THE U.S. – SOUTH KOREA FREE TRADE AGREEMENT

KEY IMPROVEMENTS TO THE AGREEMENT

Negotiation of a free trade agreement with South Korea raised a fundamental principle – whether the United States would insist on creating conditions to allow two-way trade in a key sector, where to date, trade has been one way. What is at stake are American jobs.

For decades, South Korea has employed a unique and ever changing regulatory regime to discriminate against auto imports, while the U.S. market has been open to their goods. As a result, U.S. automakers exported less than 14,000 cars to South Korea in 2010. In contrast, South Korean automakers have been able to use their historically closed market to finance an aggressive push into the U.S. market, through both exports (515,000 cars in 2010) and transplant production. In 2010, automotive trade accounted for more than 75 percent of the $10 billion U.S. trade deficit with South Korea.

The Bush administration ignored Congressional and stakeholder calls to ensure the FTA meaningfully opened South Korea's auto market, and concluded an agreement that would have locked in one-way trade.

Last year, with the active support of key Members, the Obama Administration negotiated an additional agreement that effectively addresses non-tariff barriers and will provide U.S. automakers with a real opportunity to compete and succeed in the South Korean market. With the changes achieved through the additional agreement, the U.S. auto industry (Ford, Chrysler, GM and the UAW) are supporting the FTA.

Key elements include:

- **Tariffs.** Unlike the 2007 agreement, which immediately eliminated duties on almost 90% of South Korea's auto exports, duty elimination for South Korea's auto exports is now delayed until year five. The delay gives U.S. automakers the opportunity to reverse decades of South Korean protectionism, providing important time to establish a brand and distribution presence and leverage to evaluate South Korea's compliance. Cuts in the U.S. 25% truck tariff, which started immediately under the Bush negotiated FTA, are now delayed for eight years.

- **Safeguard.** The agreement includes a first-ever auto-specific safeguard designed to protect against potential surges of South Korean cars and trucks.

- **Safety and Environmental Standards.** The new agreement levels the playing field and prevents Korea from relying on discriminatory, rotating safety and environmental regulations to shut out U.S. auto imports.

The U.S. – South Korea FTA is the most commercially significant trade agreement that the United States has signed in over a decade. The ITC estimates that implementation would add $10 – $12 billion to annual U.S. GDP and at least $10 billion in additional annual exports. The FTA will create billions of dollars in new market opportunities for a number of U.S. sectors, including agriculture and services. The ITC also estimates it will increase jobs, as does the Obama Administration. Those who project job losses associated with the FTA rely on analyses that: (1) do not directly estimate the FTA's impact; and (2) fail to provide a complete, or accurate, picture of the FTA's effect on jobs.

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KEY FACTS

U.S. Sanctions on North Korea Unaffected. Under the FTA, the United States can continue to prohibit the import of Korean products that incorporate any North Korean content, in accordance with E.O. 13570. Under E.O. 13570, the only way North Korean imports (or imports from another country which incorporate such content) can enter the United States is if Treasury grants a license. To date, Treasury had few license requests, and granted fewer. Violation of U.S. sanctions can lead to significant civil and criminal penalties. Additionally, the President cannot unilaterally extend preferential treatment under the Korea FTA to products from any part of North Korea (including Kaesong) – Congress must pass legislation for that to happen.

Includes "May 10th" Labor and Environment Changes. The Korea FTA includes the May 10 changes insisted upon by House Democrats in 2007, including a fully enforceable commitment to adopt and enforce the five internationally recognized core labor standards and a fully enforceable commitment to enforce key international environmental agreements (such as CITES) and existing environmental laws.

Addresses Investment Concerns. The FTA investment chapter includes changes to the NAFTA Chapter 11 investment model, such as: (1) clarifying that regulations that protect legitimate public-welfare objectives (including environmental protections) generally are not considered expropriations; (2) limiting so-called "minimum standard of treatment" investor claims; (3) providing for transparency and input in the arbitration process from NGOs; and (4) providing for quick dismissal of frivolous investor claims. Also included are the "May 10" clarification that the FTA does not provide foreign investors greater substantive rights than U.S. investors have under U.S. law, and a government- to government mechanism to dispose of investor claims.

Rule of Origin. Concerns raised about the impact of the autos rule of origin on U.S. and Korean sourcing patterns fail to recognize key points. First, the content requirements under the U.S.– Korea FTA are substantially the same in effect as under the EU – Korea FTA. Second, the rule of origin was designed to ensure that U.S. producers, whose production is highly integrated with Canada, can export cars to Korea under existing production patterns (given that Canadian content is excluded under the FTA). Third, if Korean producers increase use of Chinese components (currently at 2.2 percent) resulting in a surge, the safeguard can be used in response.

"Too Big To Fail" Not Impeded. Some have argued that the FTA's market access obligation will interfere with our ability to "re-regulate" the financial services industry, in particular by addressing the "too big to fail" ("TBTF") by limiting the size of a financial institution. That is false – the market access obligation does not address the size of a particular firm in an industry. Instead, it addresses limitations on the size of a sector as a whole. In addition, the financial services chapter includes an exception for measures "to ensure the integrity and stability of the financial system".