provides a “ratchet” clause, under which liberalization undertaken autonomously by Korea will be captured and bound under the KORUS Agreement.

Seventh, the Agreement includes generally strong protections for U.S. Investors that are critical to promote greater participation of U.S. service providers in the Korean market.

Eighth, the Agreement has the further advantage because it is based on the negative list approach to negotiations, meaning that the Agreement creates free trade in services except for listed exceptions.

Finally, the Korea-US FTA is likely to have a powerful strategic impact on economic relationships in the region. The fact that the United States will have preferred access to this vast, fast growing market is going to cause other countries, like Japan, to rethink their trade relationships with the United States as well as other countries in the region.

III. Brief Description of the Mandate of the Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10)

ITAC 10 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to the services sector. To fulfill its mandate the ITAC meets at least monthly to review negotiations with U.S. trade officials and to advise as required by law.

ITAC 10 advises the Secretary of Commerce and the U.S. Trade Representative (USTR) concerning the trade matters referred to in Sections 101, 102, and 124 of the Trade Act of 1974, as amended; 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 services trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order 12188, and the priorities for actions there under.

In particular, ITAC 10 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the USTR regarding trade barriers and implementation of trade agreements negotiated under Sections 101 or 102 of the Trade Act of 1974, as amended, and Sections 1102 and 1103 of the 1988 Trade Act, which affect the services sector, and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of the Industry Trade Advisory Committee on Services and Finance Industries (ITAC 10)

ITAC 10's overall goal is to liberalize trade in the wide range of services provided by U.S. businesses, thereby promoting the expansion and health of the U.S. economy and, by extension, the economies of its trading partners.

U.S. services industries provide about 87 million jobs, or 80% of total private sector employment. Most new jobs are services jobs. Between 1993 and 2003 services added 20.3 million new U.S. jobs.

According to the U.S. Bureau of Labor Statistics, 90% of all the 21.3 million new jobs to be created over the next 8 years will be services jobs.

U.S. exports of services were \$413 billion in 2006, providing a surplus of \$73 billion in cross border trade. Sales of U.S. foreign affiliates were \$490 billion in 2004, the latest year for which these data are available.

ITAC 10's objective for this and other trade agreements is to achieve substantial additional market access for U.S. service industries. This means commitments to greater access to foreign markets for U.S. cross border trade, to investment abroad, and to the temporary movement of persons who provide services. Without similar U.S. commitments extended to our trading partners, U.S. service providers will be less able to realize the full opportunities this Agreement and others like it appear to offer.

With respect to the protection of U.S. investment abroad, ITAC 10's objective is to ensure high levels of protection for U.S. investors. These include: assurance of national treatment and most-favored nation treatment, protection against expropriation without prompt and full compensation; the free transfer of capital both into and out of the country, fair and equitable treatment and full protection and security by local agencies and courts, a prohibitions of

performance requirements on foreign investors, and effective and efficient investor-state dispute settlement procedures.

ITAC 10 also sees an opportunity to advance U.S. policy objectives to liberalize foreign markets by focusing U.S. agencies' and private entities' efforts to provide technical assistance and trade-related capacity-building abroad, especially in developing countries and transitional economies. ITAC 10 believes that intensive technical assistance is imperative in many parts of the world if mutual trade liberalization goals are to be attained.

With respect to government procurement, ITAC 10's objective is to ensure access on a transparent, open and non-discriminatory basis to foreign government procurements for U.S. service providers and, where needed, to objective reviews of procurement decisions.

V. Advisory Committee Opinion on Agreement

Overall, the Committee believes that the U.S.-Korea Free Trade Agreement meets the Committee's objective of achieving new and expanded trade and investment opportunities and recommends that Congress implement it.

A. Crosscutting Provisions

The Committee's opinions on anti-corruption, government procurement, investment, movement of personnel, and transparency follow:

Anti-Corruption

As with the other recently negotiated Free Trade Agreements, it is worth noting the Anti-Corruption Principles included in Section 6 of the Transparency Chapter of the Agreement. Corruption is an issue that goes to the very heart both of the business community's ability to conduct business openly and fairly and to the ability of governments to use their resources for the benefit of all their people. We applaud the continued efforts of the U.S. Government in this area.

