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THE U.S.-KOREA FREE TRADE AGREEMENT: LESSONS LEARNED TWO YEARS LATER

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE, CUSTOMS, AND GLOBAL COMPETITIVENESS

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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THE U.S.-KOREA FREE TRADE AGREEMENT: LESSONS LEARNED TWO YEARS LATER

TUESDAY, JULY 29, 2014

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
CUSTOMS, AND GLOBAL COMPETITIVENESS,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 3:08 p.m., in room SD–215, Dirksen Senate Office Building, Hon. Debbie Stabenow (chairman of the subcommittee) presiding.

Present: Senators Brown, Thune, Isakson, and Portman.

Also present: Democratic Staff: Elissa Alben, International Trade Counsel; Jason Park, International Trade Counsel; and Jayme White, Chief Advisor for International Competitiveness and Innovation. Republican Staff: Richard Chovanec, Detailee; and Shane Warren, International Trade Counsel.

OPENING STATEMENT OF HON. DEBBIE STABENOW, A U.S. SENATOR FROM MICHIGAN, CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL TRADE, CUSTOMS, AND GLOBAL COMPETITIVENESS, COMMITTEE ON FINANCE

Senator STABENOW. Well, good afternoon. The Senate Finance Subcommittee on International Trade, Customs, and Global Competitiveness will now come to order.

Thanks very much for being here today as we consider the lessons we have learned during the first 2 years of our free trade agreement with Korea. Because this is my first hearing as chair of the subcommittee, I would like to share my basic beliefs on international trade as we begin this discussion.

Michigan is a State where we make things and grow things. I grew up with families whose quality of life was shaped in part by their ability to sell products in foreign markets. These products sold around the world because the people who made the cars and tilled the soil were good at it. This hard work powered the growth of our middle class in Michigan, just as it powered the growth of the middle class throughout America.

We know this: if American workers and American businesses can compete on a level playing field, they will succeed in markets around the world, and our American middle class will thrive. Within this subcommittee, we have the opportunity to explore new markets on behalf of these workers and the businesses that employ them. In exchange for these opportunities, we allow products made

in other countries to compete in the United States. We are not afraid of competition. We welcome it.

But the competition must be fair, and the playing field must be level. Too often in recent years, our workers and businesses have found themselves on a playing field that was tilted in one direction, littered with rocks and holes that could trip them up.

We must resist being drawn into a race to the bottom on international trade. Trade agreements must be about creating opportunities to grow a middle class around the world, not lose our middle class in America, which I think is really our fundamental charge and challenge.

Fortunately, the Republic of Korea is a trusted ally and a willing partner. I am grateful to Korean leaders for working with us when the Obama administration asked for better terms on behalf of our automakers. When our Nation entered into this agreement in March 2012, I was as optimistic as the administration and the business community that removing trade barriers would spur job growth and generate higher earnings for our workers.

I am sure Korea had the same hopes. But for trade deals to thrive, they must be a win-win for both sides. So far, the Korean free trade agreement has fallen short of our hopes. The agreement aimed to narrow the trade deficit between the U.S. and Korea. Instead, the trade deficit has gone in the wrong direction. Even if you look at the most conservative numbers, that deficit has grown. If you look at the deficit in goods, in the things that we make, it has increased by nearly 50 percent.

While our dairy producers have reaped many benefits through the trade agreement, they continue to face challenges when it comes to certain products that are blocked from the market based on geographical indications. We will hear more about that today from our witnesses.

The agreement aimed to open Korea's markets to American automakers, but agreeing to phase out tariffs on U.S.-made automobiles has not been enough. Due to non-tariff barriers, Korea remains one of the most closed auto markets in the world.

Given our strong alliance with the Republic of Korea, I am hopeful that the expectations we had at the outset will be matched by real-world results, but to achieve these results we must have candid conversations about what is working and what is not, and that is why we are here. I also believe that it is very important that we apply what we learned here to the other major international trade agreements that are actively being negotiated right now.

We also need to recognize that we have other tools for strengthening our Nation's position in the international economy. By improving our infrastructure, our goods and services can move more smoothly; by reforming the tax code, we can give companies incentives to keep jobs in America; by offering job training to American workers, we can equip them for 21st-century markets; and by strengthening U.S. trade law, we can defend our companies against nations that manipulate their currency.

In international trade, it is our responsibility to drive a tough, fair bargain with foreign countries that seek access to American markets. There must be no doubt that we will be exporting our Na-

tion's products and not our jobs. I have every confidence that, with smart trade policies, we will be successful.

[The prepared statement of Senator Stabenow appears in the appendix.]

Senator STABENOW. Now it is my great pleasure to turn this to our distinguished ranking member, Senator Isakson. I am so very pleased to have him as my partner in leading this subcommittee.

Senator Isakson?

OPENING STATEMENT OF HON. JOHNNY ISAKSON, A U.S. SENATOR FROM GEORGIA

Senator ISAKSON. Well, thank you, Chairman Stabenow. It is a pleasure to serve with you, and I have looked forward to this opportunity for many days. I am glad we could finally have this hearing together, and I appreciate your opening remarks.

I have voted for every free trade agreement that I have had the possibility of voting for since I have been in the Congress of the United States in the last 16 years. One of the ones I was proudest of was President Bush's proposal that he signed in 2007, and the Senate finally ratified in 2011. That free trade agreement has served Americans and served South Korea well.

I have a warm place in my heart for South Korea. In 1988, I took a trade mission from the State of Georgia to Seoul, South Korea, to take 23 Georgia companies to do some business in Korea. By the time we left, the Coca-Cola company had made the contract to purchase the office systems for the Coca-Cola USA headquarters being built in Atlanta, and Dalton Carpet and Shaw Industries had sold carpet to the Korean Textile Federation for a new facility they were building. So I believe in international trade creating jobs in my State, but also creating jobs in South Korea. I have been proud to be a part of that.

I am also appreciative of our steadfast loyalty to each other, in terms of our mutual defense, and have had the privilege of going where the peace agreement was signed between North and South Korea and visiting some of the 30,000 U.S. troops who are stationed in South Korea, helping to carry out their message which is ahead of them all, which is their slogan, "The United States Army at the DMZ." I appreciate very much our steadfast work with them.

In the past 2 years since the FTA agreement was put in force, we have already seen positive results emerge in my home State of Georgia, with increased exports in aerospace products, pulp and paper, engines and turbines, agricultural products, and chemical products. The U.S.-Korea Free Trade Agreement has paved the way for $800 million in exports from Georgia to South Korea, and in 2013 almost $7 billion in Korean investment across the United States of America.

Korean investment in Georgia has been welcomed to boost our State's economy. According to Georgia's Department of Economic Development, Georgia is home to 62 Korean companies/facilities, over 23 of which are manufacturing facilities. The Kia Motors Manufacturing Company in West Point, GA represents a $1.1-billion investment in my home State, providing jobs, directly or indirectly, for over 10,000 Georgians. On July 11, 2013, the 1 millionth Kia Motorcar was built in the United States at that plant.

Kia is a member of the Association of Global Automakers. I would like to ask unanimous consent from the chairman that their statement for this hearing be put in the record.

Senator STABENOW. Without objection.

[The prepared statement of the Association of Global Automakers appears in the appendix on p. 39.]

Senator ISAKSON. Today we will hear testimony from witnesses who have different experiences with the U.S.-Korea free trade agreement. I am looking forward to a fruitful discussion and the benefits of their knowledge and experience they have had with this agreement, but I also understand that there have been challenges. As we discuss these challenges, we do so not only with our trade relationship with South Korea in mind, but also with an eye towards the ongoing trade negotiations with others.

However, it will be extremely difficult to make any progress on these issues without a renewal of Trade Promotion Authority for the President of the United States. Without TPA, the administration continues to negotiate from a weaker position, and Congress's priorities are notably absent from the important trade talks of the Trans-Pacific Partnership.

As the ranking member of the Trade Subcommittee on the Finance Committee, with the Trans-Pacific Partnership, the Trans-Atlantic Trade and Investment Partnership, and the AGOA Act—the African Growth and Opportunity Act—I know how important it is for TPA to be authorized for the President so he can negotiate knowing he has the full faith of the Congress behind him and has an up-or-down vote on, finally, ratification.

So I hope, although I know there are differences, that we can note the importance of Trade Promotion Authority and the need to have it. The President called for it in his State of the Union address, many members of Congress have called for it, and I hope that it will happen.

The bipartisan Congressional Trade Priorities Act of 2014 introduced by Senator Hatch and former Senator Baucus would renew TPA and address some of the issues that are so important to our witnesses in the future agreements. For example, this important legislation would make addressing the issue of currency manipulation a principal negotiation objective of the United States in trade talks.

Until the Senate acts on renewing TPA, Congress's priorities on this and other important issues will remain on the sidelines. I would like to thank our witnesses for being here to testify today, and I thank the chairman for giving me the opportunity to speak.

Senator STABENOW. Thank you very much. I know that Senator Brown would like to make a brief opening statement as well.

[The prepared statement of Senator Isakson appears in the appendix.]

OPENING STATEMENT OF HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO

Senator BROWN. Thank you, Madam Chairman. I will be brief. I never trump the distinguished chairman of our subcommittee, but she said she comes from Michigan where they make things and grow things. Her neighbor immediately to the south makes things,

grows things, and mines things too, I would add, with our oil and gas industries. So, not to ever show up the chairman, but thank you. I appreciate Ranking Member Isakson's comments about currency too.

This hearing is important for a whole number of reasons. I opposed the original Korea trade agreement. Like most Americans, I support trade, I want more of it, but I want trade that benefits our workers. I think too many of our trade agreements have undermined U.S. manufacturing, especially small manufacturers further down on the supply chain and their employees.

I thought the Korea FTA followed this flawed model, and I was skeptical that it would yield reciprocal market access for U.S. companies. I believed, and I continue to believe now, that there is another way forward on trade.

For example, the Korea agreement does not include disciplines on currency. There is no recourse for U.S. companies that face disadvantages due to an under-valued won. I appreciate the chairman's leadership on that currency issue and the whole host of ways that she has addressed that.

I think the hearing today is especially timely. TPP and TTIP both are advancing. Congress continues to urge the administration to negotiate high-standard and better, more level trade agreements for American workers. I think this hearing can help lead to that. So, I thank the chairman.

Senator STABENOW. Thank you very much.

We are very pleased to have four distinguished witnesses with us from different parts of the economy, with different perspectives. We appreciate all of your time.

Let me introduce our four witnesses. Our first witness is Stephen Biegun, vice president of international governmental affairs for Ford Motor Company, a company I know a little bit about. Before joining Ford, Mr. Biegun worked as National Security Advisor for former Senate Majority Leader Bill Frist, and prior to that he served the White House as Executive Secretary of the National Security Council. Welcome.

Our next witness is Sean Murphy, vice president and counsel of Qualcomm, based in San Diego. Mr. Murphy manages Qualcomm's international public policy agenda on issues such as international trade, technology policy, competition and innovation, and intellectual property. He has represented the company before industry associations and multilateral institutions, including the United Nations, the World Trade Organization, and the World Bank. Welcome as well.

Our third witness is Shawna Morris, vice president of trade policy, National Milk Producers Federation and U.S. Dairy Export Council, based in Arlington, VA. Ms. Morris has worked with Congress and other government officials negotiating U.S. free trade agreements and resolving bilateral trade barriers. She is an advocate for the U.S. dairy industry's priorities in international trade. Welcome.

Our final witness is Michael Rue, who will be speaking on behalf of the USA Rice Federation, which is based in Rio Oso, CA. Mr. Rue is vice chairman of the Federation's International Trade Policy Subcommittee. He chairs the Federation's Subcommittee on Asian

Trade Policy, and serves on the Subcommittee on European Union Trade Policy.

So we will begin with Mr. Biegun. As you know, we ask for 5 minutes of testimony verbally. You are welcome to give us in writing whatever you have; we would certainly welcome that.

So, Mr. Biegun, welcome.

STATEMENT OF STEPHEN E. BIEGUN, VICE PRESIDENT, INTERNATIONAL GOVERNMENTAL AFFAIRS, FORD MOTOR COMPANY, DEARBORN, MI

Mr. BIEGUN. Thank you, Madam Chairman. I do have a statement that I would like to submit for the record.

Thank you, Madam Chairman, thank you, Ranking Member Isakson and Senator Brown, for the invitation to appear today. Also let me thank you on behalf of the 72,000 men and women who work for Ford Motor Company across the United States of America. We deeply appreciate the commitment of this committee to make trade work for American manufacturers.

Trade is not an after-thought for Ford Motor Company's business. One hundred and 10 years ago when our company was founded, Henry Ford exported the sixth vehicle made by the Ford Motor Company. Since then, we have become one of the largest exporters and largest importers in the global economy.

It is a little-known fact to many people that the automotive sector is the number-one sector of exports from the United States economy, and, within that sector of exports, Ford Motor Company is the number-one exporter of American-made automobiles to markets around the world. We are very proud of our trade pedigree and, as you can see by the scale of our business, trade is a foundation of Ford Motor Company's model.

Now, we have supported every free trade agreement that has been passed by the United States since we began negotiating free trade agreements about 2 decades ago. But I will say that, when the KORUS agreement was first proposed 7 years ago, we had deep skepticism that it would be able to change the nature of a Korean market which was the most closed automotive market in the entire world.

With slightly more than 5 percent import penetration, Korea ranked dead last among the 32 OECD countries in terms of import access. By way of comparison, on average, normal markets around the world have about 50 percent import presence in their markets. Korea was a definite outlier.

So we had our concerns, and, when the agreement was originally signed, it actually confirmed all of our concerns in that it failed to address the barriers to automotive trade with Korea. However, with the support of many members of this committee, with the support of our partners in the United Auto Workers, and with our fellow companies in the U.S. auto industry, we were able to work with the administration to renegotiate the agreement.

Our strategy in the renegotiation of the agreement 3 years ago was basically to create time and space for the export of American automobiles. How would we do that? Working with U.S. negotiators and the Koreans, we set up a model in which up to 25,000

American-made vehicles per year could come into Korea, built to American regulatory standards.

Now, America's regulatory standards are not second to Korean regulatory standards—in some cases, they actually exceed them—but they are different. But they are different because for decades the Korean government has used slight tweaks of its regulatory system to add cost to importers to keep them out of the Korean market.

So with the negotiations we created space to get our vehicles into the market, and then we also created time. We created time by delaying for 4 years the removal of tariffs on the import of Korean vehicles in the United States. During that 4-year period, it was our anticipation that we would be able to build a toe-hold for a business in Korea that, up to that point, only had one dealership in the entire country of Korea.

Now, compare that to the Korean manufacturers who had 1,500 dealerships across the United States of America and sold and imported hundreds of thousands of vehicles per year. Our goal was to use that time and space to get a toe-hold so, when the tariffs went away, we could at least have some equivalent opportunity. It would never be in balance, but it would be some equivalence of opportunity.

I explained in detail in my written testimony what kind of barriers we have seen since, but I have to tell you, in short, our view of the agreement to date has been disappointment. Yes, we have to some degree increased the number of vehicles that we have exported and sold in Korea. We have done that with tens of millions of dollars of expenditure in expanding our business and marketing expenses.

We are falling woefully short of the numbers that were negotiated in the agreement to allow us to build a toe-hold in the business. There is an urgency here. The clock is ticking. In 2 years, the tariffs go away, and we still are left guessing in the Korean market what the rules will be to export American cars in the coming year.

So what are the lessons learned for this committee and for companies like ours? We do not regret supporting the agreement. We still think that we can make it work. But we have to be able to use the enforcement mechanisms quickly, not just to help our own companies, but quite frankly to help the Korean government learn the disciplines of free trade.

I actually think we would have helped the Korean government had we used elements like the snap-back provision in the agreement early on. We would have sent a message through the bureaucracy that compliance is not negotiable.

The second lesson we learned is that regulatory systems do matter. Our free trade agreements have to make sure that our trading partners accept American-made goods that are built to the highest standards of safety and environmental performance.

Lastly, as a couple of the Senators did mention, currency matters. Currency is the medium in which trade flows. The Korean government has intervened in its currency over a number of years, and, absent the disciplines against that kind of practice in a free trade agreement, we will not see any trading partners cease and desist.

Let me conclude by saying that we are committed to the Korean market. We have a wonderful team of men and women in Korea who are working every day to build a healthy and growing business in that market. We want to serve the Korean customers with some of the best automobiles in the world. All we ask is that the Korean government get out of the way and let us go about our business. Thank you.

Senator STABENOW. Thank you very much.

[The prepared statement of Mr. Biegun appears in the appendix.]

Senator STABENOW. Mr. Murphy, welcome.

STATEMENT OF SEAN P. MURPHY, VICE PRESIDENT AND COUNSEL, INTERNATIONAL GOVERNMENT AFFAIRS, QUALCOMM INCORPORATED, SAN DIEGO, CA

Mr. MURPHY. Chairman Stabenow, Ranking Member Isakson, Senator Brown, I am pleased to be here today to discuss the U.S.-Korea FTA, KORUS. Qualcomm has been, and remains, a strong supporter of this historic agreement. Since KORUS entered into force a little more than 2 years ago, it has opened the Korean market to U.S. goods, services, and investment. It has also enhanced the basic framework for U.S. free trade agreements, creating an updated model upon which to build the Trans-Pacific Partnership, the Trans-Atlantic Trade and Investment Partnership, and the Trade in Services Agreement.

Korea is important to Qualcomm because it is one of the world's most sophisticated mobile communications markets. Korean cell phone manufacturers and mobile service providers are among our most-valued partners.

Qualcomm is a world leader in 3G, 4G, and next-generation mobile technologies. Seventy percent of our 30,000-plus employees are here in the United States, and about 65 percent of them are engineers and scientists. If you have a smartphone, a tablet, or other advanced wireless device, chances are you are using our technology.

Qualcomm develops and channels its technologies into Korea and global markets in two ways. First, we sell advanced semi-conductor chipsets and software that are incorporated into mobile devices that are manufactured by our customers and sold globally. Second, we own tens of thousands of technology patents worldwide, and we broadly license our inventions to more than 270 licensees across the global mobile industry. Under KORUS, Korea has become the tenth-largest export market for the United States in goods and the sixth-largest trading partner overall. Bilateral trade in goods today tops $100 billion, about one-third greater than when negotiations began in 2006.

Consider the ways in which the agreement promotes a competitive environment for U.S. companies in Korea. For example, KORUS eliminates 95 percent of all Korean tariffs on U.S. industrial goods by 2016; it establishes rules to reduce Korean non-tariff barriers; it liberalizes services markets in a number of sectors; it adopts the principle of technology neutrality, which obliges Korea to refrain from discriminating in favor of Korean businesses and technologies when it sets technical standards or licenses services; it enhances transparency and due process in Korean competition

law matters; it incorporates state-of-the-art protections for intellectual property rights; and it includes strong investment protections in Korea and enhanced transparency in Korean regulation and rulemaking.

KORUS has yielded important benefits that have helped to level the playing field and create new market opportunities. However, we are only 2 years into implementation, which coincided with a slow recovery from a painful global economic recession. We acknowledge that some U.S. firms have concerns about KORUS implementation. That issues of this nature arise is to be expected, given the size and complexity of the bilateral trade and investment relationship. Fortunately, KORUS provides a structure for regular, ongoing, bilateral dialogue about specific challenges.

