



THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KOREA

1 Uisadang-daero, Yeongdeungpo-gu
Seoul 150-701, Korea

February 8, 2012

His Excellency Mr. Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500
U.S.A.

Dear Mr. President,

We are writing to express our deep concern about the Korea-U.S. Free Trade Agreement (“KorUS FTA”) and our belief that the agreement needs a significant revision prior to further advancements of its implementation process.

As you may well know, after the KorUS FTA was approved unilaterally by the ruling majority party at the National Assembly of the Republic of Korea, many Koreans took to the streets to protest the approval, demanding its immediate repeal. Consequently, the National Assembly passed a resolution calling for re-negotiation of the KorUS FTA. Even the ruling party members who had voted for the approval supported the resolution.

This resolution urges the governments of the Republic of Korea and the United States to revisit the investor-state dispute settlement mechanism (“ISD”) either to delete it from the agreement, or substantially revise it as an amendment to the agreement. In this regard, the resolution further requests that the United States government accede to the proposal of renegotiation.

Our resolution was motivated by the wishes of the ordinary Korean people. However, it does not reflect all of their concerns, which are not limited to the ISD provisions. The majority of the Korean people are concerned that a range of provisions in the FTA, designed to maximize corporate interests, would jeopardize democratic policies that promote economic justice, eliminate poverty, regulate financial services, and develop healthy communities.

First of all, these provisions are directly in conflict with the Article 119 of the Constitution of the Republic of Korea, which obliges the state to intervene for economic democratization. Furthermore, it is our shared view that the KorUS FTA is simply unfair because: the agreement *itself* has no direct effect within the territory of the United States; and the domestic U.S. laws prevail when there is a conflict between the two.

Therefore, we the leaders and the members of the National Assembly of the opposition

parties would like to take this opportunity to bring our concerns to your attention regarding the ten items listed below. If our governments fail to address these issues satisfactorily before the KorUS FTA goes into effect, we are afraid that we would be forced to exercise our legislative authority to prevent the current provisions of the deal from being implemented.

- 1) **ISD**: The investor-state dispute settlement procedure allows private corporations to bring the government of either party of the agreement to foreign arbitration tribunals to demand compensation over public policy standards, even those that apply to both domestic and foreign corporations alike. This would restrict policy options available to our governments to promote the public interest and undermine the government's ability to protect public services and promote public health, food safety, and environmental protection. We believe such a malignant procedure is unnecessary; given the fact that both of our countries have well-established rules of law and well-functioning courts. Therefore, Section B of Chapter Eleven shall be deleted from the agreement;
- 2) **PROTECTION OF SMES**: Any non-discriminatory measures adopted or maintained either by the Republic of Korea or by any non-governmental bodies in the exercise of power delegated by central or local governments or authorities of the Republic of Korea to protect small and medium-sized enterprises (SMEs), especially the SMEs involved in distribution services, should be free from the obligations imposed by the KorUS FTA, in so far as such measures are in accordance with the laws of the Republic of Korea;
- 3) **NEGATIVE LIST**: The negative list approach for services liberalization should be converted to the positive approach as adopted by WTO;
- 4) **RATCHET**: The ratchet clauses would exclude policy options of our future governments. Therefore, the ratchet clauses contained in Chapters 11, 12, and 13 shall be deleted;
- 5) **TARIFF SCHEDULES**: The tariff schedules of Korea on some U.S. agricultural products, including oranges, beef, and pork, should be revised. For instance, the existing duties on beef may be maintained for the next ten years as they are, after which period, they may be reduced to zero over the following five years, through an evenly distributed five-stage annual reduction plan;
- 6) **KAESONG INDUSTRIES COMPLEX**: In determining the originating status of a good, operations and processes performed in the Kaesong Industrial Complex, on materials exported there from the Republic of Korea and subsequently re-imported to the Republic of Korea, shall be considered to have been performed in the territory of the Republic of Korea, where portions of non-originating input for such a product are within a certain range;

- 7) **HUMAN FEEDING PROGRAM:** A human feeding program provided or supported by the central or the local governments should be exempted from the obligations under the KorUS FTA. In particular, a school feeding program that is in operation with a financial support of a local government or agency should be explicitly exempted from national treatment obligation of the agreement;
- 8) **PATENT-APPROVAL LINKAGE:** The KorUS FTA should be amended so that there is no “linkage” requirement between the marketing approval of a pharmaceutical product and the patent status of such a product. This may be accomplished by deleting or rewriting Article 18.9:5 as non-mandatory;
- 9) **FINANCIAL SAFEGUARD:** The restrictive conditions for financial safeguard measures under Annex 11-G and the prudential regulations under Article 13.10 shall be eased. Specifically, the conditions of less than a one-year period for the safeguard measures, non-confiscatory requirement, and avoidance of unnecessary damage to the commercial, economic, or financial interests of the United States should be amended; and
- 10) **AUTO-SPECIFIC SAFEGUARD:** The special safeguard provisions for automobile vehicles created by the 2010 supplemental agreement need to be revisited to prevent abuse or misuse of such measures;