Government Procurement

Korea is already a member of the World Trade Organization (WTO) Government Procurement Agreement (GPA), on which many U.S. FTA procurement chapters are based, and requires national treatment, non-discriminatory treatment, transparent notice and bidding procedures, non-discriminatory technical specifications, penalties for corrupt procurements, and objective domestic review of procurement decisions. This Agreement expands the coverage of those commitments by Korea to nine additional Central government agencies and lowers the threshold by nearly half for Central government goods and services procurements to which U.S. suppliers will have non-discriminatory access. The Agreement also incorporates several of the improvements in the GPA agreed to by the WTO GPA Committee in December 2006, including language reducing the tendering period where procurement notices and information is made available electronically and for off-the-shelf items and promoting the use of electronic procurements. The Agreement also establishes a working group on government procurement

to review any issues, particularly those involving information technology. In short, this Agreement expands access for U.S. service suppliers to the Korean government procurement market.

Investment

The Agreement will help promote a secure and predictable legal framework for U.S. investors in Korea. Such provisions are of particular interest to service providers, which are often required to establish a local presence in Korea.

With respect to the protection of U.S. investment, the investment chapter of the Agreement generally contains the primary protections sought by the Committee and included in the Trade Promotion Authority legislation, enacted as part of the Trade Act of 2002. These include a broad definition of “investment;” guarantees of prompt, adequate and effective compensation for expropriation; a ban on performance requirements; and commitments to provide national treatment, most-favored nation treatment, fair and equitable treatment, full protection and security, and free transfer of capital. Very importantly, the Agreement includes the investor-state dispute settlement mechanism that is vital to afford U.S. investors the opportunity to ensure that their investments are protected against arbitrary, discriminatory and unfair government actions. In addition, the Agreement provides for investor-state dispute settlement with respect to the breach of existing and future investment agreements that a U.S. investor has entered into with the government of Korea.

The Agreement also provides for protections against direct and indirect expropriation. The Parties agreed in a side letter to confirm that the protection for expropriation applies, as in the United States, to rights under contract and all other property rights in an investment. With regard to indirect expropriation, paragraph 3(a) of Annex B of the Investment Chapter provides that the analysis must be done on a case-by-case basis, citing the factors from the Supreme Court’s decision in *Penn Central Transp. v. New York City* (1978). The Committee is disappointed that new language regarding “special sacrifice” was added as an example in paragraph 3(a)(iii) of Annex B on Expropriation. The Committee recognizes the U.S. negotiators’ explanation that this language was added to illustrate one type of “character” of a government action that may be considered when determining whether an expropriation has occurred. We further recognize the U.S. negotiators’ explanation that this language does not in any way modify the factors contained in the Annex or narrow the scope of what constitutes an expropriation under Article 6 of the Investment Chapter of the Agreement. In addition, the language in paragraph 3(b) that notes that, except in rare circumstances, government regulatory actions concerning legitimate public welfare objectives do not generally rise to the level of an expropriation, was modified slightly from prior agreements to provide an example of when an indirect expropriation can occur by looking at the purpose or effects of the governmental action. This language does not narrow or alter the scope of what constitutes an expropriation under Article 6, nor the factors to be considered as laid out in paragraph 3(a). The Agreement also incorporates improved transparency provisions in the investor-state dispute settlement mechanism as sought by the Trade Act of 2002 and provides for the consideration of a bilateral appellate mechanism after three years.

The Committee notes the Agreement's Investment chapter includes two exceptions that differ from the U.S. model. While the Committee would have preferred that neither of these provisions be included, the Committee recognizes that each of these exceptions can only be used in extraordinarily limited circumstances. First, the Agreement includes a very narrow exception from the national treatment and performance requirements obligations for limits on the establishment or acquisition of an investment under Korea's Foreign Investment Promotion Act where a measure is necessary to protect the public order. Under this provision, Korea has the burden to demonstrate several circumstances are present, including that the measure is adopted and maintained only where the measure poses a genuine and sufficiently serious threat to the fundamental interests of society, is not applied in an arbitrary and unjustifiable manner, does not constitute a disguised restriction on investment, and is proportional to the objective it seeks to achieve. This provision does not apply to measures covered by the Agreement's Financial Services Chapter. Second, the Agreement provides an exception from the chapter's national treatment, senior management and boards of directors, and performance requirements obligations for services supplied in the exercise of governmental authority. Notably, this provision does not apply to an investor or investment that has entered into an agreement with Korea to supply those services; nor does it apply to measures covered by the Agreement's Financial Services Chapter. The Committee urges that neither of these provisions be included in future agreements.