If resolutions cannot be reached through consultation, KORUS establishes an enforceable dispute settlement mechanism. KORUS implementation is also happening in parallel with the roll-out of Korean President Park's "Creative Economy" agenda, which is designed to deregulate and stimulate the Korean economy through innovation.

One form of regulatory intervention is antitrust enforcement, which should be grounded in rigorous economic and competitive effects-based analyses, which are crucial to understanding innovation-driven economies.

In concluding, I would like to recap by addressing the main question this hearing poses: what are the lessons learned from KORUS after 2 years? First, we are better off with KORUS than without it. The agreement strengthened bilateral trade and economic relationships and provided a framework for broadening and deepening these ties.

Second, it is possible to negotiate a state-of-the-art agreement between trading partners that have different interests and complex national economies, and such agreements can deliver concrete benefits.

Third, KORUS is still a work in progress with respect to the phase-in of certain obligations, but it is improving the ability of American companies and investors to compete in Korea. Implementation questions and new challenges will inevitably arise and need to be addressed through the consultative and dispute settlement mechanisms established in the agreement.

Fourth, KORUS updated the model for U.S. free trade agreements and paved the way for TPP and TTIP.

Finally, our experiences with KORUS should inform the important debate about Trade Promotion Authority and help us identify updated negotiating objectives for the 21st-century trading system. As implementation of KORUS proceeds, Qualcomm looks forward to seeing the full benefits of continuing economic integration, innovation, job growth, and consumer choice in both the U.S. and Korean economies.

Thank you again for the opportunity to share Qualcomm's views, and congratulations on your inaugural hearing as chairman.

Senator STABENOW. Thank you very much.

[The prepared statement of Mr. Murphy appears in the appendix.]

Senator STABENOW. Ms. Morris, welcome.

STATEMENT OF SHAWNA MORRIS, VICE PRESIDENT, TRADE POLICY, NATIONAL MILK PRODUCERS FEDERATION AND U.S. DAIRY EXPORT COUNCIL, ARLINGTON, VA

Ms. MORRIS. Chairman Stabenow, Ranking Member Isakson, thank you for the opportunity to present the views of the National Milk Producers Federation and the U.S. Dairy Export Council on the first 2 years of the U.S.-Korea Free Trade Agreement.

Trade is increasingly important to the U.S. dairy industry. We have gone from exporting less than $1 billion in dairy products in 1995 to a record $6.7 billion in exports last year. We are now the world's leading exporter of skim milk powder, cheese, whey products, and lactose. Korea is an important market for U.S. dairy exports, which is why NMPF and USDEC strongly supported the U.S.-Korea Free Trade Agreement, or KORUS.

The agreement ultimately will eliminate nearly all Korean dairy tariffs. It was not perfect, but it certainly was very good. As a result of its initial market access expansions, U.S. dairy exports to Korea in 2013 totaled more than $300 million. That is more than double the average of the previous 3 years.

This type of deep and broad trade liberalization seen in KORUS's dairy provisions can be a good model for Trans-Pacific Partnership negotiations with Japan and Canada. In undertaking such strong dairy commitments, Korea made a difficult decision to prioritize the achievement of a strong FTA. This type of commitment to high standards is just as important in TPP.

Despite these overall positives, however, a new type of trade barrier unfortunately popped up in Korea just prior to implementation of KORUS. Since mid-2011, Korea has restricted access for certain U.S. cheeses, namely gorgonzola, feta, asiago, and fontina. This is the direct result of its separate FTA with the European Union.

In a nutshell, the E.U. has been leaning on countries around the world to block imports of products by confiscating common food names and reserving them exclusively for itself. It does this through the abuse of geographical indications regulations. Since approval of the E.U.-Korea FTA, the E.U. has expanded around the world the model it first developed in that agreement. E.U. pressure has resulted in similar restrictions in Central America, Peru, Colombia, and most recently in South Africa.

Canada has also agreed to restrict cheese names, and we understand the E.U. is pursuing similar objective in Singapore, Japan, the Philippines, Malaysia, and Vietnam, as well as in China. It is also clear that the E.U. wants to impose these types of strict GI rules on the U.S. through the Trans-Atlantic Trade and Investment Partnership.

This is an outcome that we, and many members of Congress, deemed entirely unacceptable this past spring as we instead insisted that the existing restrictions driven by E.U. efforts be rolled back. As the CEO of Sartori Company, a 4th-generation family-owned cheesemaker, put it, "If we are not able to use these common names that our customers have become familiar with, we are going to sell less cheese, and we are going to have less employees working for us."

It is going to hurt rural America, because they are the foundations supplying the milk for the cheese products. We greatly appre-

ciate the work USTR, USDA, and the U.S. Patent and Trademark Office have devoted to this issue. Both Ambassador Froman and Secretary Vilsak have been clear about the serious nature of the E.U.'s attacks.

As the administration continues to work to prevent barriers to U.S. exports, it will be useful to draw upon the experience in Korea. There are a few critical lessons that we learned from the Korean situation. First, we need to do a better job of fully employing our embassy resources to try to find out about these E.U. deals before they are signed and sealed.

Second, the GI letter exchange USTR conducted with Korea remains a process we believe could be used elsewhere to clarify our rights. It was not perfect, since it left in place barriers against some U.S. cheese exports, but it was very helpful.

Third, GIs are no longer simply about intellectual property. Instead, this issue also requires concrete work in defense of U.S. market access opportunities. We know that we have to fight to keep these markets open.

Finally, where we can be involved in negotiating on the topic of GIs directly, we need to be. The greatest opportunities currently are in TPP and in the World Intellectual Property Organization. The U.S. needs to lead in promoting a more balanced and WTO-compliant path forward.

Although I represent the U.S. dairy industry, NMPF and USDEC are collaborating with many other industries, including the wine and meat sectors in fighting the E.U.'s aggressive stance. Together with these groups, we look forward to continuing to work closely with the administration on how to ensure that all of our trade agreements are operating in a way that maximizes opportunities for U.S. exporters.

I appreciate this chance to explain how the U.S.-Korea free trade agreement has benefitted the U.S. dairy industry and to elaborate on a trade barrier that has limited access to that market for some of our most important products.

Senator STABENOW. Thank you very much.

[The prepared statement of Ms. Morris appears in the appendix.]

Senator STABENOW. Mr. Rue, welcome.

STATEMENT OF MICHAEL RUE, OWNER, RUE AND FORSMAN RANCH, INC., ON BEHALF OF THE USA RICE FEDERATION, RIO OSO, CA

Mr. RUE. Thank you, Chairman Stabenow, Ranking Member Isakson. Thank you very much for holding this hearing and giving us an opportunity to share the lessons that we have learned and the experiences we have had in the aftermath of the Korea Free Trade Agreement. I am a rice producer and rancher from the Sacramento Valley in California. I am testifying today on behalf of the USA Rice Federation.

The USA Rice Federation is a global advocate for all segments of the rice industry, with a mission to promote and protect the interests of producers, millers, processors, merchants, and allied businesses. We are active in all rice-producing States.

Nationally, the U.S. rice industry contributes $35 billion in economic activity. It provides and generates jobs not only for rice pro-

ducers and processors, but for all those involved in the value chain, generating over 128,000 jobs. About 85 percent of the rice that is consumed in the United States is produced domestically. Despite significant foreign trade barriers, many of which you have heard about today, the U.S. remains the largest non-Asian exporter of rice in the world and consistently ranks in the top five exporters worldwide.

The key lesson learned from our trade policy and negotiating experience with the Korea Free Trade Agreement is that product exclusions should be a non-starter and have no place in a modern comprehensive trade agreement. As you know, rice was completely excluded from the Korea Free Trade Agreement at the insistence of the Korean government and with the acquiescence, unfortunately, of the U.S. Government. Not only were U.S. rice producers and processors denied the opportunity to improve on the limited access in Korea that was obtained in the WTO's Uruguay Round agreement, the exclusion of rice in KORUS gives support today for those in the negotiations involving the Trans-Pacific Partnership, primarily Japan, who seek to turn back the clock and retreat from the principles of a comprehensive trade agreement. Rice and the other so-called sensitive agricultural commodities face the real prospect of sub-standard market access gains if Japan is allowed to prevail with this line of negotiating tactic in the Trans-Pacific Partnership.

As I mentioned, U.S. rice received access in Korea as a result of the Uruguay Round agreement in 1994. This access, while significant, was insufficient and permitted the Korean government to keep an absolute lid on the amount of rice imported. The quality of access under the Uruguay Round was poor, as it denied suppliers like the United States direct access to Korean consumers, thus preventing any opportunity to establish and promote commercial markets.

The access of some 20 years ago was also negotiated when Korea was considered a developing country and the market access bar was set low. For example, I would like to point out that in the Uruguay Round, for the first 10 years of that agreement, no U.S. rice was actually sold to Korea. Only when Korea sought an extension of special treatment in 2004 were conditions provided in those negotiations that allowed U.S. rice to find success in entering Korea.

Korea's wish to join TPP offers an opportunity to fail or redress the decision. It is also an opportunity to set comprehensiveness and trade liberalization as conditions of entry for Korea as a TPP partner. We believe that U.S. negotiators have learned a key lesson, of course, that product exclusions have no place in trade policy today, and we acknowledge and appreciate the ongoing active support and strong efforts of administration negotiators in TPP to obtain meaningful improvements in access for U.S. rice, especially in Japan.

However, as we all know, much more work needs to be done. We would hope that the U.S. and other TPP participants will move forward without Japan if Japan is not able to show the kind of ambition that needs to be shown.

We also have begun to work now with U.S. negotiators as Korea seeks to transition from the rice import regime set up 20 years ago to a tariff-based system. This emerging negotiation is an oppor-

tunity to advance market access across not only rice, but other important agricultural commodities.

I conclude this statement with a wholehearted endorsement of trade agreements. The U.S.-Colombia Trade Promotion Agreement, for example, has been a great success for the U.S. rice industry. Not only has it opened an important new market for U.S. rice, but the creative thinking of U.S. negotiators put in place a quota management regime that has returned $6 million last year to State rice research boards generated from the management of those quotas.

Because trade agreements work for rice, and because we face intense protectionism and government intervention overseas, we will stay at the negotiating table and very much appreciate the support of this subcommittee and its support and defense of U.S. agriculture.

Thank you again for this opportunity.

Senator STABENOW. Thank you very much to each of you.

[The prepared statement of Mr. Rue appears in the appendix.]

Senator STABENOW. Mr. Biegun, let me start with you, talking about currency. As you know, Senator Lindsey Graham and I, as co-chairs of the Manufacturing Caucus, put together a letter some time ago. We had 60 members of the Senate, which is a pretty substantial group of people, who signed the letter to the administration about future trade agreements, wanting to make sure that we were addressing currency manipulation.

The Treasury Department's April 2014 report to the Congress on international exchange rate policies specifically notes Korea's continued foreign exchange intervention, concluding that Korea should limit such intervention to "exceptional circumstances" and "increase the transparency of their interventions in foreign exchange."

How have Korea's currency policies affected your ability to compete in the auto market?

Mr. BIEGUN. Thank you very much, Senator. Thank you for your leadership on the letter that was sent from the U.S. Senate. That letter has significantly changed the nature of the debate over currency disciplines in free trade negotiations, and we deeply appreciate that change.

Currency manipulation is a significant problem for industries like ours that build high-value items in the United States economy. A country like Korea will use its currency policy from its central bank to intervene in currency markets, to buy U.S. dollars, to sell their own currency, the Korean won, and in doing so they simply drive up the price of our products coming into Korea.

Now, the Treasury's criticism is very much welcome. The problem with the Treasury's criticism is, it is not matched by any action. In fact, in the months since the Treasury Department published that report, the Korean government has several times intervened directly in the market in an attempt to weaken the Korean currency, specifically to aid the domestic export industry, and they did so non-transparently. They do it through third parties. It is recognizable to companies like ours that track global currency flows. But they do it, and nothing happens.

As a result, we get a triple-whammy from this currency manipulation. Number one, imported vehicles coming into the market to compete with our products that are built right here in the United

States undercut us in price, not because they are better, not because they are built at a better cost, but simply because of the effect of a weakened currency.

Number two, when we export an American-made car into their market, we essentially pay a tariff on that export. When they move the value of the dollar up 10 percent, we have a 10-percent duty on an export into the market.

Third, we are not just a U.S. and Korean manufacturer, we export vehicles around the world. We go head-to-head with Korean-made products in markets around the world. Every export we send from the United States to the Middle East, to Europe, to Asia, goes head-to-head with Korean products made in Korea that are subsidized by currency manipulation.

So it is absolutely critical that future trade agreements have disciplines against this pernicious practice which can completely erase the benefits of a well-negotiated free trade agreement.

Senator STABENOW. Thank you very much. I appreciate it.

Ms. Morris, talk a little bit more with me and the subcommittee on the whole question, which I find to be an important issue, of our developing a trade agreement with another country, then another country develops a trade agreement with them, and somehow through the back door that comes back to affect what we already agreed to, which is very worrisome, I think, when you look at the implications of that in the long run.

It really means the value of the hard-fought deal we negotiate for dairy is not as valuable as the industry planned for, so I think that is a pretty big issue. How much of U.S. dairy export growth consists of products with common cheese names?

Ms. MORRIS. Well, thank you for that. I certainly agree with the view that this is a serious concern to have another country directly striving to undercut the market access that our negotiators have worked so hard to carve out for U.S. exporters. This was particularly the case in Korea, where cheese plays such a major role in U.S. exports to that market.

It is by far the largest dairy product sector that we ship to that country, so it certainly was an area that we highly prioritized during the KORUS negotiations. So to find out years afterward that another partner had effectively blocked out access for a number of U.S. companies that had looked forward to exporting to that market, certainly diminished the value of the agreement, particularly for those companies and for the industry as a whole.

I would say most troubling is the fact that we have seen this model replicated now over and over with a number of other trading partners, particularly with U.S. free trade agreement partners where the European Union has put in place similar restrictions against our cheese exports directly to try to undercut them. It is something that we think definitely needs more attention. We need to try to find out what is happening before it is too late and then tackle it appropriately to address the market access impacts.

Senator STABENOW. Great. Thank you very much. I think it is a really important thing we have to weave our way through in future agreements as well in how we address this.

Senator Isakson?

Senator ISAKSON. Mr. Biegun, welcome back to Capitol Hill. Who bought the sixth Ford?

Mr. BIEGUN. Pardon me?

Senator ISAKSON. Who bought the sixth Ford? You said the first five——

Mr. BIEGUN. It was exported to Canada.

Senator ISAKSON. To Canada?

Mr. BIEGUN. Yes, sir.

Senator ISAKSON. Not too far away. I just had to ask.

Mr. BIEGUN. Just across the river.

Senator ISAKSON. I just wanted to find out how trade was working back in 1903. [Laughter.]

I really appreciate your comments and your remarks about enforcement mechanisms in KORUS. In particular, I think you were the one who stated that the lesson learned in the last 2 years is to quickly seize the opportunity to use those enforcement mechanisms to protect your interests. Is that right?

Mr. BIEGUN. Yes, sir. I think there is a reason why they are in the agreement. As I said in my testimony, the irony is, I think we probably would have helped the Korean government make its way along the road of free trade a lot faster had we used them initially.

By choosing instead to renegotiate some of these areas of dispute, we just ate up time on the clock while we were trying to build a business, and the Korean bureaucracy, still to this day, is left to its own devices, even to subvert the intent of some of the elected officials in Korea.

Senator ISAKSON. Well, I want to underscore the importance of your remarks. All the remarks were fantastic, but it was so important to me, because I remember when we did the permanent normal trade relations with China, and being from the State of Georgia where we export a lot of textiles, for a long time our market share was eroded away by China at a rapid rate, and we looked the other way on the enforcement mechanisms through the WTO to protect our market share. So, we have to stay vigilant.

Do you think the mechanisms that are in the KORUS agreement are a good example or a good template for what we might do with TTIP or the Trans-Pacific Partnership?

Mr. BIEGUN. Yes, sir. When it comes to the area of regulatory differences, I think the agreements are good. They were in a renegotiation of the document. So one of the issues that did come up after the agreement came into force is what force of law they had in the agreement, because some of them were in a side letter.

We would certainly argue that these dispute resolution and snapback measures should be up front, part of the core FTA, and we should be forward-leaning and use them when we see non-compliance.

Senator ISAKSON. And that enforcement is a partnership between you the exporter and manufacturer and the U.S. Trade Representative. Is that not correct?

Mr. BIEGUN. That is right, Senator. We do work very closely with the U.S. Trade Representative. They, on our behalf, work very hard to get the Koreans to comply with these agreements.

I think the one thing we have to avoid is the temptation to start renegotiating. We need to just go at it, if there is non-compliance,

just straightforward and honestly say so, and we will probably do ourselves and our trading partners a big favor in doing so.

Senator ISAKSON. Thank you.

Mr. Murphy, you used the term "embracing state-of-the-art intellectual property protections" in KORUS as one of the main values of that to Qualcomm. Can you explain why those protections are so important to Qualcomm and what you think these protections mean for future trade agreements?

Mr. MURPHY. Yes. Thank you, Senator. I appreciate the question. As I said in my opening remarks, Qualcomm owns tens of thousands of patents worldwide. We are one of the largest filers of patents before the Korea Intellectual Property Office. Patents are fundamental to our business.

The KORUS intellectual property chapter raises and imposes standards that go far beyond the minimum standards of the WTO TRIPS agreement. Let me give you a few examples. First, in the area of patents, the agreement expands the scope of subject matter eligibility in Korea. In addition, it extends the term of the patent for those products that are regulated and require prior market approval or testing before they can be commercialized. So, in other words, if your patent term is eroded during the time that your product is being assessed, you can potentially make up that lost time and still have exclusive protection.

In addition, for those products where there is a requirement for testing or approval, the data that the patent owner or company would provide to the government agencies responsible for the testing is required to be kept confidential and exclusive. So, in other words, the data that you are using to get market approval will not be leaked to your competitors.

In other areas, copyright for example, the agreement helps move the Korean copyright regime closer to U.S. law, specifically the Digital Millennium Copyright Act. In addition, with respect to Internet domain names, there is a mechanism in place to ensure that a company that does not own a trademark cannot then cyber-squat, or assert rights to the domain name. This ensures that the legitimate trademark holder has first priority.

Senator ISAKSON. Thank you very much.

I will wait. Are we going to have a second round?

Senator STABENOW. Yes.

Senator ISAKSON. Thank you.

Senator STABENOW. Thank you.

Senator Brown?

Senator BROWN. Thank you, Madam Chairman.

Mr. Biegun, your comment about the relative number of dealerships I thought was particularly compelling and stunning, so thank you for that.

I want to talk about TPP. The negotiations with Japan on autos and agricultural products have been challenging because, like Korea, Japan seems to be reluctant to open its markets to sensitive products, especially autos. From your company's perspective, Mr. Biegun, what are the risks to U.S. auto companies and workers as the administration rushes to complete a TTP agreement that does not include enforceable currency provisions and does not address the non-tariff barrier issues we have seen with Korea? If those

issues are not remedied to your satisfaction, would you support the agreement?

Mr. BIEGUN. Yes. Thank you very much, Senator Brown. Thank you for everything you have done to help make the automobile industry strong in the State of Ohio. The question is the one that weighs on our mind right now. Ford Motor Company was a strong supporter of the launch of the Trans-Pacific Partnership negotiation. With its original 9 members, and later with 11 members, we thought that it made an enormous amount of sense.