Mr. President, we would support a trade deal between our countries that would genuinely help “to raise the living standards of the people, promote economic growth and stability, create new employment opportunities, and improve the general welfare” in our countries as expressed in the Preamble of the agreement. However, the existing provisions of the KorUS FTA are far from meeting such purposes partly because of the flaws listed above.

Therefore, we strongly call for your administration to reconsider the KorUS FTA in order to truly strengthen the long-term relationship of our countries. If our cordial and earnest request would be overlooked by your administration, we would have to take all measures possible to freeze the implementation of the KorUS FTA, as we are expected to gain a majority of seats in the National Assembly in the coming general elections.

Furthermore, when we gain power in the presidential election in December and if the KorUS FTA shall not have been revised by then, as recommended above, the agreement would be subject to termination according to Article 24.5(2).

Again, we sincerely hope that you reconsider the ongoing process for the implementation of the KorUS FTA and reassess ways to enhance our mutually beneficial relationship for the current and future generations.

Sincerely,

Han Myeong-sook
Chairperson, Democratic United Party (DUP)

Lee Jung-hee
Co-Chair, United Progressive Party (UPP)

Rhyu Si-min
Co-Chair, United Progressive Party

Sim Sang-jung
Co-Chair, United Progressive Party

Kim Jin-pyo
Floor Leader, Democratic United Party

Kang Gi-gap
Floor Leader, United Progressive Party

Moon Sung-keun
Supreme Council Member, Democratic United Party

Park Young-sun
Supreme Council Member, Democratic United Party

Park Ji-won
Supreme Council Member, Democratic United Party

Lee In-young
Supreme Council Member, Democratic United Party

Kim Boo-kyum
Supreme Council Member, Democratic United Party

Lee Yong-deuk
Supreme Council Member, Democratic United Party

Nam Yoon In-soon
Supreme Council Member, Democratic United Party

Member of the National Assembly

Ahn Gyu-baek (DUP)	Ahn Min-seok (DUP)	Byun Jae-il (DUP)
Chang Byung-wan (DUP)	Cho Bae-sook (DUP)	Cho Jeong-sik (DUP)
Cho Kyung-tae (DUP)	Cho Seung-soo(UPP)	Cho Young-taek (DUP)
Choi In-ki (DUP)	Choi Jae-sung (DUP)	Choi Jong-won (DUP)
Choi Kyoo-sik (DUP)	Choi Kyu-sung (DUP)	Choi Young-hee (DUP)
Choo Mi-ae (DUP)	Chun Jung-bae (DUP)	Chung Bum-goo (DUP)
Chung Dong-young (DUP)	Chung Jang-seon (DUP)	Chung Sye-kyun (DUP)
Hong Hui-deok(UPP)	Hong Jae-hyeong (DUP)	Hong Young-pyo (DUP)
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Kim Hak-jae (DUP)	Kim Hee-cheol (DUP)	Kim Hyo-seuk (DUP)
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Kim Sang-hee (DUP)	Kim Sun-dong (UPP)	Kim Sung-gon (DUP)
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Kim Young-hwan (DUP)	Kim Young-jin (DUP)	Kim Young-rok (DUP)
Kwak Jung-sook(UPP)	Kwon Young-ghil(UPP)	Lee Chan-yeol (DUP)
Lee Choon-seok (DUP)	Lee Jong-gul (DUP)	Lee Kang-rae (DUP)
Lee Mi-kyung (DUP)	Lee Nak-yeon (DUP)	Lee Sang-min (DUP)
Lee Seok-hyun (DUP)	Lee Sung-nam (DUP)	Lee Yong-hee (DUP)

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Park Ki-choon (DUP)	Park Sang-cheon (DUP)	Park Sun-sook (DUP)
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Shin Hak-yong (DUP)	Shin Nak-yun (DUP)	Sohn Hak-kyu (DUP)
Song Hoon-seok (DUP)	Song Min-soon (DUP)	Won Hye-young (DUP)
Woo Yoon-keun (DUP)	Yang Seung-jo (DUP)	You Seon-ho (DUP)