The Committee is disappointed that, while the Agreement includes strong commitments to guarantee the free transfer of capital into and out of the country, the transfer provisions are weakened somewhat through the incorporation of provisions in Annex G that permit Korea to impose limited restrictions on certain capital flows relating to portfolio investments for up to one year. Moreover, the Annex G language fails to provide procedural clarity to potentially affected investors, which reduces certainty. Given the importance of capital transfers to U.S. investors abroad, the Committee would prefer that these modifications not be included and expects the provisions limiting the application of these measures to be interpreted strictly, excluding all measures related to foreign direct investment and payments or transfers for current transactions. The Committee notes that the Agreement permits Korea to seek an extension of such measures beyond a year only in "extremely exceptional circumstances" in coordination with the United States and expects the U.S. Government to ensure that Korea does not attempt to circumvent this limitation. The Committee urges U.S. negotiators not to include similar provisions in future agreements.

The Committee is also disappointed that the Investment Chapter includes a new annex on taxation, as this language is not appropriate for this Agreement (or any other agreement). The Committee recognizes the U.S. negotiators' explanation that this language does not in any way change the text of the expropriation provision of the Investment Chapter nor does it change in any way a claimant's burden of proof to establish that a tax measure has resulted in an expropriation.

The Committee remains disappointed by provisions in the Financial Services chapter, as in other FTAs, which do not provide financial institutions with investor-state arbitration for national treatment violations and which could allow governmental restrictions on financial services activities through the operation of a prudential carve-out for financial services

measures taken by the host government. With regard to discrimination, the Committee strongly urges that U.S. negotiators seek investor-state arbitration for national treatment violations affecting financial institutions. As well, the Committee notes that the procedure developed to review whether a measure properly falls within the prudential carve-out is extremely lengthy and onerous, allowing not only a government-to-government review, but also a separate dispute settlement proceeding if the two governments cannot agree that the measure taken properly fits within the prudential carve-out.

With respect to ensuring access to U.S. investment, the Agreement makes substantial progress in reducing the barriers to such investment. Overall, the Agreement assures U.S. investors greater opportunities to establish, acquire and operate investments in Korea in all sectors, except where a reservation has been taken in a particular sector area. Sector specific investment issues are discussed below.

Movement of Personnel

The agreement contains no provisions for movement of natural persons. Without them Korean nationals who wish to travel to the United States to provide services can only do so through the existing U.S. visa structure. As in its prior reports, ITAC 10 strongly urges the appropriate Congressional Committees to participate in the development of ways by which foreign nationals can visit the U.S. for short periods of time to provide services and return home. Movement of natural persons to provided scarce skills is an essential element of services trade and the Committee regrets that Congress has blocked this avenue of trade.

Transparency

The Agreement continues the highly beneficial U.S. effort to obtain commitments to regulatory transparency in our free trade agreements. Securing commitments to these disciplines in trade agreements is an important achievement, because they commit our trading partners to apply transparency disciplines that have been extensively tested and very widely applied by the U.S. federal and many state governments. The U.S. experience is that they have improved the quality of U.S. government regulatory decisions. Many state governments have comparable procedures.

Nowhere is transparency in domestic regulation more important than in the services sector, where government regulation is prevalent. We expect Korean government agencies to implement these commitments fully, in accordance with the agreement, because opaque and discriminatory regulatory practices have troubled many of our companies in the past. The KORUS Agreement is strengthened by transparency commitments on financial services not contained in other agreements. We believe that the Agreement's transparency provisions will improve the business climate in Korea, help stimulate new investment, improve the operation of financial and other markets, and reduce corruption.