But I have to tell you that we did have pause to reconsider when Japan was added as a 12th member of that negotiation. We are deeply skeptical that there will be anything in this negotiation that opens the Japanese auto market to the export of U.S. automobiles.

Japan, today, has no tariff on automobiles. You do not pay a penny in tariff to get an automobile into Japan. Japan is the third-largest auto market in the world and has the least number of imports of any major auto market in the world. Japan is completely closed, and it does not have a tariff.

So what are the challenges? Well, certainly there is a major issue of non-tariff barriers. Many of the things that we work with to try to get into the Korean market are nearly existential challenges when it comes to setting up a business in Japan. But more so, Japan has a record of being one of the largest manipulators of currency in the global economy. By moving the value of the yen to weaken 20 or 25 percent, they do, de facto, impose a 20- or 25-percent tariff on every vehicle we try to export to Japan.

So we are deeply concerned about Japan's entry into the TPP, and, more so than that, we are deeply concerned with the impact it has had on the negotiations themselves. Without a doubt, negotiations are now delayed.

The ambitions are now far lower than they had been before Japan entered. We think that, unfortunately, this is driving the negotiation to be a repeat of the Doha Round that will be an endless discussion of how not to open markets. That is a real lost opportunity for the U.S. economy.

Senator BROWN. You mentioned non-tariff barriers. What should we do differently in TPP to ensure we eliminate non-tariff barriers before the agreement is actually signed?

Mr. BIEGUN. So USTR does have a team working on non-tariff barriers with Japan. The problem is that they are spending 99 percent of their time on 1 percent of the problem. The mother of all non-tariff barriers is currency manipulation, so we have to have disciplines against currency manipulation.

And by the way, this is not a novel idea. Japan has agreed, as a member of the IMF and the WTO, not to intervene in its currency for purposes of facilitating its exports. It has already agreed in principle. What is lacking is enforcement, and that is what we need in our free trade agreements.

The other thing I would say is, the lesson of KORUS and the future challenges of markets like Japan and also the Trans-Atlantic Trade and Investment Partnership is, we should negotiate these agreements to ensure that products like American automobiles that are built to world-class standards of safety and environmental performance can drive out of the factory, drive onto the ship, get to

the shores of the foreign market, and get to the customers with a minimal amount of revisions.

Non-tariff barriers really are the last tool to obstruct trade as we see tariffs reducing around the world. Addressing regulatory barriers and arresting currency manipulation will be huge improvement in generating U.S. exports.

Senator BROWN. Let me shift in my last minutes. Are you concerned with harmonization of auto safety standards within TTIP, or does that typically in your mind work to the advantage of U.S. automakers?

Mr. BIEGUN. To be clear, the specific term——

Senator BROWN. Defining the term, right.

Mr. BIEGUN. Yes. Harmonization is not actually the goal of the TTIP. What the goal of the TTIP is is to create a body of evidence that suggests that U.S. safety and environmental standards provide an equivalent outcome as European safety and environmental standards. That means they do not have to be identical, but that means what every customer knows: when you fly to Europe and you rent a car at a rental lot and you get in the car and you buckle your seat belt, you do not have any question in your mind that you are safely secured into the cockpit of the car, and that it is going to perform to a high level of safety.

The same goes for Europeans when they come to the United States. Customers know this, and that is a reality. Still, because of the importance that is attached to automotive safety, it is incumbent upon us in the industry to provide the data to regulators that proves factually that that is the case, not just because it is the perception of us or customers. So that is what we are doing.

If that happens, we believe this will open a significant amount of new trade between the United States and Europe, which right now only sees a very small amount of trade in the area of premium vehicles. So, from a Ford Motor Company perspective, we do fully endorse the efforts to create regulatory mutual recognition between the U.S. and Europe, and we think it will expand the export of U.S. automobiles to Europe.

Senator BROWN. Thank you.

Senator STABENOW. Thank you.

Senator Portman?

Senator PORTMAN. Thank you, Madam Chairman. Thank you for holding this hearing.

I appreciate all the witnesses today. I did not get to hear all your testimonies, but I got to look at some of what you had to say. It is really important that, after we complete these agreements, that we do have this ability to look back and see how it is working or not working.

As some of you know, I was very involved in the launch of this trade agreement, thinking that KORUS was critical for us to have a better footprint, frankly, in that part of the world. At the time, the U.S. was the single-largest trading partner with the Republic of Korea. By the time we completed the agreement, China was by far the largest trading partner, and now we are attempting to regain some of that ground through KORUS.

We just had the 2-year anniversary of its entry into force, and sometimes you have to wait a while, so 2 years may not be an ap-

propriate marker to make the final judgment, but the bottom line is, I think we have seen some progress. We have also seen some problems. I think Mr. Biegun just talked about some of the non-tariff barrier issues with these trade agreements. We tend to make great progress on the tariff side.

In fact, we have already gone through a couple of rounds of tariff reductions, and that is positive. We have seen U.S. trade and services exports combined up about 4 percent between 2011 and 2013. I think those results would be a whole lot better if our economies were better, including the Korean economy, which took a dip during that period. The slow-down over the last 2 years has meant that it has just not been as strong as it could have been.

But the bottom line is, we have seen expanded opportunities for services, we have seen expanded opportunities for our U.S. goods, and we have seen improved transparency in much of the regulatory system. We have stronger intellectual property protection, and so on.

So I think, again, your judgment is a little premature. I think we are making general progress on the tariff reductions and progress on our degree of exports, but we still have big challenges. I think currency is certainly one of them. That was not something we addressed in the trade agreements, and we will see what we do going forward on that, but I do think currency is an issue, and I do think it affects trade.

I am concerned about transparency in medical device reimbursement. I am concerned about the non-tariff barriers in the auto industry that we talked about. I am concerned about—by the way, Korea is a great opportunity for autos, including for exports from Ohio. We have a bunch of plants in Ohio, including Ford Motor Company plants, that produce parts, transmissions, engines, and so on, for cars like the Explorer, which are exported all over the world. So we want more of that market share.

By the way, I am told that the vast majority of Hondas that are in the Korean market are now exported from Marysville, OH. So, there is an opportunity here for us to do even more, but we have to get at those non-tariff barriers. Then there are some Customs issues too. Again, both of our economies are weaker than we would hope they would be, and so hopefully these numbers will end up being stronger.

To Ford, quickly, you mentioned the regulatory burdens and currency manipulation. The Korea situation is one we need to deal with, and we are talking about that, but also they have talked about joining the TPP, as you know.

Their interest in joining, I think, should wait until we have full implementation of the KORUS issues, in my view. But I would just ask you, how problematic have these non-tariff barriers been to your U.S. workers as you look at TPP potentially including Korea?

Mr. BIEGUN. Thank you, Senator Portman. Thank you for working so closely with us and our UAW partners to raise the issue of currency in Ohio as well. As I was saying earlier, it really has changed the tenor of the debate on that issue.

The lesson that we have learned from these non-tariff barriers in Korea—and it will apply to Japan as well—is that the best solution would simply be for us to be able to sell our cars at our standards

in these markets. Now, that may not be possible in all cases, I understand. I am realistic when it comes to the fact that each country has a sovereign right to set its own regulatory system.

But the problem that you have with markets like Korea and Japan is, they have a long record of using the establishment of those regulations as a trade barrier, so there is a special burden on them to create a level of transparency and predictability in their regulatory changes that at least is equivalent to what their manufacturers face here in the United States, and we simply do not have that.

In the case of Korea, 2 years ago we could not tell you what cars it would be legal for us to sell in Korea today. Today, I cannot tell you with certainty what cars it will be legal for us to sell 1 year from now. In an industry in which these kind of decisions to assign products, to allocate vehicles like the Ford Explorer, are made under the most extreme interpretation of the bonus-malus law, which is an environmental provision currently under debate in Korea, next year we could have to pay $7,000 on every Ford Explorer we export from the United States to Korea. That would wipe us out. There would not be a single Explorer there.

Now, I do not want to over-dramatize this. The Koreans are in negotiations. We have gotten assurances that, in all likelihood, this policy will evolve in a way that will not have a punishing impact on importers. But in a way, it does not matter, because right now I am not sure.

So, when I go to the business and say, we need to spend tens of millions of dollars to make some adjustments in the Explorer line to be able to qualify for whatever is left in the Korean market, to qualify as far as regulations, it has to be justified against a reasonable expectation that those products will have access to the market. This is the Whack-A-Mole we talk about with regulatory systems in protected markets, and it is something where we really have to use our trade policy to carve out the space for American manufacturers to export.

Senator PORTMAN. Yes. That certainty issue is critical. I was just at your transmission plant in the Cincinnati area, and also your engine plant in Cleveland. You guys are not weeks or months, you are years ahead in terms of your planning, and have to be.

I know my time has expired. I would like another round, so I would hope that the chairman will give me that. But again, I appreciate all of you being here. I look forward to asking another question for the rest of the panelists.

Senator STABENOW. Thank you very much, Senator Portman. We will have a second round. I think we all have additional questions.

Mr. Biegun, let me continue with you, because I know there is, certainly in Michigan, great concern about our ability—we want to be selling automobiles in Korea, in Japan, and around the world and have equal access to markets that certainly other countries have in America right now, as we know.

Just last weekend at an event in Seoul, the president of the U.S. Chamber of Commerce echoed many of the concerns that have been raised here today, that you have talked about, related to non-tariff barriers. He acknowledged that there is room for improvement, noting that "things are moving too slowly in areas where non-tariff

trade barriers restrict trade and where new rules or guidelines are required to meet the Korea Free Trade Agreement."

Could you talk a little bit more about how you would identify a new trade barrier or potential trade barrier, the process for preventing this before it got implemented? At this point, is there a way?

Mr. BIEGUN. Yes. Certainly the highest level of transparency is important, which is one of the provisions in the KORUS, and the requirement for the longest lead time to notify manufacturers—which again is in the KORUS. The problem is, you do not know what you do not know. At times we have had this sense that our Korean competitors in Korea have known well in advance of us of some of the regulatory changes that were coming.

When it is sprung upon us, even if it is a legitimate regulatory innovation in the economy, it has the effect of pushing our products, which are sold in relatively low numbers, out of the market, because we simply cannot afford it. We will sell 7,000 cars this year in a market of 1.5 million. If you add thousands of dollars of cost to every one of those cars, we cannot continue the business.

The Korean companies will average those costs over hundreds of thousands of cars, so the cost-per-unit to make any adjustments like this is insignificant. We watch it closely. We have a team. We have been in Korea for 20 years. We are not new to that market. The reason why we were so concerned about the free trade agreement to begin with is because, since 1995, we have had a toe-hold, trying to build a business. But, Madam Chairman, after 20 years, to be selling 7,000 cars per year in one of the top 10 auto markets outside the United States is a challenging business case to maintain.

The irony is, it would be good for the Koreans to open the market. They would have better prices, their consumers would have more choices, they would remove a major irritant in U.S.-Korean economic relations. Auto trade represents over 90 percent of the U.S. auto deficit with Korea. It is an urgent matter for them to address this, not just for us.

Senator STABENOW. Let me ask one other quick question regarding moving forward with Japan, because I know in conversations that I have had directly with your company, there is great concern that, here we go again into another market, and certainly currency manipulation, the concern about the difference in price that results from that, is of deep concern. I believe that any trade agreement going forward needs to correct that with enforcement mechanisms.

But on non-tariff trade barriers, there I was fascinated by a conversation that I had a while ago. As a daughter of a car dealer who grew up on and had my first job on a car lot, to hear the fact that it was so tough to even get the automobiles onto the car lot to be able to try to sell them, what is that like in Japan as we go forward here, looking at non-tariff trade barriers?

Mr. BIEGUN. Again, Japan, like Korea, has an extremely low import penetration when it comes to automobiles. In fact, Japan has now surpassed Korea as the most closed automotive market in the world. These barriers tend to become most aggressive as we begin to grow our market share, as we have done occasionally over the course of the past several years.

In Japan, there are a number of costly technical revisions that need to be made to automobiles to comply with Japanese standards. The Japanese do clear out a little bit of space for a few thousand vehicles per year that can come in without modification, but in essence that pushes the automakers to simply steer to the left and take the low-volume exemption rather than grow into the bulk of the market, because there is no certainty that we will have access to the market.

Looking at the tariff barriers—which USTR is trying right now to clear in the TPP negotiations—is important. But absent addressing the other factors that keep us out of the market, it is almost irrelevant. If currency manipulation continues, we will have a pretty good sense of the limits of our ability to reach into that market.

The business case to invest in modifying products to get into a market in which you are permanently locked into a small, small share of the market, is a very difficult business case to make inside a company. We are willing to invest the money to get into the market, but there has to be some reasonable expectation that the government will not use other policies to keep the importers out.

Senator STABENOW. Thank you. I know I am out of time, but, Mr. Rue, I want to ask you, how big an opportunity are U.S. rice farmers losing in Korea by not being a part of this trade agreement?

Mr. RUE. Thank you for that. Well, for example, the existing access that we were able to negotiate when they asked for an extension of special treatment under the Uruguay Round garnered about a 50,000-ton access that was country-specific.

But more importantly, it opened up the balance of that access that is not country-specific. That is over 400,000 tons today. This access is entirely through a state trading enterprise, and so, while we do have access, it is through a state trading importing enterprise run by the Korean government. They are able to manage that to the degree they want.

The opportunity we lost, I believe, in the Korea Free Trade Agreement was an opportunity to have access that allowed us to in fact directly reach consumers and processors so we would have an opportunity to build a market share and a trading relationship that would have support both on the Korean side and benefit them directly, as well as on the U.S. side.

Senator STABENOW. Well, we hope future trade agreements will correct that. So I have taken extra time. We will add a minute to each of my colleagues if you would like to take a little bit more time.

Senator Isakson?

Senator ISAKSON. Thank you, Chairman Stabenow.

Cheese is my favorite food, so, when you start talking about cheese, you have my attention. [Laughter.]

I want to make sure I heard you correctly, because you named all my favorite cheeses too, when you were going down that litany. But, if I understood you correctly, you said the E.U. colluded with the South Koreans to restrict the import of certain types of cheeses from the United States into South Korea. Is that correct?

Ms. MORRIS. Yes. The European Union, in its negotiations with Korea, made it a requirement of closing the agreement to include these geographical indication restrictions that specifically crowd

out imports of the types of products that I named from the U.S. and other suppliers around the world. So those products can only be shipped now to Korea from specific European manufacturers.

Senator ISAKSON. Well, that seems like a dangerous practice if it ever caught fire on any number of different types of products, because it is basically a conspiracy. You had two conspirators, and you unwittingly were affected by their negotiation without your ability to have any say. Is that right?

Ms. MORRIS. I would absolutely agree with your characterization of the issue, Ranking Member Isakson.

Senator ISAKSON. Then I heard you say that you thought our embassies ought to do a better job of monitoring the negotiations of the countries where they represent us to try to catch this. Is that right?

Ms. MORRIS. We believe that that is something that could help this issue immensely. As I mentioned in my testimony, Korea was the first instance where we saw the E.U. put in place restrictions on the use of common names such as cheese types in its FTAs, but now it is popping up in a number of other markets around the world.

It is extremely difficult for us as an industry to monitor the situation effectively in every single one of those markets. We believe that better use of our embassy personnel, specifically through the Foreign Agricultural Service, could help get information in advance so that we can engage proactively before the agreement is concluded and try to best preserve U.S. market access opportunities with those trading partners.

Senator ISAKSON. Well, carried to the extreme, if collusion like that were a common practice, you could have the European Union saying to Korea, you cannot import any automobile named Explorer, or like my hybrid Escape, just by the type of car. It would close the market, even though you are saying you are opening the market by negotiating the free trade agreement. Is that right?

Ms. MORRIS. It is certainly, in our view, a very serious non-tariff type barrier that is comparable to other cases as well.

Senator ISAKSON. I would defer to the chairman and distinguished gentleman from Ohio, Mr. Portman, on this. But it might be worthy of us taking steps for a provision like that to be part of our negotiated agreements so it automatically invalidates the free trade agreement we have entered into with somebody if they collude or conspiratorially in any way prevent access to U.S. products without us being a party to it.

Ms. MORRIS. We certainly think that, through TPP and other agreements, that the U.S. should be looking at ways to use those agreements that we are involved in proactively to try to address the issue ahead of time rather than simply reacting after the fact.

Senator ISAKSON. I want to discuss that with Ambassador Froman, because I think, with my love for cheese, I do not want any lack of access, whether I am in South Korea or South Chicago. [Laughter.]

So, thank you, Madam Chairman.

Senator STABENOW. Well, I am with you on that. So, we will pursue it.

Senator Portman?

Senator PORTMAN. Thank you, Madam Chairman. The geographical indicators are a frustration. What the Europeans do, as Senator Isakson said well, is they do these agreements, including one with Canada recently, where they impose their view on these GIs, which we have been fighting for years, as you know. It is frustrating.

You have said in your testimony that Korea's restricted access for these products is a result of its FTA with the European Union. You stressed at the outset that this is not a flaw in KORUS, so we continue to strongly support the agreement and its approval by Congress, because you have seen some market access improvements overall.

But I will tell you, for Ohio, the Blue Jacket Dairy in Bellefontaine, OH, the Heini's Cheese Dairy in Millersburg, OH, the Great Lakes Cheese Company in Hiram, OH, they all make feta, brie, gorgonzola, and other cheeses that are affected directly by this Korean adoption of the European standards in their E.U. agreement. So, it is a huge problem.

I will not ask you the question, because I think you answered Senator Isakson's question well, but let me just ask a general question of the group here. I have been critical on autos, critical on cheese, and I mentioned some other concerns I have.

I will say that, but for this agreement, we would not have the export growth we have had in Ohio. Our exports to Korea have increased 19.5 percent from 2012 to 2013. I do think, as again their economy begins to pick up, we will see more growth, but we have to have a more level playing field.

I think the other issue here—and I want to hear from you all on this—is, what impact has this had on our relationship with one of our strongest allies in a more general sense? And they are an ally, in the region and globally, and have stood with us, including during some tough times in the last several years.

In February of 2006 when we announced this negotiation, I stood with Korean Minister Kim, and there was a big bipartisan group from Congress here, including Senator Carper, by the way, who is still here on the committee. We talked about the economic benefits, we talked about what could happen, we talked about the fact that this was the tenth-biggest economy in the world.

Again, the situation was that, at one time, we were the biggest trading partner, and now it has shifted over to China. At that press conference, we also talked about how this was beyond trade, that for more than 50 years we had stood together and that Korea strongly reflected the values that this country holds dear, including democracy and freedom.

The distinction between North Korea and South Korea could not be more clear. At that time, Korean Trade Minister Kim said, "This is the most important event since the signing of the military alliance with the United States in 1953." So they obviously viewed this as an important agreement.

I guess I would ask, since many of you work closely with businesses in Korea and around Asia, how important is this trade agreement to our relationship with the Republic of Korea and with Asia generally, and, therefore, how important is it that we get this implementation right? I would open it up. Mr. Biegun?

Mr. BIEGUN. Senator Portman, we have been involved in many trade negotiations around the world, and it certainly can be the case that you describe. But something that we have learned in the course of these negotiations is that geopolitics makes for lousy free trade agreements, but really good free trade agreements make for great geopolitics.