B. Sectoral Issues

The Committee's opinions on specific service sectors follow:

Agricultural Services and Distribution

Korea has taken several Annex reservations from the services and investment chapter for agricultural services. The Committee is concerned Korea's Annex I reservation limiting U.S. firms to minority ownership in meat wholesaling. The Committee notes that U.S. negotiators have explained that Korea sought this reservation to protect public meat wholesaling markets from foreign ownership. The Committee expects the United States to not permit Korea to expand this reservation to limit meat distribution in Korea by expanding the scope of this reservation. Gaining full distribution rights, including through investment, for U.S. meat products is critical to enable the U.S. industry to capture fully the expanded market access in the Korean market. As demand increases for meat products in Korea, it is clearly in Korea's interest not to limit distribution solely to licensed Korean distributors.

The Committee also seeks greater clarity from the United States regarding Korea's Annex II reservation permitting Korea to take certain restrictions on cross border trade in agricultural services with respect to services incidental to agriculture and livestock, citing certain polishing and processing activities. The Committee expects the United States to ensure that this reservation is narrowly limited to incidental services as intended and does not allow this reservation to be applied to broader distribution or value-added processing activities, which are not properly categorized as incidental services.

Architectural and Engineering Services

The general provisions of the Services Chapter, on the development of professional standards and criteria, temporary licensing and review, provide for equity and reciprocity in this sector.

Further, the lack of any restrictions or exceptions for national treatment, most-favored-nation treatment, and market access, the absence of a local presence requirement, and the fair and transparent treatment of domestic regulation provide a welcoming environment for professional service providers. The non-conforming measure affecting the practice of architecture is acceptable in that practice by foreign professionals is restricted solely on the basis of a lack of reciprocal treatment by the licensing jurisdictions of both countries. With respect to the temporary licensing of engineers, we support the establishment of the Working Group on Professional Services and the specific priority given to developing procedures for the temporary licensing of architects and engineers at the first meeting of that Working Group. We would encourage the early conclusion of an agreement governing the temporary licensing of engineers.

Audiovisual Services

Korea's marketplace offers enormous promise for U.S. audiovisual products and services. However, the Korean government has diminished that promise through the imposition of multiple restrictions at virtually all levels of the industry, including broadcast content, theatrical screen quotas, ownership restrictions on market participants, and a challenging importation and censorship regime. While the Agreement does not sweep away all these

restrictions, it does create the framework for improved market access and the potential for economic improvements.

Korea has made some commitments to improve treatment to U.S. audiovisual products and services. The most evident progress can be seen in the area of traditional delivery of audiovisual products through the halving of the screen quota applicable to the theatrical exhibition of U.S. motion pictures. While Korea has preserved the structure of existing content quotas on broadcasting, cable and related media, and its theatrical screen quota, it has locked in those quotas at the least restrictive level allowed under current law. In addition, Korea made two liberalizations that will be commercially meaningful to U.S. companies. First, the Agreement decreases the domestic content quota applicable to the broadcast of animation programming and the domestic content quota applicable to the broadcast of films. Second, the Agreement increases the quota applicable to single-country sources of foreign content broadcast in Korea.

Korea has taken reservations in Annex II to enable it to require “program providers” (channel operators) to reserve time for new domestic animation or to impose prime time or production content quotas, but has conditioned doing so upon parallel increases in the foreign content quotas.

The Agreement reflects significant movement on the issue of foreign ownership within the broadcasting sector. Korea has made the commitment to phase in 100% foreign ownership of program providers (channel operators), other than those offering multi-genre, news or home-shopping programming, for firms that establish a local subsidiary. It also will allow U.S. investment in IPTV. This will open substantial new opportunities for U.S. interests in the marketplace.

The primary area of concern with respect to the audiovisual sector arises in connection with new services and delivery platforms. In the case of video-on-demand (VOD) and internet-protocol television (IPTV), Korea has reserved, but qualified, its right to impose content restrictions: video on demand providers cannot be required to store Korean content for which negligible demand exists and IPTV will not be subjected to domestic content requirements in excess of those permitted under the exceptions taken in Annex I.

However, Korea has taken a broad reservation for future measures taken to promote the availability of Korean content through digital audio and video services (streaming and downloading via the Internet or otherwise but not broadcasting or subscription video) upon a finding that such content is not readily available. (See Annex II – Sector 26). However, this reservation is strictly limited by conditions that Korean can implement future measures only through a transparent process and that they must be based on objective criteria and can be no more trade restrictive nor burdensome than necessary.

It is disappointing that the Agreement does not contain more protections against unilateral or arbitrary use of this clause. While the conditions included in the reservation with respect to “new platforms” provide some assurances to the U.S. audio-visual sector, the industry has

strong concerns about the reservations, and the Committee repeats its strong recommendation that these provisions do not set precedent for future agreements.

Construction Services

With respect to construction services the general provisions of the Agreement provide for reciprocity and equity and the non-conforming measure in Annex I is acceptable.

Energy Services

Korea is the world's ninth largest consumer of oil, but because it has no domestic reserves it must import all of its crude oil, making it the fifth largest net oil importer. Because the country's refining capacity is substantially greater than its domestic consumption, no new refineries are currently planned, although Korean refineries increasingly use their excess capacity to produce products for export to China as demand there has increased.

Korea has produced a small quantity of natural gas from one offshore field starting in 2004, but otherwise has no substantial natural gas reserves, and relies principally on imported liquefied natural gas (LNG) for most of its supply.

During the late 1990s, the Korean government announced plans to begin privatizing its large state-owned electricity and natural gas monopolies – the Korean Electric Power Corporation (KEPCO), and the Korea Gas Company (KOGAS). Overall, both electricity and natural gas privatization programs have moved more slowly than originally planned, due to strong opposition from labor unions, and delays in passing implementing legislation due in part to objections from key elected officials to foreign ownership of electricity and natural gas assets. In 2004, the government decided to limit electric power sector privatization to generation facilities and to retain ownership over KEPCO's transmission and distribution assets. Today, although there are some independent power producers, most Korean generation is still controlled by KEPCO, and privatization of both KEPCO and KOGAS is effectively stalled.

Korea has ratified the Kyoto Protocol on greenhouse gas emissions, and while its status under that agreement has meant it has not had to meet specific targets, its future plans emphasize the development of more nuclear power plants to reduce growth in carbon emissions. Most notably for United States energy companies, Korean plans call for construction of a dozen additional nuclear plants in the next ten years.

Although these resource and structural issues limit the potential for some U.S. energy services providers, Korea's large and growing economy make it an attractive prospect for many others. Thus, the fact that the Korea U.S. FTA contains a wide range of provisions that can help create new opportunities for U.S. energy services providers comes as positive news.

In particular, the provisions in the FTA's Services Chapter addressing market access, domestic regulation, and transparency provide a framework to increase certainty and opportunity for U.S. energy services firms, especially small to medium-sized ones. The Investment Chapter establishes a legal framework that provides energy services investors with substantial protections, including due process protections, that they enjoy in the United States. The Government Procurement Chapter includes important provisions including transparent bidding

procedures, non-discriminatory technical specifications, and objective review of procurement decisions.

Commitments to protect the environment provide opportunities for market-based solutions to environmental problems, an approach of particular interest to many energy services providers whose environmental expertise can provide opportunities in Korea.

Reservations establishing Korea's right to keep much of its electricity industry out of reach of competition, while notable, are neither surprising nor damaging to U.S. interests. In practice, they do not differ substantially from the policies of many U.S. states, which either continue to maintain vertically integrated electric utilities, or which have pulled back substantially from plans for industry restructuring which were in place in the late 1990s.

Overall, we believe that the Korea U.S. FTA will improve conditions for U. S. energy services companies in Korea, and will provide for equity and reciprocity.

Express Delivery Services

The U.S. express delivery industry believes the U.S.-Korea FTA includes important provisions for the sector, including an appropriate definition of express delivery services (EDS) and a positive statement ensuring at least the same level of market access as exists at the time the Agreement takes effect. The Agreement also contains important provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers, including a targeted window of no more than four hours for clearance of most express shipments and provisions allowing for electronic record retention. Finally, the Agreement includes a side letter that clarifies the existing Korea Postal law and embraces principles for ensuring a level playing field for private express providers.