What do I mean by that? If you negotiate a bad free trade agreement because you want to strengthen the relationship, you actually import into that relationship a lot of tension and disagreement. But if you take a clear-eyed look at what the economic opportunity is, have a fair agreement in which both sides are equally committed to implementing it, and you approach it from an economic perspective, you produce a foundation for the relationship that is unsurpassed.

So, on Korea, I would say the jury is out. As I said in my testimony before you arrived, we do not regret having supported this agreement, but we are deeply disappointed by the level of the commitment that the Korean government has shown to date in implementing it.

I do not want to sound impatient, but there is some urgency. We carved out a 4-year window in which the U.S. automobile industry can get a toe-hold in the Korean market before the tariffs go away. We are 2 years into that 4-year period. As I said a moment ago, we do not even know what vehicles it is legal to sell next year. It is unacceptable for countries like Korea, regardless of how good a friend they are, to not fulfill their commitments on a free trade agreement.

Senator PORTMAN. Mr. Murphy?

Mr. MURPHY. Thank you for the question, Senator Portman. I would say that the agreement has had a very beneficial effect on the overall bilateral economic relationship. In addition to the direct benefits and gains we have seen in terms of market access and important rules that are helping to propel American and Korean businesses alike, the agreement has set up a number of important mechanisms for ongoing dialogue between our economic officials, including at the Cabinet level.

We have talked about some of the implementation issues and new problems that have arisen. The 21 committees that the KORUS establishes created an important framework for ongoing and continuous dialogue. I believe that can only help to strengthen the relationship, help improve implementation, and make sure that the benefits that all of us who supported KORUS expected, will come to pass.

I would also say that, since KORUS, the U.S. and Korea relationship has been strengthened in other forums. For example, at the World Trade Organization, the United States has been pushing very hard for expansion of the Information Technology Agreement, which lowers and reduces tariffs on a range of high-tech products.

Korea has been a very good ally to the United States, and it has exhibited a leadership in the WTO that is of common interest to both economies. So that is just one example of how the relationship has been beneficial in terms of bilateral engagement, but also on the multilateral front.

Senator PORTMAN. Thank you.

Ms. Morris?

Ms. MORRIS. Thank you, Senator Portman. As you mentioned, I have spent a fair amount of time in my testimony focusing on one type of non-tariff barrier that has troubled our products in that market, even though it was unrelated to the actual KORUS text itself. We continue to believe that KORUS was the right decision to approve and that it has been, overall, very beneficial to U.S. dairy exports and to the relationship with that country as a trading partner.

I would also note that, in our view, it was particularly important in hindsight, because we are not the only ones active in that sphere. The Europeans, of course, put their agreement into place. They are a major dairy exporter. Australia just concluded its negotiations recently with Korea, so it will soon have an FTA. They are also another major dairy exporter. So without that, the U.S. actually would have been at a risk of moving backward in terms of market access opportunities rather than moving forward, thanks to KORUS.

Senator PORTMAN. Ms. Morris, as you will recall, we were way behind, and it took us much longer to put our agreement in place. In the interim period, the others came in and have captured some market share. Even though you say your market share overall has improved, it could have been even better, and it would have made it even more difficult for foreign competitors to come in if we had acted sooner. But we learn lessons as we go along.

Mr. Rue?

Mr. RUE. Thank you. Obviously, having rice excluded from KORUS, on a personal level, it has not been a great benefit. However, I acknowledge the advantages and the progress that we have made in, not only other agricultural products, but industrial and intellectual products as well.

I think I would repeat what Mr. Biegun has said, that it underlines the importance of the overall relationship, not only the economic one but the geopolitical one as well, that you have a comprehensive, fair agreement that covers all products and that each of the participants feel like they are dealt with in a fair relationship. That can only strengthen the relationship overall. Thank you.

Senator PORTMAN. Yes. And I think the exclusion is a big mistake, and we should not negotiate agreements with those exclusions. The agreement also does give us a forum to discuss all these issues, which is important. With regard to some issues we talked about today, autos in particular—GIs are more complicated because of the E.U. agreement—we ought to use those forums and resolve these issues. Certainly, as trading partners that are important and as friends and allies, this is to both countries' advantage.

Thank you, Madam Chairman.

Senator STABENOW. Thank you very much. And thank you to each of you for your insights today. This has been very helpful. By strengthening and better enforcing our trade agreement with the Republic of Korea, I believe we will strengthen the bond between our two nations. We need to be focused on that.

In addition, if we can get this done right as we start out, hopefully we will open new markets to American companies in agriculture and manufacturing where we see some real challenges, and

that is going to lift wages and create quality middle-class jobs, which is the bottom line of what we want to see happen.

So we look forward to working with the Korean government as well as with all of you, with all Americans who have a stake in this trade partnership. Finally, the experience we have had through our agreement with Korea gives us a clear sense of how to move forward on future trade agreements. We need to learn from what we are doing now so that we can strengthen agreements and not make the same mistakes and build on what is working. These are valuable lessons.

So again, we appreciate all of you being here. Any additional questions for the record should be submitted to the committee clerk. The deadline is 5 p.m. on Friday, August 1st.

The subcommittee meeting is adjourned.

[Whereupon, at 4:27 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

July 29, 2014

U.S. Senate
Committee on Finance
Trade Subcommittee
The U.S.-Korea Free Trade Agreement: Lessons Learned Two Years Later

Testimony of Stephen E. Biegun
Vice President, International Governmental Affairs, Ford Motor Company

Chairwoman Stabenow, ranking member Isakson and members of the Senate Finance Trade Subcommittee, thank you for the invitation to discuss Ford Motor Company's views on the U.S.-Korea Free Trade Agreement (KORUS). On behalf of Ford, I also thank you for the strong commitment you have shown on trade issues that are hugely consequential to Ford Motor Company and our 72,000 U.S. employees – and our 5,500 U.S. suppliers and their employees across the country.

Since the global financial crisis in 2009, we have invested billions in the United States. This year, we will add more than 5,000 new U.S. jobs on top of more than 14,000 new hires in the past two years.

Ford has a strong and well-established trade pedigree. Henry Ford exported the sixth vehicle he assembled in 1903, and we have been building on his legacy ever since. In 2013, the automotive industry represented the single largest U.S. export sector, and Ford is the leading U.S. exporter of automobiles.

We are not philosophers of trade – we are practitioners. As a manufacturer, we see how trade allows Ford to create and leverage manufacturing scale to drive global competitiveness. Ford is among the nation's largest exporters and we are also among the nation's largest importers. That is why Ford has supported every free trade agreement ratified by the U.S. government.

In fact, the American auto industry provided the original impetus for U.S. trade initiatives when we successfully pushed for the U.S.-Canada Auto Pact in 1965. This free trade agreement, with our close ally and neighbor in Canada, became the foundation for the U.S.-Canada Free Trade Agreement, which itself soon expanded to become the North American Free Trade Agreement.

As a global company, it is our confirmed belief that the very best business conditions exist when trade barriers and tariffs are removed, allowing for the free flow of goods and services. These conditions permit the development of a healthy and efficient business, and they are proven to produce a customer base that is gainfully employed, upwardly mobile and able to make rational choices about purchases, such as the vehicle they will drive.

To that end, I am pleased to have the opportunity today to share some perspective on the implementation of KORUS. Despite our consistent support for opening markets, Ford had significant concerns with the original KORUS deal. We appreciated the advocacy by you, Senator Stabenow, and other members of this Committee, to urge the Administration to address its flaws. As a result, the KORUS, which was originally signed in 2007, was ultimately renegotiated before being approved by Congress in 2011.

Ford was grateful for the opportunity to participate in a broad stakeholder effort to ensure the final terms of the KORUS deal would result in real, meaningful market access for American-made cars and trucks. We believed the details provided that clarity, took a leap of faith and we stepped forward to support the deal, as did our UAW partners.

Despite the improvements made to KORUS and the commitments made by the Korean government, access to the Korean auto market has still fallen well short of the openness promised, and we are deeply disappointed by the results to date.

Since Korea came into force two years ago, U.S. vehicle exports have modestly increased by about 13,000 vehicles in a market expected to have 1.5 million vehicle sales this year. America's automotive trade deficit with Korea increased by nearly $4 billion and now stands at almost $19 billion. This amounts to 94 percent of the overall U.S. trade deficit with Korea.

Furthermore, overall U.S. exports to Korea are down over $1.9 billion, when compared to the year before KORUS. The overall U.S. trade deficit with Korea has increased by over $7 billion and now stands at a staggering $20 billion per year.

Outside the U.S., Korea represents one of the top 10 auto markets in the world by size, making it a very desirable market for U.S. automotive exports. It is an important market for global automakers, and Ford has invested sizable resources over two decades to expand our presence there.

Ford has been operating in Korea since 1995. We have worked closely with our dealers to expand our distribution network, and today, we have 31 showrooms and service centers in operation throughout Korea. Overall, Ford and its dealers have invested more than $70 million, including more than $10 million in 2013 alone. Additionally, millions more have been invested on product development to meet specific regulatory requirements in Korea.

The majority of vehicles sold by Ford in Korea are built in the United States. Our number one selling vehicle in Korea is the Ford Explorer, which is assembled at our Chicago assembly plant. We also sell the Ford Fusion, Taurus, Escape,

Mustang, and Lincoln MKS and MKC – all of which are assembled in the U.S. While we also export vehicles from Canada and Europe, the majority of our volume in Korea is exported from the U.S.

Unfortunately, after 20 years of continuous effort and investment, Ford sells less than 10,000 vehicles a year in Korea. There is a reason for this. Despite free trade agreements with the U.S. and Europe, Korea's auto market remains among the world's most closed to imports.

For decades, the Korean government has followed a deliberate strategy to erect non-tariff barriers, or NTBs, to replace the previous tariffs eliminated under these trade agreements. Staffed by a bureaucracy that often fails to coordinate regulatory actions among the many ministries that regulate various aspects of the automotive industry, the Korean government has effectively ensured that no global manufacturer achieve a level of success in the Korean market that is commensurate with the performance of domestic brands.

Although the U.S. government has engaged actively to address NTBs in Korea, these NTBs have created a climate of regulatory uncertainty that has thwarted U.S. automakers' plans. U.S. producers are currently revising plans downward, recognizing that the continuation of the Korean government's pattern of NTBs has undermined the promise that was made to the U.S. to open the Korean auto market with the signing of KORUS.

The Korean Government's Pattern of Shifting Regulatory Requirements

Almost immediately after KORUS became effective, the Korean government launched a new round of regulatory requirements, denying U.S. automobile manufacturers the benefits they expected under the trade agreement.

In each instance of changing regulatory requirements, the same pattern persists:

- The Korean government announces a measure, frequently without advance consultation or with only a minimal effort at consultation.
- U.S. automakers assess the unexpected proposal, and determine that it poses significant risks to their Korean operations.
- Over a period of time – sometimes up to a year or more, the U.S. government raises the issue with the Korean government and either obtains a commitment to postpone its implementation, or to exempt U.S. automobile manufacturers.
- Sometimes this is done in confidential negotiations, with no clear public resolution of the issue.
- Sometimes the negotiation offers no clear cut solution, either continuing to impose significant burdens, or leaving legal uncertainty as to the scope of the measure.

U.S. auto manufacturers are not alone in facing these challenges. In March of this year, European manufacturers expressed their concern about Korean NTBs in a letter to the European Trade Commissioner, stating *"we consider that this is defeating the underlying purpose of the FTA to facilitate trade."*

Examples of NTBs include:

- **Elimination of Table 4 – Korean Government Proposal to Remove Foreign Built Vehicle Standard Equivalency.** On August 23, 2012, the Korean Ministry of Land, Transport and Maritime Affairs issued a proposal to delete Article 4 of the Enforcement Regulations of the Korean Motor Vehicle Safety Standards (KMVSS).

  The core element of Article 4 is a table ("Table 4") that aligns various U.S. Federal Motor Vehicle Safety Standards (FMVSS), UNECE directives and EC directives, and recognizes them as equivalent to corresponding KMVSS. Table 4 applies to vehicles manufactured in all countries. Thus, a vehicle assembled in Canada, which might not receive the protections of KORUS, could qualify under KMVSS by means of Table 4. Table 4 also applies to certain vehicle standards that are not closely tied to vehicle safety, such as radio frequency standards on vehicle systems.

  The announcement by the Korean government to eliminate Table 4 posed a grave threat to U.S. automakers' Korea operations because the majority of U.S. vehicles sold in Korea would not meet KMVSS without Table 4.

  For a full year after KORUS came into force, U.S. trade negotiators pressed for the Korean government's compliance with Table 4 commitments. Ultimately, the Korean government promised that Table 4 will remain in effect. Even with this assurance delivered to the U.S. government, no formal agreement has been made public and the Korean Government has taken no public action to formally withdraw its proposal. In fact, at various points in time, most recently in May of this year, Korean officials have re-introduced the notion that Table 4 should be eliminated.

  All of this continues to cast a considerable cloud of legal uncertainty over U.S. automobile manufacturers' Korean operations. In short, for a significant time, importers were unsure if it would be possible to legally import certain models into Korea.

- **Bonus/Malus Program: Subsidies and Penalties Impacting Imported Vehicles.** Korea's current environmental standards on fuel economy and greenhouse gas (GHG) emissions represent one of the world's most stringent regimes for controlling such emissions.

Under this regime, by 2015, the standard for the fleet average will be 140 g/km or 17 km/L. Under the February 10, 2011 KORUS "Agreed Minutes on Regulations Pertaining to Automotive Fuel Economy and Greenhouse Gas Emissions," U.S. automakers were granted a period of 19 percent leniency in meeting these fuel economy and GHG emissions targets. This margin was considered sufficient to permit U.S. producers to sell a full product line in Korea once the Korean market was fully open to imports.

Notwithstanding the introduction and phase-in of these new fuel economy and GHG regulations, the Korean government in 2012 took affirmative legislative and administrative steps to impose an entirely new "Bonus/Malus" system.

As initially proposed in 2012, the Bonus/Malus system was to go into effect in 2013-14, and would have imposed cash penalties on purchases of vehicles emitting more than 145 g/km of CO2 while providing cash subsidies to purchasers of vehicles emitting less than 131 g/km of CO2.

The subsidies and penalties were to be calculated based on emissions levels. At the extremes, purchasers of vehicles emitting less than 40 g/km would receive a subsidy of several thousand dollars, and purchasers of vehicles emitting more than 246 g/km would be charged as much as an additional $7,000.

In March 2013, after extensive discussions with U.S. officials, the Korean legislature passed the Atmospheric Environment Preservation Act ("AEPA"), which delays the effective date of the Bonus/Malus program to January 1, 2015. While the temporary postponement of the Bonus/Malus program is welcome, the measures are already having a significant adverse impact on the competitive conditions faced by U.S. vehicle exporters.

Foreign importers typically have little choice but to sell larger or premium automobiles with higher profit margins to offset the higher costs of doing business in Korea, including meeting Korea's unique regulatory requirements. Under the currently-proposed Bonus/Malus thresholds, most of the vehicles currently being imported from the United States would be penalized. This reduces the business case to import more vehicles into the market and inhibits the opportunity to invest in greater volumes and diversification of imported fleets in a manner that would improve fleet fuel economy. This also would discourage investment in the expansion of the overall business operations in Korea.

While Korean domestic producers have also raised objections to the scheme, virtually all locally-produced Korean cars are expected either to obtain a direct competitive advantage through bonus payments, or to be

unaffected by the program. The Bonus/Malus system will significantly tip an already tilted field in favor of Korean producers.

Some steps can be taken to mitigate, but these steps come with significant costs. For example, U.S. vehicle producers may be able to import a greater proportion of diesel-powered vehicles. But shifts of this kind require significant additional investments in engineering, marketing, management and distribution costs. The lack of market access makes it difficult to justify the business case. Nevertheless, these steps are being explored now, and the Bonus/Malus system is already imposing unexpected costs on U.S. vehicle manufacturers that are not imposed on Korean manufacturers.

- **Self-Certification of Auto Parts and Equivalence**. This proposal, released in April, 2012, would have required U.S. automobile manufacturers to certify certain replacement parts shipped to the Korean market as compliant with KVMSS, and would not allow equivalence to U.S. FMVSS qualification. All of the parts involved satisfied FMVSS and all are shipped to Korea to replace original equipment parts on vehicles sold by U.S. manufacturer, vehicles that frequently are certified on the basis of equivalence with FMVSS. This measure threatened the workability of warranty and dealer service operations that are central to all manufacturers' product programs. In short, a manufacturer cannot sell a car in Korea if replacements parts are blocked from the same market. After strong engagement by the U.S. government, the Korean government ultimately agreed not to apply the policy. Even after this concession was made, disagreement with the Korean government continues on the issue of appropriate marking techniques for the parts.

- **Vehicle Identification Number (VIN) Stamping**. After KORUS became effective, the Korean government did not change its regulations to accept as equivalent VIN stamping that is consistent with FMVSS. Korean VIN stamping requirements are different and the refusal to align with FMVSS would create additional cost in special stamping of vehicles bound for the Korean market. The U.S. government again has become involved in the matter, seeking approval from the Korean government to accept VIN stamping that is compliant with FMVSS.

- **Fuel Economy Tailpipe Emissions Audits**. Korea's Ministry of Trade, Industry & Energy ("MOTIE") has introduced an "Improvement Plan for Motor Vehicle Fuel Economy Management System" ("Improvement Plan"). The details are still being worked out, but the MOTIE proposal appears to be inconsistent with the emission control policies of the Ministry of Environment (MOE). The MOE accepts in-house-testing by manufacturers without prior verification, while the Ministry of Land, Travel and Maritime Affairs administers the self-certification program for safety

standards. The result is that vehicle manufacturers are facing conflicting requirements from multiple Korean agencies for validation of in-house testing facilities and for correlation tests between the manufacturers and testing agencies. It also appears that the measurement standards being applied for this purpose may not be consistent across ministries.

- **Currency Manipulation to Subsidize Exports.** Finally, currency plays a role in the continued challenges we face in the Korean market. Currency is the medium in which trade occurs, and exchange rates can be as important a determinant of trade outcomes as the qualities of the goods or services themselves. In the context of a free trade agreement, currency manipulation can negate the trade liberalizing effects of tariff reductions.

  Chairwoman Stabenow, we appreciate your recognition of this critical issue of currency manipulation, including your leadership in communicating the need for strong and enforceable currency disciplines in future trade agreements. Currency manipulation is the 21st century trade barrier and it is not surprising that 59 of your Senate colleagues joined you in a letter to the Administration stating this position, and that more than 230 U.S. House members also agree.

  You and the majority in the House and Senate reflect the view of the American people. A recent survey conducted by IPSOS found that nearly 90 percent of Americans believe including currency manipulation rules in international trade agreements is important. The survey also found that by a more than 2-1 margin, Americans believe Congress should oppose an international trade deal that does not prohibit currency manipulation.

  Since the signing of KORUS, the Korean government has intervened in currency markets to slow the appreciation of its Won versus the U.S. Dollar. This manipulation of currency has the effect of subsidizing Korean exports while creating a barrier to imports into the Korean market.

  Since January 2011, foreign exchange reserves in Korea have increased $70 billion or 24 percent and now stand at over $366 billion. The Bank of Korea has routinely intervened to slow the appreciation of the Won despite criticisms from the U.S. Department of Treasury and the International Monetary Fund.

Lessons for Future Trade Agreements

As a company operating in six continents, Ford sees real benefits of free trade policies. It lowers transaction costs, improves efficiency and enables us to build a strong business to meet the demands of our customers here in the U.S. and abroad. But free trade must not be encumbered by the layers of restrictions that are set up only to protect domestic industries.