Financial Services

The Agreement represents, in many significant respects, a material improvement in operating climate in Korea for international financial services providers. Korea's market access and national treatment commitments are high-level and its commitments relating to the transfer of financial information outside Korea remove trade diverting restrictions and should facilitate Korea's efforts to become a regional financial hub. The Committee is pleased that the Parties recognize the importance of cross-border transfer of information by financial institutions, and is gratified by Korea's commitment in paragraph 3(b) of Annex [FS] A and Section B of [FS] Annex B promptly to undertake modifications to its regulatory regime that will permit those institutions to transfer such information. The Committee is similarly pleased by Korea's commitments with respect to permitting the delegation of core functions to locations outside Korea. The Committee is also pleased with Korea's commitments on transparency as they relate to financial services. These commitments to ensure the engagement of market participants in the formation of regulation through, among other things, public notice and comment, and to ensure clarity and predictability in processing applications and other documents relating to the supply of financial services are welcome and collectively represent further progress in the U.S. effort to improve transparency globally.

We must however note that while the substance of the financial services commitments is largely positive, the ability of U.S. financial services firms to enforce them has been considerably weakened by the limitation, unfortunately not unique to this Agreement, of investor-state arbitration solely to claims alleging expropriation as well as by the inclusion of provisions allowing Korea to impose limited restrictions on certain capital flows as described in more detail in the previous Investment Section.

The Committee has previously registered its strong objection to the relatively recent decision by U.S. trade negotiators to exclude from U.S. investment treaties and similar agreements the remedy of investor-state arbitration for alleged violations of discrimination and most-favored nation obligations in the financial services. The Committee believes both U.S. regulators and their BIT and FTA counterparts should be prepared to defend their decisions in a neutral arbitral forum, especially in light of the continued application of the prudential carveout which give such official bodies wide latitude to exercise discretion.

Healthcare Services

The Agreement reduces barriers to U.S. health care institutions interested in developing, management and/or owning health care facilities in Korea and we are very supportive of the Agreement.

By incorporating the special privileges granted by legislation creating Free Economic Zones and the Jeju Special Self-Governing Province, human health service organizations are freed from restrictive licensing and investment barriers that apply elsewhere in Korea. However, in the FEZ zones and Jeju Island, U.S. human health service organizations may establish hospitals, pharmacies and certain other health care centers, and U.S. licensed physicians may in fact practice medicine in these areas.

Inclusion into the FTA strengthens the rights of U.S. health care organizations and practitioners by making it more difficult for the Korean legislature and executive branch to remove those benefits through changes in domestic legislation.

Insurance

The KORUS FTA will permit greater expansion, competition and business opportunities for all insurance providers. The results of the free trade agreement negotiations with Korea are commercially meaningful for the insurance sector and set a new, higher standard in FTAs for addressing regulatory, as well as market access, barriers. Achieving true market access for the insurance business involves the removal of discriminatory regulatory hurdles, in addition to the ability for insurers to gain market entry. We commend the U.S. negotiating team for the constructive results achieved.

Korea is the largest insurance market subject to a USFTA. South Korea is the world's eighth largest insurance market with total premium volume of more than \$65 billion. The South Korean insurance and retirement security market would be by far the largest insurance market to be included in an FTA with the United States. The financial sector reforms agreed to under the KORUS FTA will contribute to a stronger and more resilient economy in Korea, while also establishing a more competitive financial services market for Northeast Asia in general. These

outcomes are consistent with U.S. policy goals to deepen capital markets in the region and to equip countries like Korea with the financial tools they need to ensure greater financial stability.

The KORUS FTA commits Korea to MFN and national treatment provisions across the sector, including expanded application of MFN and national treatment to self-regulatory organizations (SROs), non-governmental entities that nonetheless perform a de facto regulatory role.

On market access, the KORUS FTA permits the full range of establishment rights, including joint ventures, wholly-owned subsidiaries, or branches. It also does not place any quantitative or geographic restrictions on the number of licensed insurers in the market.

For cross-border provisions, the FTA permits the standard range of services provided on a cross-border basis, including marine-aviation-transport (MAT) insurance, reinsurance, retrocession, intermediation (agency and brokerage), and services auxiliary to insurance. The agreement also permits cross-border portfolio investment management and advisory services two years after entry into force of the agreement.