That is why we were hopeful that KORUS would result in meaningful market access for our products into the Korean market. Unfortunately, it has fallen well short of expectations and will continue to, if the Korean government's pattern of non-tariff barriers persists.

The U.S. is among the most open markets in the world. The priority for the U.S. government should be to remove barriers to U.S. goods and services in other markets to an equivalent degree. As the U.S. pursues future free trade negotiations, there are many cautionary lessons offered by KORUS.

1. It is critical that the U.S. specifically address all trade-distorting impediments – especially the less visible non-tariff barriers.

2. It is critical to include strong and enforceable currency disciplines in all future U.S. trade agreements, beginning with TPP. Without these, we send the message that it is ok for countries to subsidize their exports abroad, and undermine manufacturing jobs here in America.

3. Finally, all future trade agreements need strong dispute resolution mechanisms and strong enforcement mechanisms, which include elimination of the FTAs benefits to violators.

Ford is proud of its investment in America. We are delivering product excellence with passion, driving the innovations of tomorrow and successfully competing around the world. Our goal is to succeed on our own. All we ask for is a level playing field on which to compete. We appreciate the Committee's focus on ensuring trade agreements benefit all, including American manufacturers and American workers.

JOHNNY ISAKSON

UNITED STATES SENATOR · GEORGIA

Isakson Statement at Finance Subcommittee Hearing on U.S.-Korea Free Trade Agreement

WASHINGTON – U.S. Senators Johnny Isakson, R-Ga., Ranking Member of the Senate Finance Subcommittee on International Trade, Customs and Global Competitiveness, today delivered the following opening statement at a subcommittee hearing on the U.S.-Korea Free Trade Agreement:

Thank you Chairwoman Stabenow for calling this important hearing.

I was glad to support the Bush Administration's decision to sign the U.S.-Korea Free Trade Agreement in 2007 and was pleased to vote for it when it finally came to the Senate for ratification in 2011. I supported this agreement, because I believed then, as I do now, that it strengthens both economies by growing markets for U.S. and Korean goods and services, creates jobs in both countries and solidifies an already strong relationship with one of the United States' most important allies in Asia.

I have had a great interest in the United States' relationship with South Korea for many years. In 1988, I led a trade delegation from Georgia to Seoul shortly before their successful Olympic Summer Games, an experience that I always kept in mind as Atlanta prepared for its own Summer Games just eight years later.

I also am appreciative of the steadfast security alliance between our two great nations. South Korea has served as an anchor for stability, security, peace and prosperity in the Asia-Pacific region and our combined defense posture in the face of repeated military provocations is crucial. Our two countries recognize the mutual values of democracy, human rights and the rule of law as the foundation of our alliance. Nearly 30,000 of our servicemen and women stand shoulder to shoulder with Korean forces, and our enduring security relationship reinforces the bond of our unique ties to South Korea.

In the two years since the FTA came into force, we have already seen positive results emerge in Georgia, with increased exports of aerospace products, pulp and paper, engines and turbines, agricultural products and chemical products. The U.S.-Korea Free Trade Agreement has paved the way for over $800 million in exports from Georgia to South Korea in 2013, and almost $7 billion in Korean investment across the United States.

Korean investment in Georgia has been a welcome boost to our state's economy. According to Georgia's Department of Economic Development, Georgia is home to 62 Korean company facilities, over 23 of which are manufacturing facilities. Kia Motors Manufacturing in West Point, Georgia, represents a $1.1 billion dollar investment and is responsible for creating over 10,000 direct and indirect jobs in Georgia. On July 11, 2013, the one millionth American made Kia rolled off the assembly line in West Point.

In order to maximize the full benefits of the U.S.-Korea Free Trade Agreement – including further expanding market access for American exports, bolstering Korean investment in the U.S. and creating jobs for American workers – last week, I along with Senator Blunt and Senator Begich introduced the Partner with Korea Act, S. 2663. The legislation will provide a unique visa category for up to 15,000 Korean professionals to perform specialty occupation services in the United States, after certifying to the Department of Labor that these job positions would not be filled by the current labor market. These visas are

crucial to helping to promote further Korean investment in the United States and I look forward to working with my colleagues to secure its passage.

Today we will hear testimony from witnesses who have had different experiences with the US-Korea FTA. I am looking forward to a fruitful discussion of the benefits of this agreement, but also understand that there have been challenges. As we discuss these challenges, we do so not only with our trade relationship with South Korea in mind, but also with an eye toward other ongoing trade negotiations.

However, it will be extremely difficult to make any progress on these issues without a renewal of trade promotion authority. Without TPA, the Administration continues to negotiate from a weaker position and Congress' priorities are notably absent from important trade talks such as the Trans-Pacific Partnership (TPP).

The Bipartisan Congressional Trade Priorities Act of 2014, introduced by Senator Hatch and former Senator Baucus, would renew TPA and address some of these issues so important to our witnesses in future agreements. For example, this important legislation would make addressing the issue of currency manipulation a principle negotiating objective for the United States in trade talks. Until the Senate acts on renewing TPA, Congress' priorities on this and other important issues will remain on the sidelines.

Thank you again, Madame Chairwoman. I look forward to hearing from our witnesses.

# # #

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Statement for the Record
Association of Global Automakers

Senate Committee on Finance
Subcommittee on International Trade, Customs and Global Competitiveness
"The U.S.-Korea Free Trade Agreement: Lessons Learned Two Years Later"
July 29, 2014

The Association of Global Automakers (Global Automakers[1]) is pleased to provide the following statement for the formal record of the Subcommittee's July 29, 2014 hearing on the implementation and impact of the U.S.-Korea Free Trade Agreement (KORUS FTA).

Global Automakers represents the U.S. subsidiaries of twelve international automakers - companies whose investments in the United States during the past 50 years have enabled them to become an integral part of the U.S. auto industry. International automakers currently operate 32 production facilities in 16 states and employ 100,000 Americans. In 2013, these companies produced more than 5 million vehicles in the United States (or 45 percent of all motor vehicles manufactured here), sold 59 percent of all motor vehicles sold in the United States, and exported 800,000 vehicles to more than 60 countries.

Global Automakers was a strong proponent of the KORUS FTA's ratification and continues to strongly support this important bilateral trade agreement. The U.S. commitment to open trade and investment policies has encouraged the investment of over $64 billion in the U.S. auto market by international manufacturers. Putting in place rules that facilitate trade and investment between the United States and Korea is both consistent with long-standing U.S. policy and good for consumers in both countries. In just two years since the agreement's implementation in 2011, Global Automakers' members have begun exporting thousands of U.S.-made vehicles[2] to Korea under the terms of the KORUS FTA, supporting thousands of American jobs.

Success in foreign markets is about both the negotiation of comprehensive agreements and the willingness of our companies to make a long-term commitment to new markets and potential customers. And several U.S. automakers have done just that.

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[1] The Association of Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. We work with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, visit www.globalautomakers.org.

[2] Vehicles built in the United States using domestic and globally-sourced parts.

Five years ago, twenty-three import brands together held just 6 percent of Korea's automotive market, with deliveries of 61,648 new vehicles out of total domestic sales of 958,854. By 2013, the number of imported cars sold in Korea had risen 250 percent to 156,497 units, accounting for 12.1 percent of the 1,137,027 vehicles sold in that year. Overall U.S. passenger vehicle exports to Korea have increased 80 percent following the implementation of the KORUS FTA.[3] By value, new passenger vehicle exports from the United States to Korea have nearly doubled.[4]

More specifically, Toyota, Honda, VW and Nissan exported to Korea a total of 14,637 vehicles in 2013 built by American workers in the United States. Underscoring the importance of the KORUS FTA for the U.S. auto industry is the fact that seventy percent of all Toyota-brand vehicles sold in Korea in 2013 were made in the United States.

And the agreement is changing attitudes among Korean consumers: Last year the 2013 Toyota Camry – made in Georgetown, Kentucky – edged out 44 other cars to become the first foreign vehicle to win the Korea Automobile Journalist Association's Car of the Year award.

Implementation of the KORUS FTA has not been seamless, and it is unrealistic to expect that an agreement of this magnitude and complexity could be implemented without encountering some challenges. Global Automakers believes mechanisms included in the agreement are sufficient to meet these challenges and does not agree that including provisions, as some have argued, to address allegations of currency manipulation are appropriate to this or future bilateral or regional free trade agreements.

Global Automakers believes that enactment of the KORUS FTA has been beneficial to the U.S. automotive industry and consumers and that these benefits will continue to grow over time. Most importantly, Global Automakers believes that the emerging benefits of the KORUS FTA should encourage, rather than discourage, the negotiation of new free trade agreements like the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP).

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[3] USTR Press Release, http://www.ustr.gov/about-us/press-office/press-releases/2014/March/US-Korea-Free-Trade-Agreement-Shows-Strong-Results-on-Second-Anniversary

[4] DOC International Trade Administration (ITA): http://trade.gov/mas/manufacturing/OAAI/build/groups/public/@tg_oaai/documents/webcontent/tg_oaai_005278.pdf

Testimony by Shawna Morris
Vice President of Trade Policy
U.S. Dairy Export Council & National Milk Producers Federation
To the United States Senate Committee on Finance
Subcommittee on International Trade, Customs and Global Competitiveness
July 29, 2014

The U.S.-Korea Free Trade Agreement: Lessons Learned Two Years Later

Madame Chairwoman and members of the Committee, my name is Shawna Morris and I am here this afternoon representing the National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC). I appreciate the opportunity to express the views of America's dairy farmers on the lessons we have learned in the first two years of the U.S.-Korea Free Trade Agreement (KORUS).

The National Milk Producers Federation (NMPF) develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 40,000 dairy producers on Capitol Hill and with government agencies. The U.S. Dairy Export Council (USDEC) is a non-profit, independent membership organization that represents the export trade interests of U.S. milk producers, proprietary processors, dairy cooperatives, and export traders. The Council was founded in 1995 by Dairy Management Inc. (DMI), the farmer-funded marketing, promotion and research organization, to build global demand for U.S. dairy products and assist the industry in increasing the volume and value of exports.

Summary of Key Points:

I would like to express our appreciation that KORUS was approved by Congress. It has played a great role in opening up more export opportunities for many U.S. companies in Korea. In fact, we believe that KORUS is a good example of how the U.S. was able to deal successfully with a country's market access sensitivities regarding dairy products. This should be a useful model to build on in the ongoing Trans-Pacific Partnership (TPP) negotiations.

However, we wish that all interested U.S. dairy companies could take advantage of those opportunities rather than having their products effectively shut out of the market. Instead, as a result of the EU-Korea FTA, U.S. companies have been prohibited from selling in Korea several widely produced cheeses: feta, asiago, gorgonzola and fontina. The restrictions on certain U.S. cheese exports that first cropped up in Korea as a result of its FTA with the EU have rapidly proliferated to other markets, including many U.S. FTA partners. This pattern, driven by EU FTA pressures, has become a deeply concerning barrier to trade in more and more markets with indications that the problem continues to worsen.

Importance of Trade to U.S. Dairy Industry

Trade has taken on an increasingly important role in determining the economic well-being of the U.S. dairy industry. Our nation has gone from exporting less than $1 billion in 1995, a time when a large portion of those sales were government-assisted, to exporting a record $6.7 billion last year, none of

which used export subsidies[1] [2]. This growth has accelerated in the past 10 years with exports experiencing average annual value growth of 21%[3]. We are now the world's leading single-country exporter of skim milk powder, cheese, whey products and lactose[4].

This growth is due in large part to the increasing competitiveness of American dairy producers and processors. But it is also the result of free trade agreements (FTAs) negotiated by the United States with some 17 nations over the past 15 years. These FTAs have created important new market access opportunities for us and we have worked very hard through our market development efforts to ensure that we are taking full advantage of them.

Positive Indications Under KORUS for U.S. Dairy Industry

Although KORUS has been in place only since March of 2012 and full free trade is still years away, it has already helped us expand dairy product shipments to the Korean market. Dairy exports to Korea in 2013 totaled over $300 million, more than double the average of the three full years prior to KORUS. And shipments during the first five months of 2014 are running 40 percent higher than in the same period in 2013.

The most significant dairy product types exported to Korea are cheese, whey and skim milk powder. Korea has long been an important market for U.S. dairy exports, which is why NMPF & USDEC so strongly supported approval of this FTA. Since implementation, the agreement has largely been effective in kick-starting our goal of expanding U.S. dairy sales to this market by initiating the process of eventually eliminating virtually all Korean dairy tariffs.

This type of deep and broad trade liberalization seen in KORUS's dairy provisions can be a good model for ongoing Trans-Pacific Partnership negotiations with Japan and Canada. We hope that TPP will similarly result in an agreement that we can support as robustly as we have supported KORUS.

In a few cases, we have seen instances that have required assistance from the Foreign Agriculture Service in order to help ensure that the terms of the agreement are being honored. Generally, the response from Korea to date has been encouraging. For instance, early on there were concerns related to how Korea was operating its auction system that KORUS authorized to administer certain dairy TRQs. The initial auctions held were not very successful in utilizing the TRQ quantities granted to the U.S. under KORUS. During the year following implementation, the Administration engaged extensively with Korea to better understand why this was occurring and explore additional ways to ensure that the auction was not interfering with market demand for U.S. dairy products. Over the past year, the process seems to have improved and we are currently satisfied with how it is operating, although it is an issue that merits continued monitoring to ensure that Korea does not use its auction system to hinder use of KORUS TRQs.

Similarly, we are currently working with FAS on a matter related to a rules of origin request from Korean Customs. We are trying to ensure that our exporters provide the necessary information to Korean

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[1] Trade data: Foreign Agricultural Service's Global Agricultural Trade Service
[2] Subsidies: U.S. Dairy Export Council
[3] Foreign Agricultural Service's Global Agricultural Trade Service
[4] U.S. Dairy Export Council

authorities that may be needed occasionally to document compliance with the KORUS rules of origin requirements. However, this need must also be carefully balanced by ensuring that Korean Customs is not demanding overly invasive and burdensome information in a manner designed to impede trade. At this stage, rules of origin documentation requirements do not appear to be a pervasive problem for U.S. dairy exports, although it is our understanding that many U.S. agricultural sectors have faced similar challenges in this area. We encourage the Administration to continue to work with Korea to ensure that the KORUS compliance needs are appropriately balanced with the need to ensure that Customs requirements do not unnecessarily impede trade.

Finally, a third issue that arose with Korea over the past two years relates to U.S. exports of organic products to Korea. This issue was successfully resolved this month, as we hope the rules of origin matter referenced above soon will be as well. In the case of organic products trade, the U.S. exported $35 million dollars worth of organic products to Korea last year, some of which were dairy products. In late 2013, however, Korea announced its intent to begin enforcing organic certification regulations adopted in 2008 but not previously enforced. After successful work with Korea by USDA and USTR, the U.S. announced on July 1st an organic equivalency agreement that provides assurance that the U.S. will be able to continue to export these high-value products to our FTA partner. U.S. companies making organic dairy products welcomed this excellent news.

Trade Compliance Concerns re: Korea FTA due to GI Restrictions

Despite the overall positives of KORUS and successes in resolving some early-on snags, however, it is also important to take note of instances that have not worked out as well and where resolution does not appear to be in site. While stressing that my industry's overall experience to date with KORUS to date has been positive, the bulk of my remaining testimony will focus on the deeply concerning new type of trade barrier we saw develop in Korea just prior to implementation of our FTA. When trade moves smoothly, the market can largely operate without the assistance of our trade agencies. However, when trade problems arise, that is where the government focus is needed in order to find ways to address the challenges and avoid having other countries replicate the barriers.

It is with that in mind that we call the committee's attention to one very ominous development that has undermined a key portion of the market access benefit many of our members had envisioned from KORUS, thereby impairing the value of concession negotiated by the U.S. Moreover, this situation is playing out in the case of several other U.S. FTA partners' markets. Many U.S. companies and organizations have expressed deep concern about these developments in recent months. Some examples of those comments are included as part of this testimony. (*Attachment 1*)

Since mid-2011, Korea has restricted access for certain U.S. dairy products as a direct result of its separate FTA with the European Union (EU). I must stress at the outset that this matter is not a flaw in KORUS and we continue to strongly support the agreement and its approval by Congress. The problem is that we are not seeing the across-the-board market access gains in Korea and other FTA partner countries for all dairy products that we had anticipated during negotiations and this is without question due to EU efforts to "claw back" use of common names of certain dairy products for the sole use of EU producers.

In a nutshell, the EU has been using its muscle to lean on countries around the world to block imports of products from countries that allow the use of product names the EU wishes to reserve for itself. The EU-

Korea FTA and its impact on our KORUS agreement was the first indication of what has turned into a massive world-wide problem for us and for other dairy-producing countries.

I know that some members of Congress are very aware of this issue and many have expressed their concerns about its impact on the U.S. dairy and other affected industries. In particular, we thank the numerous members of this subcommittee that signed one of the two letters sent this past spring to USTR & USDA on the EU's abuse of geographical indication regulations to restrict trade. But for those who are not as familiar with some of the details of this issue, let me provide a little background.

Many well-known names for cheeses, meats and other foods trace their origins to Europe, but thanks to generations of emigration and trade, these products are now made and enjoyed throughout much of the world. This has greatly increased the popularity of certain cheeses such as parmesan, romano, feta and others to the commercial benefit of both European and non-European producers.

However, the EU has been working in recent years to monopolize usage of these terms, while resisting efforts to clearly identify which names have already entered into wide-spread common usage. This is being done through use of the EU geographical indication (GI) system, which is aimed initially at keeping such products out of its own market. It is now also being done, however, through EU efforts to negotiate exclusive use of many EU GIs through its free trade agreements, including with many U.S. FTA partners. This prevents any competition with EU products in those markets, as well.

For instance, the EU-Korea FTA forbids the use of the terms gorgonzola, feta, asiago and fontina by non-EU suppliers. It also required Korea to register the EU GIs automatically; that is, stakeholders with an interest in the Korean market had no opportunity to present arguments that the GIs at issue were in fact widely used generic names or otherwise should not have been protected in Korea. Even the EU provides a case-by-case opposition procedure, something it prevented Korea from adopting as part of their FTA.

U.S. companies have had to forego sales opportunities in Korea due to these restrictions. Had it not been for efforts by the Office of the U.S. Trade Representative (USTR), which conducted an exchange of letters with the Korean government in 2011 in order to seek clarification on the scope of the EU-Korea FTA's GI commitments with respect to certain terms, the use of the common names brie, camembert, emmental, grana, mozzarella, parmesan, romano and provolone could also have been at risk of facing future prohibitions. (Preservation of these latter terms was able to be achieved since the GIs they pertain to were listed in the EU-Korea FTA as multi-word GIs rather than as single terms. For instance, the GI listed in the EU-Korea FTA was "Parmigiano Reggiano", not parmesan. The letter exchange therefore clarified that it was the full GI that was being protected, not individual pieces of it. In contrast, feta, asiago, gorgonzola and fontina were each listed using just that name, i.e. "Feta".)

A recent article in the Economist summed up well the impact of these Korean restrictions on a family-owned Wisconsin dairy company:

> *"In 1925 Ron Buholzer's family left Switzerland and settled in lush, green, rural Wisconsin. Here, like so many Wisconsinites, his family started to make cheese. Since then four generations of cheesemakers have worked in the family firm. Their most popular product is feta, a crumbly cheese that goes well in Greek salads. Mr Buholzer worries that he may soon be banned from selling it, because the European Union is trying to "claw back" food names that Americans consider generic but which Europeans believe should only apply to products made in specific bits of their continent....*

Already Mr Buholzer is barred from exporting his feta to South Korea if he calls it "feta". *Also, any new feta products sold in Canada that are not from Greece will soon have to be called "like" or in the "style" of feta—and not use Greek symbols. The EU is demanding protection for 145 food names, including feta, asiago, Gorgonzola, munster and fontina."* *http://www.economist.com/news/united-states/21607867-europeans-want-their-food-names-back-americans-are-peeved-stressed-are-cheesemakers*

International Expansion of EU-Driven GI Restrictions on Common Names

After the initial shot across the bow fired in the EU-Korea FTA, the EU has busied itself expanding that model to many other markets around the world. EU pressure has resulted in similar restrictions being replicated in Central America, Peru, Colombia and most recently in South Africa. Canada announced that it had agreed in its FTA with the EU to adopt new restrictions on several cheese names such as feta, muenster, gorgonzola, asiago and fontina that require all new entrants to the market to label their product as "imitation feta" or "similar to muenster". (Harmful as this restrictions is in the EU-Canada FTA, in all other EU FTAs to date with other countries the limits go even further and directly prohibit any use of the term, banning for instance the use of "similar to asiago" or "feta-style".) We understand that the EU is pursuing its objectives in Singapore, Japan, the Philippines, Malaysia and Vietnam, as well as through a GI-specific arrangement with China that is close to being finalized.

Unfortunately, we have not been able to negotiate clarifying exchanges of letters with those countries, as we did with Korea. After extensive U.S. outreach, some countries such as Guatemala and El Salvador have chosen to do the right thing and preserve access for many key U.S. exports but others such as Costa Rica and South Africa have introduced harmful new restrictions on the use of certain common names.

In the case of Costa Rica, the government interpreted its EU FTA commitments as requiring it to restrict the use of parmesan and provolone, despite the fact that the applied-for GIs were "Parmigiano Reggiano" and "Provolone Valpadana". This is despite the fact that even the EU does not currently restrict use of "provolone" and the Central America-EU FTA clearly permits a country to decline to restrict use of a generic term such as parmesan which has been used by the local industry for decades and more recently by U.S. exporters under CAFTA. In South Africa, the government quietly moved in early 2014 to restrict the use of a number of terms claimed as GIs by the EU, grandfathering local use in a direct acknowledgement of likely generic status for many of the names. We believe that this action directly impairing access for U.S. cheese opportunities should factor into consideration of GSP preferences for South Africa.

And now we are in the midst of negotiations on an FTA with the EU -- the Transatlantic Trade and Investment Partnership (TTIP) -- and it is abundantly clear that EU producers and politicians expect their negotiators to deliver an agreement that imposes strict EU GI rules on the United States. Our industry is even more adamant in its expectation that our negotiators should only come to an agreement on GIs with the EU if it simultaneously rejects restrictions in the U.S. market on common names, addresses the trade barriers erected against U.S. exports to third country markets and restores access into the EU for key U.S. exports such as parmesan and feta, labeled as such.

Global in Scope: Expansion of International GI Register under WIPO

As if the EU efforts to lock up common product names for itself through trade agreements were not enough, it is also working feverishly to modify the World Intellectual Property Organization's (WIPO) *Lisbon Agreement for the Protection of Appellations of Origin and their Registration* (Lisbon Agreement), which was adopted in 1958 and entered into force in 1966. Changes sought by the EU and current participant countries would dramatically expand the types of names that could be registered for protection under this agreement and would expand the criteria for who could join as a party to the agreement.

The scope of protection for a GI is extremely broad and ambiguous – virtually anything the GI holder may deem at any future stage to be problematic could be claimed as a violation of the GI. In particular, the agreement provides no clarity about how countries are to protect multi-word GIs such as Mortadella Bologna, leaving a high likelihood that the GI holder could claim that use of a portion of the GI is still a violation of the agreement.

In contrast, there are virtually no safeguards for users of common food names, particularly on an export basis. The Lisbon Agreement effectively provides cheap and fast "one stop shopping" for GI registrants while providing no such similar "single streamlined window" to common name users. These types of tremendous imbalances in the agreement are deeply problematic.

Although the Lisbon Agreement is a voluntary plurilateral agreement, its impacts will be felt by many non-members such as the U.S. when member countries agree to adopt restrictions on the use of registered GIs, even if they have long been in the global public domain as having been produced and traded by other WTO members. For instance, Italy has submitted to register the terms asiago and gorgonzola this year. Mexico and Peru are Lisbon Agreement members. If they do not reject these applications, then U.S. exporters will be forbidden from shipping asiago or gorgonzola to those two U.S. FTA partners as of next year. Again, this type of restrictions violates U.S. FTAs by impairing the value of concessions in those agreements and also violates WTO commitments.

Efforts are underway by the EU and its member states to finalize this dramatic expansion of international GI restrictions in October 2014. If successful, the EU will have taken major strides in accomplishing all of its objectives in restricting the use of common names for its own producers. We are working with U.S. officials to prepare for the next WIPO meeting on this topic and hope that the U.S. and other governments will give the matter their full attention.

Support for GIs "Done Right": the Path to GI Trade Compliance

I want to make it entirely clear that we are not opposed to legitimate GIs. Having an avenue to protect GIs is an existing international obligation and the U.S. complies with that obligation by permitting the registration of both U.S. and foreign GIs through our trademark system. In fact, the EU already has a number of GIs registered in the U.S. system. They have available to them all the same enforcement opportunities as do U.S. companies, many of which are small or medium size operations themselves.

In other words, we have no problem with the registration of names such as "Provolone Valpadana" or "Parmigiano Reggiano", both of which are registered and protected in the U.S. What we oppose is the EU's effort to effectively license to itself names that are commonly (and globally) used to identify a type

of cheese. Production of such cheeses outside the European region to which the EU wants to provide a monopoly often represents a very sizable portion of global production, a clear indication that the name is not a term unique to one corner of the world. In some cases the names were even used generically in the EU until the EU decided to bestow just one country the permanent claim to them. (This was the case for parmesan and feta, which were produced by many European countries until roughly a decade ago when the EU made its final decision to award sole use within the EU of those generic names decides to Italy and Greece respectively.)

As I have noted, the problem is not only a U.S. problem and it is not only a dairy problem. The U.S. Dairy Export Council has joined with other U.S. companies and organizations such as NMPF & the International Dairy Foods Association, as well as other groups from around the world that are concerned about EU efforts putting at risk the continued ability to use common names for cheese and other products, including certain meats. In response to this threat, the Consortium for Common Food Names (CCFN) was created two years ago. CCFN believes that several guidelines can be helpful in establishing a model that protects both common names and legitimate food-related geographical indications.

Considerations include:

- Encouraging the use of multi-word GIs this include the name of the region or sub-region where the product is produced, and a second term that describes the product with a clear assurance that the common names portion can remain in free usage (e.g., "Gouda Holland" GI with a statement preserving free use of "gouda");

- Requiring any desired translations of a GI to be clearly identified and separately applied for in order to ensure clarity and transparency;

- Establishing reference points for identifying common names, such as existence of a Codex standard or other international standards; use of the term in newspapers, product descriptions in tariff schedules to denote a type of product; levels and diffusion of global production; international trade originating from the non-applicant country; etc.;

- Providing ample opportunity (i.e. 5 to 6 months from the date of publication) for stakeholders around the world to comment on geographical indication applications to ensure that officials have fully considered the request and its impact on other farmers and food producers, as well as the trade compliance impacts of the decision.

The Need for EU Course Correction

Certainly, abolishing bans on common food names – both those in the EU and in other markets – would be a critical first step. But the EU would also have to remove its inward focused blinders and begin to recognize the impact its policy has on producers and consumers in other nations and rein in some of the more problematic GI decisions it has rendered in recent years.

This includes the deeply problematic principle of evocation, whereby any term that overlaps with a portion of a GI is at risk of being ruled a GI infringement. For example, the EU ruled that a new cheese name that used the ending "zola" was not permitted due to the existence of a GI for "gorgonzola," despite the fact that this was the only overlapping portion of the name. This extremely broad scope of

protection makes it virtually impossible to know where the GI holders' rights end and the rights of everyone else begin.

Another example is the designation of "feta" as a GI. The word "feta" is in fact neither a place in Greece nor even the name of the cheese alone – it is simply the Greek or Italian word for "slice." But the EU approved "feta" as a GI for use throughout all of Greece (and only Greece), despite the fact that at the time of the ruling roughly 75% of the world's feta was produced outside of Greece and in places such as the entire Balkan region, Denmark, the Netherlands, Germany, France, Turkey, the United States, Oceania and elsewhere. As the Danes so aptly put it shortly after this misguided ruling, "The door is now open for other cheeses such as cheddar or camembert to apply for PDO status... And why should it stop there? Could we see Britain registering the name bacon, or Italy registering pizza?" – Hans Bender, Danish Dairy Board, Just-Food, 2005.

Ironically, but not surprisingly, Danish producers recently applied for a GI that would prevent producers in any other country from using the name "Havarti" -- this despite the fact that the international food standards-setting body, CODEX Alimentarius, has already adopted a production standard for "havarti" for use by all countries, with full EU support. If the EU approves the Danish request, then the risk magnifies that other products for which international production standards exist, such as cheddar and mozzarella, may also face future attacks. As you can imagine, we have expressed our strong opposition to granting of GI recognition by the EU to havarti.

Attack on Common Names: Violation of International Trade Commitments

The EU's approach to restricting common food names through the use of GI registrations abuses a good concept in order to impose trade barriers against competitors. This has no place in TTIP or any other trade agreement. In forcing its trading partners to adopt the same trade-restrictive GIs in recent FTAs, the EU has turned FTAs, which are supposed to expand trade, into tools for discriminating against third countries to gain unfair market shares.

This raises serious questions about whether the EU's GI policy is compatible its WTO obligations. The fact that the EU had hoped to use the dormant WTO Doha negotiations to write new rules on GIs, suggests that it felt that this was a loose end that needed to be tied up. Legal analysis indicates that these restrictions on the use of common names violate the WTO TBT agreement. In addition, the lack of opposition procedures and genuine intellectual property analysis in certain countries such as Korea also violate the TRIPS Agreement.

Actions Needed to Address Concerns

Although the EU typically uses the guise of intellectual property to impose these restrictions in common food categories, it is clear that the EU's real objective is to crowd out competition in as many markets as possible in order to give its producers a leg up over those in the U.S. and other countries. This goal is most clear when examining the cases in which the EU's restrictions bypass a country's intellectual property system's evaluation process entirely such as in Korea, South Africa and reportedly in Canada.

This targeting of terms long in the public domain through wide-spread international usage is certainly not fair competition, nor appropriate use of intellectual property systems. In determining how to tackle this dilemma, U.S. tactics must take this into account in order to properly combat the threat.

We greatly appreciate the work that USTR in particular, as well as USDA in certain instances, has devoted to the challenge of EU attacks on U.S. market access opportunities through the imposition of restrictions on the use of common food names. This issue is one that both agencies are very well familiar with; both Ambassador Froman and Secretary Vilsack have been clear about the serious concerns the EU's actions pose. For instance, USTR work in particular with Korea, Singapore and Japan on this topic has been very engaging. In addition, USTR & PTO staff have worked extensively in TPP to reduce the likelihood of inappropriate outcomes such as those seen in the EU-Canada FTA's GI provisions. Unfortunately, the size of the problem seems to continue to grow swiftly.

We are firmly convinced that EU goals will not remain limited to only those terms facing direct attack today by the EU. History indicates – dating back to the EU's initial focus primarily on imposing GI restrictions for certain wines & spirits – indicates that the EU will continue to push the envelope as far as it can in exploring how best to crowd out competitors, particular in categories such as wine or cheese that threaten EU value-added production.

- All too often, vital information and opportunities are missed. The U.S. could be deploying its embassy staff, particularly Foreign Agriculture Service employees posted abroad, much more effectively to gather information and act in a coordinated manner to respond to attacks on market access for U.S. products.
- As cited earlier, we applaud USTR's work with Korea to limit the scope of the potential damage that the EU-Korea FTA could have inflicted on U.S. dairy exporters. Although these efforts did not succeed in preserving negotiated access for all U.S. products, it was still a very important step towards reigning in the EU's efforts to sow restrictions and confusion through the GI provisions of its FTAs. We continue to encourage the U.S. government to pursue similar understandings with U.S. trading partners in order to ensure that the value of market access that U.S. negotiators secure is not impaired.
- Utilize U.S. trade negotiations to promote a better path forward on GIs. As TPP is in the most advanced stage and includes other countries that share U.S. concerns in this area, TPP represents a vital opportunity to do something to foster improvements to the current handling of GI requests/applications. The U.S. must seize this opportunity and maximize our ability to use this agreement to combat the EU's pervasive attacks on the use of common food names around the world by offering a counter model.
- At the international level, it is vital that the U.S. do all it can to underscore the trade impacts and questions regarding WTO compliance that are at stake as a result of the nearly finalized efforts to expand the WIPO Lisbon Agreement's international list of GIs.

Conclusion

We look forward to working with the members of this committee to address barriers to U.S. exports and to continuing to collaborate closely with USTR & USDA to combat the EU's aggressive efforts to plant trade barriers to our products around the world. I appreciate the opportunity to present information to this committee both on how KORUS has operated to the benefit of the U.S. dairy industry and elaborate on a trade barrier that has limited access to that market for some products.

Attachment: Examples of Commentary on EU Attacks on Common Names, First Displayed in Korea

Jim Sartori – "If we're not able to use these common names that our customers have become familiar with, we're going to sell less cheese, we're going to have less employees working for us. It's going to hurt rural America, because they're the foundation, supplying the milk for the cheese products."... "It would be devastating to the state of Wisconsin, America's Dairyland."
http://www.nbcnews.com/nightly-news/food-fight-cheese-wars-its-europe-vs-u-s-n110386

Wisconsin Cheese Makers - "It's a clever trade barrier," says John Umhoefer, executive director of the Wisconsin Cheese Makers Association. "There would be a lot of uphill work to do for cheese makers to convince consumers that their 'salty white cheese in brine' is feta. They would have to market it all over again."
http://time.com/22011/europes-war-on-american-cheese/

Farr Hariri, president of Belfiore Cheese Company: "If all nations followed this mentality, where do you draw the line? Would all manufacturers—of spaghetti, lasagna, beef stroganoff, Hungarian goulash, hummus, salami, lavash—in this country someday fall victims to such irrational claims, which are purely motivated by greed and desire to artificially manipulate supply and demand?" -
http://www.specialtyfood.com/news-trends/featured-articles/article/cheese-industry-embattled-over-eu-naming-proposal/

Marin Bozic, an assistant professor of dairy foods marketing economics at the University of Minnesota, says a deal would not only give Europe a non-price advantage in foreign markets, where American cheese exports are booming, but would affect domestic consumers, too. "People will be confused," Bozic says. "But the problem is that those names don't indicate origin. They indicate method of preparation."... Consumers have come to understand these names as representative of a type of cheese rather than rooted in a certain place, Bozic argues..."[Feta is] a common food name and reverting back 50 years is no solution."
http://time.com/22011/europes-war-on-american-cheese/

The International Dairy Foods Association called the EU's plans "the kinds of restrictions that have the capacity to stall job growth in the United States and limit our expanding dairy export market."
http://www.csmonitor.com/Business/The-Bite/2014/0312/EU-wants-to-ban-US-use-of-Parmesan-Gouda.-Lawmakers-cheesed.-video

Pete Kappelman, who owns a family dairy farm in Manitowoc, Wis - "We've been manufacturing, marketing, advertising, and making the cheese interesting to consumers, and now we're supposed to walk away from it? That's not quite a level playing field."
http://www.cbsnews.com/news/parmesan-feta-gorgonzola-cheese-names-prompt-big-stink-in-europe/

Errico Auricchio - Some producers say they are incensed because it was Europeans who originally brought the cheeses here, and the American companies have made them more popular and profitable in a huge market. Errico Auricchio, president of the Green Bay, Wis., company BelGioioso Cheese Inc., produced cheese with his family in Italy until he brought his trade to the United States in 1979. "We have invested years and years making these cheeses," Auricchio says. "You cannot stop the spreading of culture, especially in the global economy."
http://washington.cbslocal.com/2014/03/11/european-union-wants-to-ban-parmesan-feta-names-on-cheese-made-in-us/

Testimony of
Sean P. Murphy
Vice President and Counsel, International Government Affairs
Qualcomm Incorporated

Before the Subcommittee on International Trade, Customs and Global Competitiveness
Committee on Finance
United States Senate

For the Hearing on
The U.S.-Korea Free Trade Agreement: Lessons Learned After Two Years

July 29, 2014

Chairwoman Stabenow, Ranking Member Isakson and Members of the Subcommittee, I am pleased to be here today to discuss the U.S.-Korea Free Trade Agreement (KORUS).

Qualcomm was and remains a strong supporter of this historic agreement. Since the KORUS entered into force a little more than two years ago, it has substantially opened the Korean market to U.S. goods, services, and investment. The agreement also enhanced the basic framework for U.S. free trade agreements, creating an updated model upon which to build the Trans-Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP) and Trade in Services Agreement (TISA).

In the two years since KORUS was implemented, Korea has become the tenth largest export market for U.S. goods and our sixth largest trading partner. U.S-Korean bilateral trade today tops $104 billion in goods, about one-third greater than when negotiations first began in 2006. Bilateral trade in services in 2013 came to roughly $27 billion. U.S. foreign direct investment in Korea totaled about $35 billion in 2012, and Korean investment in the United States was roughly $24.5 billion.

Qualcomm and Korea

Korea is an important market for Qualcomm. We enjoy a robust commercial, investment, and intellectual property-licensing relationship with Korea and many Korean firms. Korean cellphone manufacturers like Samsung and LG Electronics are among our most valued partners, along with Korea's three national mobile service providers: SK Telecom, Korea Telecom and LG Uplus.

Qualcomm is a world leader in 3G, 4G and next-generation mobile technologies. If you have a smart phone, tablet or other advanced mobile device, you likely are using some form of Qualcomm-developed technology. Our research and development efforts, as well as strategic partnerships with other innovative companies, allow us to develop the breakthrough technology mobile companies need to power their business. Once the technology is developed, we channel our innovations into Korea and the global marketplace in two ways.

First, we sell advanced semiconductor chipsets which are incorporated into mobile devices manufactured by our customers, which are sold globally.

Second, we broadly license our patented innovations to more than 270 licensee customers across the mobile industry. Qualcomm's innovation and patent-intensive business model has and continues to provide all companies – big or small – opportunities to enter and compete in the dynamic mobile ecosystem.

Qualcomm led the development and commercialization of a pioneering digital communications technology called Code Division Multiple Access (CDMA), and we play a similar role for next-generation mobile technologies known as 4G Long-Term Evolution (LTE). We take pride in our contributions in

helping to make mobile communications the biggest, most pervasive information platform in history – with nearly 7.8 billion mobile connections in a world of 7.2 billion people.

Korea is a microcosm of the explosive global growth of mobile technologies. Fifteen years ago, Korea's mobile market was small. However, since the introduction of CDMA in Korea, it has expanded rapidly. Korea was one of the first countries to deploy commercially the 2G version of CDMA in 1996 and upgraded to the 3G version in 2000 and in 2011 all Korean service providers adopted 4G-LTE.