The KORUS FTA contains very strong provisions on transparency, resulting in enhanced general regulatory transparency commitments and expansion of these commitments to government affiliated entities, including a standardized notice-and-comment period for all new laws and regulations. The FTA also stipulates how the administrative guidance process is to operate and specifies the use of no-action letters to help insurers better navigate the local regulatory environment.

The Agreement contains additional regulatory reform provisions. Underpinning them is Korea's agreement to move to a "negative list" approach to financial sector regulation, meaning insurers will be allowed to provide any product or service unless specifically prohibited or curbed by regulation. The FTA also contains provisions for expedited regulatory approval for new insurance products (within one year after entry into force); implements bancassurance reform to fully open that distribution channel for all life insurance products; increases the allowance of foreign currency reserves; and creates a leveling of the playing field between government-owned Korea Post and sectoral cooperative insurance providers and the private sector, a key industry goal, by placing them under the same regulatory requirements as pertaining to private insurers two years after entry into force of the agreement. Should Korea Post at any point in the future cease to operate as a government entity, the FTA requires both governments to consult on the matter.

For the first time in any trade agreement, the KORUS FTA contains in the financial services annex specific reference to data transfer, enabling U.S. companies to freely transfer customer data into and out of Korea, which will be fully implemented within two years after entry into force.

Finally, the KORUS FTA creates an Insurance Working Group, a flexible arrangement allowing both governments to review future developments in the insurance sector on an

ongoing basis, taking into account changes in the marketplace and in competitive conditions affecting the sector.

Legal Services

Chapter 11 of the proposed FTA addresses Cross-Border Trade in Services. Pursuant to this Chapter, services are provided on a national treatment and MFN basis.

In its Annex I, Korea states that legal services must be supplied by a Korean-licensed lawyer registered with the Korean Bar Association. Korea also states that only a Korean-licensed lawyer may establish certain legal entities: law offices, law companies with the characteristics of partnership, limited liability law companies, and limited liability partnership law offices. Korea Annex I at I-KOR-26. Korea also clarifies that investment in any of these legal entities by non-Korean licensed lawyers is not permitted.

Also in Annex I, Korea states that patent attorney services must be supplied by a Korean-licensed patent attorney registered with the Korean Intellectual Property Office, and that only a Korean-licensed patent attorney may establish a sole proprietorship or a patent law firm. Patent attorneys are also limited to establishing only one office. Korea Annex I at I-KOR-28.

In its Annex II, Korea reserves the right to adopt or maintain any measures with respect to foreign lawyer certification, approval, registration, admission, supervision, and “any other requirements with respect to foreign country-licensed lawyers or foreign law firms supplying any type of legal services in Korea.” Korea Annex II at II-KOR-44. Korea reserves similarly broad rights to regulate foreign country-licensed lawyers or foreign law firms entering relationships with Korean-licensed lawyers, Korean law firms, patent attorneys, and other professionals.

Nonetheless, Korea makes three substantial new commitments to open its market to legal services in its Annex II:

- First, upon entry of force of the Agreement, Korea will allow U.S. law firms to establish a representative office (FLC office) in Korea, permitting U.S. licensed lawyers to provide legal advisory services on their own jurisdictions and on public international law. Korea Annex II at II-KOR-45.
- Second, no later than two years after entry into force, Korea will allow U.S. FLC offices to conclude a specific cooperative agreement with a Korean law firm to jointly deal with cases involving both domestic and foreign legal affairs, and to share profits from such cases.
- Third, no later than five years after entry into force, Korea will allow U.S. law firms to establish joint venture firms with Korean law firms. These joint ventures may employ Korean-licensed lawyers as partners or associates. However, Korea states that it may restrict the proportion of voting shares or equity interests of the firm.

All of these provisions state that they are subject to certain requirements or limitations. The true market-opening effect of these provisions is uncertain until it becomes clearer exactly what types of requirements and limitations Korea might impose. However, despite these

limitations, this is the first time that Korea has opened its legal services market to the United States, and thus the FTA should provide a substantial opportunity for U.S. law firms.

In its Annex I, which lists non-conforming measures for services and investment, the United States preserves its existing requirements that only U.S. citizens and residents may serve as patent attorneys, patent agents or otherwise practice before the U.S. Patent and Trademark Office. U.S. Annex I at 12. This language is identical to previous FTAs.