Prior to collaborating with Qualcomm in the 1990s, Samsung and LG Electronics made consumer electronics and household appliances. Today, they are competitive, global suppliers of mobile devices. Korea is among the world's most sophisticated mobile markets and Korean companies and consumers are among the first to adopt new mobile technologies that Qualcomm has pioneered.

Qualcomm and the U.S.-Korea Free Trade Agreement (KORUS)

Given our strong partnership with Korea, it should be no surprise that Qualcomm enthusiastically endorsed the negotiation and Congressional approval of KORUS. Our support for KORUS was based on a number of factors, including benefits like market opening in areas such as information and communications technology goods and services. It enhanced protection for intellectual property rights, investment and regulatory transparency. The agreement has also created and sustained U.S. jobs, and done so on a reciprocal basis. KORUS was an important strategic step toward upgrading and modernizing the template for free trade agreements negotiated by the United States.

Qualcomm's future growth will be driven by partnerships to advance the "internet of everything," which includes machine-to-machine communications like smart cars and smart buildings, mobile-education,

mobile-health and new applications of commercially available technologies. KORUS is an important example of U.S. government efforts to negotiate forward-looking trade agreements that foster such collaboration and create future opportunities like these. If history is an accurate indicator, Korea will be among those countries that are early to adopt and commercialize these cutting edge technologies that are important to an array of U.S. technology and service companies.

As businesses in both countries expand, they need a robust information and communications backbone to build and maintain growth in a number of sectors, for example mobile communications, mobile commerce and other mobile internet-oriented applications. As firms compete and cooperate to advance innovation, they create new technologies and services that make collaboration, communication and connection stronger, which benefits consumers. By eliminating or reducing barriers to business and investment with and in Korea, and establishing meaningful rules in other areas, KORUS helps create the economic environment vital to Qualcomm's and many other U.S. firms' continued success.

While not all of the following are directly relevant to Qualcomm, consider the ways in which KORUS promotes a competitive, innovative environment which expands market opportunities for U.S. companies. It:

- Eliminates 95 percent of all Korean tariffs on U.S. exports of industrial and consumer goods by 2016, benefiting a broad range of American industries and workers;

- Established new rules to reduce Korean non-tariff trade barriers that have historically been of concern to the U.S. business community;

- Liberalized new services markets in a number of sectors, including the information and communications technology sector critical to Qualcomm;

- Adopted the principle of technology neutrality, which obliges Korea to refrain from discriminating in favor of Korean businesses or technologies when it sets technical standards;

- Expanded existing procedures to ensure fairness, transparency and due process in Korean competition law investigations and enforcement actions;

- Created new government procurement opportunities for U.S. firms to compete;

- Incorporated state-of-the-art protection for intellectual property rights;

- Included strong and enforceable investment protections for U.S. investors in Korea; and

- Enhanced transparency in Korean regulation and rule-making.

These are just a few of the tangible benefits of KORUS, the scope of which extends into virtually every area of the U.S.-Korean trade and investment relationship.

In our view, KORUS has yielded benefits and Korea has made continued progress in leveling the playing field and opening its market to U.S. firms. However, we are only two years into implementation, which coincided with a slow recovery from the painful global economic recession. We recognize that while

progress has been made, and Qualcomm enjoys a robust business relationship with Korea, other U.S. firms doing business in or with Korea have concerns about KORUS implementation.

That issues of this nature arise is only natural given the complex, greater than hundred billion dollar bilateral trade and investment relationship. It is essential that these concerns be resolved as soon as possible. Both parties should fulfill their obligations in a full and timely fashion as required under the agreement.

When there are differences over the interpretation of or compliance with commitments, KORUS provides a structure for regular, ongoing bilateral dialogue about specific challenges and implementation issues. This mechanism can help the United States and Korea to address those issues that arise and ensure full and faithful KORUS implementation. If resolutions cannot be reached through consultation, KORUS established a transparent and timely dispute resolution process.

Looking Ahead

KORUS created a ground-breaking framework for strengthening U.S.-Korean trade and economic relations. But trade agreements are not self-executing. They depend on governments taking the necessary actions to create an environment conducive to spurring economic growth. These actions may not be required by the agreements but are nevertheless necessary to create an environment in which trade gains are most likely to be realized.

For example, Qualcomm applauds Korean President Park's economic agenda designed to stimulate Korean economic growth. Her plan has three objectives: strengthening Korea's economic fundamentals, fostering an innovative economy, and creating a balanced Korean economy where

growth comes from domestic demand as well as exports. For Qualcomm and many other Korean and U.S. companies, this is a welcome development and we are hopeful that it will be fully and successfully implemented.

President Park's emphasis on innovation and creative industries, including information and communications technologies (ICT), presents opportunities for U.S. business, both in terms of direct sales and for collaboration with Korean enterprises. To realize these benefits, the Park administration must move ahead and strengthen the business environment through regulatory, legal, tax, transparency and customs reforms so that Korea indeed develops a sustainable creative economy that provides a mutually beneficial partnership with the United States.

A component of President Park's domestic agenda is to ensure that competition is not adversely impacted by overregulation. We applaud this initiative as both Korean and U.S. companies have seen regulatory over-reach in certain areas. Also critical to a vibrant innovation ecosystem is the application of antitrust law. It is important that antitrust authorities employ fact-based, rigorous economic analysis and a competitive effects-based approach in their enforcement actions, which is particularly important in understanding innovation-driven industries. In that context, it is critical that the system of risk and reward enshrined in the patent system is upheld in order to promote incentives to innovate by focusing on dynamic rather than static efficiencies. Delay or failure to adopt a light regulatory approach will limit the opportunities for U.S. and Korean companies alike and deny benefits to consumers.

Qualcomm believes that it is in the shared interest of the U.S. and Korean business communities for the Government of Korea to strive to advance a framework for innovation that encourages the private sector to create new opportunities in information and communications technologies and related services for which ICT is the backbone. Such a framework would involve continued deregulation and

transparency, market access liberalization and continuous U.S.-Korean dialogue on how best to jointly foster innovation and entrepreneurship, for example by leveraging the newly established U.S.-Korea ICT Dialogue.

Beyond the domestic reform agenda, continued trade reform is a must. Successful trade relationships are vibrant, and the agreements that govern those relations cannot be stagnant. Although KORUS was negotiated in 2007 and implemented just two years ago, today we should seize the opportunity in the broader Asia Pacific region presented by the Trans-Pacific Partnership (TPP), which builds on KORUS. TPP will enhance regional economic ties and establish an improved framework for trade and investment across the Pacific.

Successful conclusion of TPP can also instill needed ambition in the multilateral arena, including through expansion of the World Trade Organization Information Technology Agreement (ITA). We encourage Korea to work alongside the United States to help drive and conclude ongoing ITA negotiations as soon as possible. Qualcomm supports these efforts to expand free trade initiatives that are in the best interests of the U.S. economy and workers, and also reinforce Washington and Seoul's shared goal of economic prosperity and closer commercial ties.

Conclusion

This hearing asks the question: what are the lessons learned from KORUS after two years? The lessons at this point seem also to be the lessons learned from other U.S. free trade agreements. Namely, it is possible to negotiate an agreement between partners who have different interests and complex national economies but a common objective, and that such an agreement can deliver benefits to both parties.

Korea is an essential economic and strategic ally of the United States and a crucial business partner for Qualcomm and other American companies. KORUS has further cemented strong trade and economic relationships, and provided a framework for broadening and deepening those ties.

KORUS is still a work in progress with respect to the phase in of certain disciplines, but it is accomplishing its goal of improving the ability of U.S. investors and firms to compete in Korea. Implementation questions and new challenges will inevitably arise and need to be addressed through the mechanisms established in the agreement for resolving bilateral trade and investment issues.

KORUS represents an updated model for U.S. free trade agreements and has helped pave the way for new trade agreements, like TPP and the TTIP. Our experiences with KORUS should inform the important debate on Trade Promotion Authority (TPA) that we need to have. TPA will provide the Administration with updated negotiating objectives reflecting the 21st century opportunities in the global trading system.

As implementation of KORUS proceeds, Qualcomm looks forward to the expansion of its business and partnerships in Korea, and also an increasingly prosperous trade and investment relationship for both the United States and Korea. We believe KORUS provides a valuable framework for promoting continuing economic engagement, new innovations, jobs and consumer benefits among these two critical economies and beyond.

Thank you again for this opportunity to share Qualcomm's view on this important topic.

Testimony of
Michael Rue

Before
Senate Finance Committee
Subcommittee on Trade

The U.S.-Korea Free Trade Agreement: Lessons Learned Two Years Later

Washington, D.C.
June 29, 2014

Introduction

Chairwoman Stabenow, Ranking Member Isakson, and members of the subcommittee, thank you for holding this important hearing on the lessons learned from the Korean Free Trade Agreement and how the lessons learned from that agreement can impact trade negotiations currently underway and future trade agreements. I am pleased to have the opportunity to offer testimony before the subcommittee concerning our industry's trade challenges and opportunities, particularly in the Asian markets.

My name is Michael Rue, and I am testifying today on behalf of the USA Rice Federation, where I serve as Vice-Chairman of the International Trade Policy Committee. I grew up on my family's ranching operation in the Sacramento Valley of California where we have been growing rice for over 40 years. Our family owns and operates Catlett Warehouse, commercial rice drying and storage facility, and I also serve as President of the South Yuba (California) Water District.

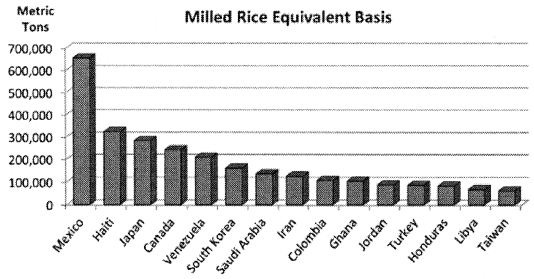
Industry Overview

The USA Rice Federation is the global advocate for all segments of the U.S. rice industry with a mission to promote and protect the interests of producers, millers, merchants and allied businesses. USA Rice members are active in all rice-producing states: Arkansas, California, Florida, Illinois, Kentucky, Louisiana, Mississippi, Missouri Tennessee, and Texas. The USA Rice Producers' Group, USA Rice Council, USA Rice Merchants' Association and the USA Rice Millers' Association are members of the USA Rice Federation.

Nationally, the U.S. rice industry contributes $34 billion in annual economic activity. It provides jobs and income for not only rice producers and processors, but also for all involved in the value chain, contributing 128,000 jobs.

About 85 percent of all the rice that is consumed in the U.S. is produced domestically. Despite significant foreign trade barriers, the U.S. remains the largest non-Asian exporter of rice and the fourth largest exporter worldwide.

2013 Top 15 U.S. Rice Export Markets



The Key Lesson Learned is No Product Exclusions

One of the most egregious repudiations of sound trade policy is the focus of this hearing today. In 2007, as the negotiators were wrapping up the remaining issues in what would be the U.S.-Korea Free Trade Agreement (KORUS), South Korean negotiators, at the eleventh hour, demanded that rice be excluded from the agreement because they considered rice a "sensitive crop." U.S. negotiators ultimately agreed to the exclusion.

The exclusion of rice in KORUS halted any progress in improved market access for U.S. rice beyond the very restrictive provisions of the Uruguay Round Agreements of 1994. The exclusion of rice in KORUS provides support today for those in the Trans Pacific Partnership (TPP), primarily Japan, who seek to turn back the clock and retreat from a comprehensive trade agreement. Rice and the other so-called sensitive commodities face the real prospect of substandard market access gains if Japan is allowed to prevail in TPP.

For the U.S. rice industry, this is the key lesson learned from KORUS – product exclusions have no place in U.S. trade policy. Not only do they deny access improvements for U.S agriculture, they poison the water for future trade agreements as other countries with politically sensitive commodities seek to gain similar exemptions.

We have begun work now with U.S. negotiators as Korea seeks to transition from the rice import regime set up 20 years ago – so-called special treatment in WTO speak – to a tariff-based system. This emerging negotiation is an opportunity to advance the market access ball that was so effectively spiked with KORUS.

Global Challenges Facing U.S. Rice Industry

While rice is one of the top grains consumed in the world, global rice trade is rife with government intervention and market distortions, illustrating the importance of commercially sound and comprehensive trade agreements. U.S. producers and exporters need the ability to compete on a level playing field with foreign governments.

Major rice producing and exporting countries provide support to producers at levels that substantially exceed those provided by U.S. producers and, importantly, at levels that very likely exceed levels permitted by the Uruguay Round's Agreement on Agriculture.

Comparative Support Prices for Rice

Country	Long Grain Rice $/Metric Ton (MT)
U.S. 1/	$231/MT
India (2013)	$231/MT
Brazil (2011)	$253/MT
Turkey (2012) 2/	$513/MT
Thailand (2013)	$418- $454/MT
China (2013)	$432/MT

1/ Target prices, 2008-2013 crops.
2/ Medium grain.

A study undertaken by USA Rice in 2011, and currently being revised, showed domestic support levels of rice in Brazil, India, Thailand, and Turkey well in excess of each of these countries' WTO limits.

Support in **Thailand**, for example, has been on a steady and impressive rise for most of this century and only recently curtailed because of the political turmoil in the country. Support prices for rice nearly tripled between 2003 and 2010. The paddy pledging program, instituted in 2011, purchased rice from farmers at 40 to 50 percent above the prevailing world price, causing a significant increase in stocks in excess of 15 million tons late last year.

There are press reports that Thai officials have released some of these stocks onto the world market at less than the cost of acquisition in order to reduce the burgeoning costs of the program. Such a release would be in clear violation of Thailand's WTO obligations which prohibit export subsidies for rice.

In **Brazil,** a large increase in rice exports in 2011 appears to be attributable to the use of export subsidies under the PEP (*Premio para Escoamento de Produto)* program. PEP acts as an export subsidy because export of covered products, such as rice, is a condition of receiving payment under the program. Brazil has a zero binding for export subsidies on rice in the country's WTO commitments.

Another study by USA Rice indicated subsidies for rice producers in **Vietnam** that exceeded by a substantial margin Vietnam's WTO ceiling for amber box domestic supports. The study used two different methodologies to calculate the aggregate measure of support (AMS) generated by Vietnam's price support program, one taking into account full Vietnamese rice

production, the other using rice procured under the price support program (2 million MT, milled basis). Using either methodology, the AMS for Vietnam's price support program is well in excess of VND 3.6 trillion, or $188 million. Vietnam's price support program for rice therefore likely results in a violation of the country's WTO subsidy obligations.

The lack of timely notifications of domestic support levels by many advanced developing countries such as those discussed above makes more difficult the challenge of getting a handle on how much countries are spending on agricultural supports and the trade distorting nature of these supports.

It is critical that the administration press for timely notifications and then to analyze these reports to assess compliance with WTO obligations and to take actions in Geneva accordingly.

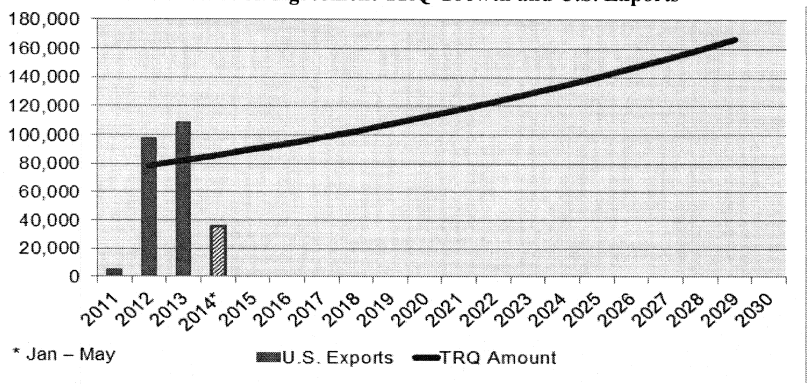
This is only a survey of the uneven competition facing U.S. rice producers, processors and exporters on the global market. Comprehensive and well negotiated trade agreements are necessary to address these and other government-backed barriers to U.S. exports and competitiveness.

Importance of Trade Agreements

We know that trade agreements work. NAFTA was an early success that has provided Mexico as consistently the number one export destination for U.S. rice. More recently, the U.S.-Colombia Trade Promotion Agreement has created a new market for U.S. rice and, as an added benefit, provided a reliable funding stream for rice research for many years to come. The Uruguay Round Agreements opened up markets in Japan and Korea to U.S. rice and paved the way for market opening in Taiwan upon WTO accession.

Exports to Colombia were low and sporadic prior to the implementation of the U.S. Colombia FTA. In 2012, the first year of implementation of the FTA, nearly 100,000 metric tons (MT) of U.S. rice entered Colombia, exceeding the tariff rate quota (TRQ) by nearly 20,000 MT. The TRQs expand 4.5 percent with each subsequent year of implementation. As an offset negotiated by the United States to the 17-year phase out of Colombia's 80 percent import duty on U.S. rice, Colombia and the United States split 50-50 the quota rents from auctioning TRQ licenses. The U.S. share is dedicated to rice research in the six main rice states, and these states shared $6.4 million in 2013. While annual amounts will vary, this is a revenue stream which will continue for years.

Colombia Trade Promotion Agreement TRQ Growth and U.S. Exports



Looking Forward: Trans-Pacific Partnership

Japan is the second largest export market for U.S. rice, and market access for U.S. rice in Japan is critical to the continued economic health of all segments of the U.S. rice industry. However, current market access in Japan is far from optimal.

The TPP negotiations offer the best opportunity since the Uruguay Round concluded nearly 20 years ago to achieve a meaningful improvement in the quantity and quality of U.S. rice access. The U.S. rice industry has long understood and appreciated the unique political sensitivity of rice in Japan. This sensitivity is reflected in all multilateral and bilateral negotiations and agreements concerning Japan rice market access since access began in 1995.

U.S. negotiators have learned the key lesson of KORUS – that product exclusions have no place in United States trade policy today. We acknowledge and appreciate the ongoing active support and strong efforts of administration negotiators in TPP to obtain meaningful improvements in access for U.S. rice in Japan.

However, more work needs to be done and Japan must show substantially more flexibility before we are able to accept what is on the table for U.S. rice. If Japan cannot move forward on market access on the sensitive commodities at this time, then the other TPP partners should move forward without Japan.

USA Rice and its members have a long-standing commitment to the Japan market, both in policy efforts to obtain access and through promotion activities in Japan so that high quality U.S. rice is available to this important market. We look forward to continuing this commitment.

Korea's wish to join the TPP offers an opportunity to redress a failed decision. This is also an opportunity to set comprehensiveness and trade liberalization as conditions of entry for Korea as a TPP partner. Rice liberalization must be on the table if Korea is allowed to join TPP, and we would not support any TPP agreement with Korea that did not provide for a meaningful improvement in the quality and quantity of our current access.

Looking Forward: Transatlantic Trade and Investment Partnership

The European Union (EU) has traditionally been a major export destination for U.S. rice, particularly long grain varieties from the mid-South. However, U.S. access is sharply constrained by EU import policies designed to protect the brown rice milling industry in northern Europe; to provide specific tariff concessions on rice from former EU colonies; and to provide duty free access to least developed countries. These policy priorities have left U.S. access restricted to brown rice because of prohibitive import duties on milled rice. The United States does benefit from a small tariff rate quota for a specific amount of fully milled rice granted as a concession due to EU expansion in 1995.