In its Annex I, the United States also specifically notes all existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico. U.S. Annex I at 13. This exclusion, which has been included in all FTAs since the NAFTA, covers all professional services, including legal services. As a result, all existing state requirements covering the legal profession, such as laws and regulations covering bar admission, are unaffected by the FTA.

Finally, an as-yet unnumbered Annex to the Services Chapter addresses Professional Services. (See page 10 of draft Services Chapter, which is currently titled "ANNEX XX-A: PROFESSIONAL SERVICES.") This Annex provides that each of the U.S. and Korea shall provide information concerning standards and criteria for licensing and certification of professional services suppliers, and shall encourage the relevant regulating bodies "to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers...." Those standards and criteria include education, examination, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge and consumer protection.

The FTA further creates a Professional Services Working Group to facilitate these activities, and in particular to foster the development of mutual recognition arrangements (MRAs) between the two countries' relevant professional bodies, and to consider the development of model procedures for licensing and certification.

The Working Group will report no later than two years after entry into force of the Agreement recommendations on mutual recognition to the Joint Committee, which will determine whether the recommendations are consistent with the FTA. If they are consistent, then each Party will encourage its authorities to implement the recommendations within a mutually agreed time.

The language in this Annex is similar in scope and coverage to that of prior FTAs, although the creation of a Working Group is a new feature. While the Annex covers all professional services, there may well be opportunities for mutual recognition in the area of legal services.

In conclusion, the FTA presents a potentially significant opportunity for U.S. attorneys to provide legal advice in Korea, through graduated market opening occurring upon entry into force, and at two and five years after entry into force.

Transportation Services

The U.S.-Korean Free Trade Agreement does not include provisions that will allow the United States or Korea to engage in the other nation's maritime transportation services. Indeed, both

countries have made an explicit reservation of their maritime transportation services to the FTA.

Importantly, both nations made specific reservations of their cabotage trades to the vessels and nationals of their respective countries. For the United States, this is consistent with the longstanding position of the U.S. Trade Representative.

VI. Membership of Committee (list of members)

Industry Trade Advisory Committee On Services and Finance Industries - ITAC 10

Chairman

Mr. J. Robert Vastine, Jr.
President
U.S. Coalition of Service Industries

Linda Menghetti Dempsey, Esq.
Vice President
Emergency Committee for American Trade

Vice-Chairman

Ms. Elizabeth R. Benson
President
Energy Associates

Mr. John (Tim) M. Fisher, III
Vice President, International
Government Relations
Metropolitan Life Insurance Company

Mr. Thomas A. Allegretti
President and Chief Executive Officer
The American Waterways Operators

Mr. Gregory M. Frazier
Senior Vice President,
International Trade Policy
Motion Picture Association of America,
Inc.

Mr. Fredric S. Berger, P.E.
Senior Vice President
The Louis Berger Group, Inc.

Madeleine F. Green, Ph.D.
Vice President and Director,
Center for International and Institutional
Initiatives
American Council on Education

Timothy C. Brightbill, Esq.
Member, American Bar Association
Wiley Rein LLP

Stephen J. Canner, Ph.D.
Vice President, Investment
and Financial Services
United States Council for International
Business

Ms. Leslie C. Griffin
Vice President, International
Governmental Affairs
New York Life International, LLC

George S. Cary, Esq.
Cleary, Gottlieb, Steen and Hamilton, LLP

Mr. Charles P. Heeter Jr.
Principal, International Government Affairs
Deloitte and Touche USA LLP

Ms. Ellen M. Delage
Director, International Relations
The American Institute of Architects

Ms. Selina E. Jackson
Vice President, International Public Affairs
UPS

Mr. William A. Jordan
Senior Director, Government Affairs and
Communications
The McGraw-Hill Companies

Mr. Leonard N. Karp
Executive Vice President
and Chief Operating Officer
Philadelphia International Medicine

John (Jay) C. Kern, Esq.
Managing Director
Reynolds, DeWitt & Co.

Dr. Marjorie Peace Lenn
President, Center for Quality Assurance in
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National Committee for International Trade
In Education
National Center for Higher Education

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Executive Vice President, Operations
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Partner, Business Planning and Taxation
Haynes and Boone, L.L.P.