U.S. access suffered a devastating blow in August 2006, from which it has yet to recover, following announcement by USDA/APHIS of the accidental contamination of the U.S. long grain commercial rice supply with the genetically modified (GM) traits Liberty Link 62 and Liberty Link 601 (LL62, LL601). These GM traits were and remain illegal for food and animal consumption in the EU, and a robust long grain rice export market nearly vanished overnight. The EU's biotechnology regulatory failure has thwarted U.S. rice industry attempts to restore this market despite the U.S. industry's success in effectively removing these two GM traits from the commercial long grain rice supply. This success is widely recognized in the United States and the EU.

Because of the history of discriminatory and differential tariff treatment afforded U.S. rice and the unscientific bias of the EU's biotechnology policy, USA Rice is urging USTR to negotiate a T-TIP agreement that provides for free trade in all forms and types of rice between the United States and the EU and that provides for a regulatory solution that includes a low level presence policy (LLP). Such an LLP is warranted in recognition of U.S. industry efforts to remove LL traits from the U.S. long grain rice supply, and in recognition of U.S. and EU regulatory reviews that demonstrate no plant or human health threats from LL62 and the close variant, LL601.

USA Rice members appreciate the likely sensitive nature in the EU of rice in these negotiations. These sensitivities may influence the staging and structure of liberalization, but it should not deter U.S. negotiators from achieving a robust result that lays out a transparent and attainable route to free trade in rice.

Conclusion

In closing, we were disappointed to be left out of an agreement with South Korea that has provided meaningful market access for many other U.S. products, including others represented here at this table. Looking to future negotiations, USA Rice believes that no one commodity can be excluded from a free trade agreement.

Thank you for this opportunity and I look forward to any questions you might have for me.

Opening Remarks as Prepared for Delivery
Chairwoman Debbie Stabenow
U.S. Senate Committee on Finance, Subcommittee on International Trade, Customs, and Global Competitiveness

Good afternoon. The Senate Finance Subcommittee on International Trade, Customs and Global Competitiveness will now come to order.

Thank you all for being here as we consider the lessons we've learned during the first two years of our free trade agreement with Korea. Because this is my first hearing as Chair of the Subcommittee, I'd like to begin by sharing my core beliefs on international trade.

Michigan is a state where we make things and grow things. I grew up with families whose quality of life was shaped in part by their ability to sell products in foreign markets. These products sold around the world, because the people who made the cars or tilled the soil were good at it. This hard work powered the growth of our middle class in Michigan, just as it powered the growth of the middle class throughout America.

We know this: If American workers and businesses can compete on a level playing field, they will succeed in markets around the world, and our American middle class will thrive.

Within this subcommittee, we have the opportunity to explore new markets on behalf of these workers and the businesses that employ them. And in exchange for these opportunities, we allow products made in foreign countries to compete in the U.S. We are not afraid of competition. We welcome it!

But the competition must be fair. The playing field must be level. Too often in recent years, our workers and businesses have found themselves on a playing field that was tilted in one direction, littered with rocks and holes that could trip them up.

We must resist being drawn into a race to the bottom on international trade. Trade agreements must be about creating opportunities to grow a middle class around the world, not lose our middle class in America.

Fortunately, the Republic of Korea is a trusted ally and a willing trading partner. I am grateful to Korean leaders for working with us when the Obama administration asked for better terms on behalf of automakers.

When our nation entered into this agreement in March 2012, I was as optimistic as the administration and the business community that removing trade barriers would spur job growth and generate higher earnings for our workers. I'm sure Korea had the same hopes.

But for trade deals to thrive, they must be a win-win for both sides. So far KORUS has fallen short of our hopes.

The agreement aimed to narrow the trade deficit between the U.S. and Korea. Instead, the trade deficit has gone in the wrong direction. Even if you look at the most conservative numbers, that deficit has grown. And if you look at the deficit in goods – in the things we make – it has increased by nearly 50 percent.

While our dairy producers have reaped many benefits through the trade agreement, they continue to face challenges when it comes to certain products that are blocked from the market based on geographical indications, and we will hear more from today's panel about those issues.

The agreement aimed to open Korea's markets to American automakers. But agreeing to phase-out tariffs on U.S.-made automobiles hasn't been enough. Due to non-tariff barriers, Korea remains one of the most closed auto markets in the world.

Given our strong alliance with the Republic of Korea, I am hopeful that the expectations we had at the outset will be matched by real-world results. But, to achieve these results, we must have candid conversations about what's working and what's not.

I also believe that it is very important that we apply what we learn here to the major international trade agreements that are actively being negotiated right now.

We also need to recognize that we have other tools for strengthening our nation's position in the international economy.

By improving our infrastructure, our goods and services can move more smoothly. By reforming the tax code we can give companies incentives to keep jobs in America. By offering job training to American workers we can equip them for 21st Century markets.

And by strengthening U.S. trade law we can defend our companies against nations that manipulate their currency.

In international trade, it's our responsibility to drive a tough, fair bargain with foreign countries who seek access to American markets. There must be no doubt that we will be exporting our nation's products, not our jobs.

I have every confidence that, with smart trade policies, we will be successful.

COMMUNICATIONS

SENATE COMMITTEE ON FINANCE
SUBCOMMITTEE ON INTERNATIONAL TRADE
CUSTOMS & GLOBAL COMPETITIVENESS

HEARING:

"The U.S.-Korea Free Trade Agreement: Lessons Learned Two Years Later"

JULY 29TH, 2014

STATEMENT FOR THE RECORD

SUBMITTED BY:

THE ADVANCED MEDICAL TECHNOLOGY ASSOCIATION (AdvaMed)

Introduction

The Advanced Medical Technology Association (AdvaMed) appreciates the opportunity to provide a statement to the Senate Committee on Finance, Subcommittee on International Trade regarding implementation of the US-Korea Free Trade Agreement (KORUS FTA). AdvaMed represents approximately 400 of the world's leading medical technology innovators and manufacturers of medical devices, diagnostic products and medical information systems. AdvaMed members range from the smallest to the largest medical technology innovators and companies. AdvaMed is dedicated to the advancement of medical science, the improvement of patient care, and in particular to the contribution that high quality health care technology can make toward achieving those goals.

AdvaMed believes that trade agreements are a vital means to level the playing field in overseas markets and to give businesses of all sizes better access to an $11 trillion global market for manufactured goods and the 95 percent of the world's consumers who live outside our borders. Trade agreements, such as the KORUS FTA, set the rules of the global economy. Currently, the United States has trade agreements with 20 countries that have enhanced the ability of manufacturers to compete in those markets. Indeed, America's 20 existing trade agreement partners account for less than 10 percent of the global economy but purchase nearly half of all U.S. manufactured goods exports.

With the 15th largest economy in the world, valued at $1.1 trillion, and a population of 49 million, South Korea represents an important and growing market for U.S. medical device manufacturers and a top ten export market for the industry. AdvaMed strongly supported the conclusion and Congressional approval of the KORUS FTA in 2011 based in large part on its strong provisions to eliminate tariff and non-tariff barriers and set high standards that together would concretely open South Korea's market to U.S. medical technology exports and sales.

The KORUS FTA has been held up by the medical technology industry as a gold standard agreement, with strong provisions that assure transparency and due process in medical device reimbursement decisions. Unfortunately, the Korean government continues to implement medical device reimbursement policies in a manner that is inconsistent with the letter and spirit of the agreement. Despite strong efforts by the U.S. government to ensure enforcement KORUS provisions impacting medical technology companies and direct industry discussions with the South Korean government, there remain significant issues with the implementation of transparency provisions, continued lack of meaningful advance notice and industry engagement and input, and continued issues with support for innovative medical technologies.

For trade agreements like KORUS to be successful, it is vital that they result in opening markets concretely and comprehensively and that they include the strongest possible standards. Unless we remain vigilant throughout the implementation process, we risk losing the hard won gains of the agreement itself.

As Korea looks toward the possibility of joining the TransPacific Partnership, it is critical that the Korean government reaffirm its commitment to full implementation of its obligations under

KORUS. Sustained attention and continued concerted effort are needed to address the South Korean government's failure to implement all of their KORUS commitments fully.

Conclusion

AdvaMed appreciates the Finance Committee's review of the KORUS FTA and its attention to the difficult and ongoing challenges that the medical technology industry is facing in seeking to realize fully the benefits of the KORUS FTA. We urge the Committee and the Administration to continue to work strenuously to ensure full implementation, including considering where appropriate and needed the use of the FTA-negotiated dispute settlement procedures so that industries, workers, consumers and communities in the United States can benefit fully from the strong provisions that were negotiated.

Statement for the Record
American Chemistry Council
700 2nd Street, NE
Washington, D.C. 20002

Senate Committee on Finance Subcommittee on International Trade,
Customs & Global Competitiveness Hearing on "The U.S.-Korea Free Trade Agreement:
Lessons Learned Two Years Later"

July 29, 2014

The American Chemistry Council (ACC) is pleased to provide the following statement for the record to the Senate Finance Committee's hearing on lessons learned two years after entry into force of the U.S.-Korea Free Trade Agreement (KORUS FTA).

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC is committed to improved environmental, health and safety performance through Responsible Care, common sense advocacy designed to address major public policy issues, and health and environmental research and development.

The U.S. business of chemistry is a $770 billion enterprise and a key element of the nation's economy. It is the nation's second largest exporter, with over $188 billion in exports in 2013, accounting for twelve percent of all U.S. exports. The U.S. chemical industry is in the midst of an unprecedented boost in competitiveness, largely due to the increased supply of low-cost natural gas, a feedstock and a power source for chemical manufacturing. Over US$100 billion in new investments or expansions of existing facilities have been announced as a result of this boom, around half of which is foreign direct investment. ACC forecasts U.S. chemical exports to grow significantly in future years, surpassing US$200 billion in 2014 and expanding nearly 8 percent per year through 2018. This makes the search for new markets, and the reduction or elimination of trade barriers in existing ones, a core priority for the U.S. chemical industry. Trade agreements are a vital means of addressing such barriers and capitalizing on the chemical industry's expansion to promote economic growth and job creation, enhance U.S. competitiveness, and expand consumer choice.

ACC and its members have a strongly supported the negotiation and implementation of the KORUS FTA. U.S. chemical exports to South Korea total $6.7 billion per year, representing a significant commercial market for our members. The agreement lays out strong requirements on opening markets, eliminating tariff and non-tariff barriers and setting in place clear rules on issues ranging from trade facilitation, intellectual property and investment to transparency and competition policy. The commitments included in the KORUS FTA serve as an important template in the growing and dynamic Asia-Pacific region.

Given the significance of this agreement, ACC and its members have concerns regarding the implementation of the FTA and the precedent this sets for future engagement in the Asia-Pacific

region. Of particular concern to ACC members are the excessive rules of origin verification requirements that are resulting in ACC members being denied access to KORUS tariff benefits. ACC and its members have discussed this issue with the Office of the United States Trade Representative (USTR), U.S. Commercial Service Officers in Seoul and South Korean government officials. Despite both industry and the Administration's efforts, the excessive rules of origin verification system has not been resolved. Sustained attention is needed to address the South Korean government's failure to implement rules of origin in a reasonable and impartial manner.

Another concern we would like to bring to your attention deals with the recent implementation of the Act on Registration, Evaluation, Authorization and Restriction of Chemical Substances ("Korea REACH")[1] which may impose non-tariff trade barriers. The Act will enter into force on January 1, 2015, and if implemented as written, would result in the registration of priority existing chemicals (> 1 tonne/yr) and all new chemicals (with no volume threshold). Experience with EU REACH has shown that it is extremely burdensome, costly, hinders innovation, and is more resource intensive than required. The major impact from Korea REACH will be the resulting cost from registration and testing which will disproportionally impact SMEs. The Ministry of Environment (MOE) is currently consulting with other government agencies and stakeholders as it revises the implementing regulations that detail the requirements of the regulations through Presidential and Ministerial decrees.

ACC identified a number of key issues and concerns in comments submitted to MOE that require further clarification in the implementing regulations in an attempt to minimize the burden associated with Korea REACH including:

1) Delaying the timeline for implementation and compliance with Korea REACH to 2019 considering the lack of guidance and clarification documents regarding the scope of substances subject to registration;
2) Protection of Confidential Business Information (CBI) by establishing provisions for direct reporting of CBI to MOE by non-Korean suppliers or "foreign manufacturers";
3) Providing clear definitions and criteria for all exemptions and also removing the application requirement for exemptions; and
4) Reducing the frequency and scope of annual reporting of chemical substances.

Many of these same issues and concerns were raised by U.S. government officials and shared with the South Korean government officials in the June 2013 KORUS Technical Barriers to Trade (TBT) consultations in Seoul and in separate bilateral discussions with the Director General of the Chemicals Management Division of the Ministry of Environment (MOE). We appreciate USTR's and the Commerce Department's efforts, as well as those of the U.S. Commercial Services in Seoul, in advocating industry's key concerns to the Korean authorities. It is important for South Korea to address these major concerns.

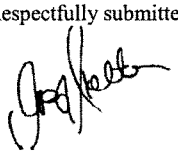
Implications for Trans-Pacific Partnership (TPP) Agreement:
South Korea has expressed interest in joining the TPP. ACC would support the inclusion of South Korea in the TPP so long as obligations under KORUS are fulfilled and South Korea demonstrates its commitment to implement the high standards of the TPP with no a priori

[1] Act on Registration, Evaluation, Authorization and Restriction of Chemical Substances, Bill No. 1904754, was passed by the National Assembly on April 30, 2013 and signed into law on May 22, 2013.

exclusions. Encouraging the inclusion of additional trading partners – who are ready to commit to the ambitious parameters of the agreement – is an important U.S. trade objective in the TPP. ACC analysis shows that the TPP agreement has the potential of generating at least $1.2 billion in export growth for the chemical industry. In addition to eliminating tariffs on chemical trade, ACC strongly support efforts to strengthen cooperation on regulatory issues in the region.

Finally, to ensure the conclusion of comprehensive and ambitious trade agreements (TPP and Transatlantic Trade and Investment Partnership (TTIP)), it is essential that Congress grant renewed Trade Promotion Authority (TPA). It is simply not feasible to expect our negotiating partners to put their best offers on the table in the absence of TPA. Updating TPA would help strategically guide U.S. negotiating goals across a range of critically important issues including defining negotiating scope, procedures, structure framework, and pathway for addressing issues before, during and after the negotiations. ACC urges the Administration and Congress to move expeditiously on bipartisan legislation to renew TPA.

Respectfully submitted,



Greg Skelton
Senior Director, Regulatory & Technical Affairs
American Chemistry Council

NATIONAL ASSOCIATION OF
Manufacturers

Leading Innovation. Creating Opportunity. Pursuing Progress.

Statement for the Record

National Association of Manufacturers
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Senate Committee on Finance
Subcommittee on International Trade,
Customs & Global Competitiveness

on "The U.S.-Korea Free Trade Agreement:
Lessons Learned Two Years Later"

July 29, 2014

Statement for the Record

Senate Committee on Finance
"The U.S.-Korea Free Trade Agreement: Lessons Learned Two Years Later"

July 29, 2014

The National Association of Manufacturers (NAM) is pleased to provide the following statement for the record to the Senate Finance Committee's hearing on lessons learned two years after entry into force of the U.S.-Korea Free Trade Agreement (KORUS FTA).

The NAM is the largest manufacturing association in the United States, representing businesses small and large in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million women and men across the country, contributing more than $2.08 trillion to the U.S. economy in 2013 alone.

The NAM has long championed a robust trade policy to grow manufacturing in the United States. At its core, an ambitious and pro-manufacturing U.S. trade policy should seek to open markets and level the playing field overseas, improve the competitiveness of manufacturers in the United States and ensure the strong enforcement of the rules of the trading system at home and by our trading partners.

Manufacturers in the United States are most successful when our trading partners play by the same basic trade rules, including treating our products on an equal basis in their markets and not providing their own industries with special advantages that tilt the playing field. For that reason, the NAM strongly supports trade agreements as a vital means to level the playing field in overseas markets and to give businesses of all sizes better access to an $11 trillion global market for manufactured goods and the 95 percent of the world's consumers who live outside our borders.

Trade agreements, such as the KORUS FTA, set the rules of the global economy. Without these types of important trade agreements, there would be no rules to enforce globally. Currently, the United States has trade agreements with 20 countries that have enhanced the ability of manufacturers to compete in those markets. Indeed, America's 20 existing trade agreement partners account for less than 10 percent of the global economy but purchase nearly half of all U.S. manufactured goods exports.

For trade agreements like KORUS to be successful, however, it is vital that they be negotiated to open markets concretely and comprehensively and that they include the strongest possible standards to ensure a level playing field. The work does not end with the negotiation; such agreements must be

implemented fully when they enter into force and thereafter. In many cases, a large amount of continued work is required to ensure that our trading partners fully implement agreed commitments. Unless we remain vigilant throughout the implementation process, we risk losing the hard won gains of the agreement itself. When countries fail to implement their obligations, the United States government should not hesitate to work with our trading partners, and if needed, invoke the agreement's dispute settlement provisions, to ensure effective enforcement. In short, our trade agreements must be more than words on a piece of paper.

With the 15th largest economy in the world of $1.1 trillion and a population of 49 million, South Korea represents an important and growing market for U.S. goods and services. The NAM strongly supported the conclusion and Congressional approval of the KORUS FTA in 2011 based in large part on its strong provisions to eliminate tariff and non-tariff barriers and set high standards that together would concretely open South Korea's market to U.S. exports and sales.

Operation of the KORUS FTA

In many ways, the KORUS FTA is one of the strongest agreements negotiated. It lays out broad requirements for South Korea to eliminate tariff and non-tariff barriers and set in place strong rules on issues ranging from trade facilitation, intellectual property and investment to transparency and competition policy. Each of these commitments is backed up by binding dispute settlement provisions that ensure commitments will be implemented. Given the KORUS FTA's strong market-opening provisions, high standards and strong enforcement mechanisms, it is an agreement that manufacturers strongly supported.

Under the KORUS agreement, more than 95 percent of U.S. industrial and consumer goods were to be eligible to enter the South Korean market duty-free immediately upon implementation. Upon entry into force, Korea officially eliminated a wide number of tariffs and other barriers in accordance with its KORUS FTA obligations, which have helped to spur new commercial opportunities and growth in U.S. goods exports and sales to Korea.

While South Korea experienced slow economic growth in 2012 and 2013,[1] U.S. exports to South Korea did increase during that period. As shown in Table 1, exports of U.S. manufactured goods to South Korea have increased 3.1 percent or $1 billion since the agreement was implemented. U.S. imports of manufactured goods from South Korea have also grown nearly ten percent, $55.5 billion in 2011 to $60.8 billion in 2013, widening the overall U.S. trade deficit with South Korea in manufactured goods.

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[1] Korean Statistical Information Service.

Table 1: U.S. Manufactured Goods Exports to and Imports from South Korea, 2011 to 2013

NAICS Total Manufactures (U.S.$)	2011	2012	2013	Percent Change (2011-13)
Exports	34,384,473,552	34,799,439,999	35,463,779,824	3.1%
Imports	55,492,504,271	57,691,702,159	60,873,056,065	9.7%
Trade Balance	-21,108,030,719	-22,892,262,160	-25,409,276,241	20.4%

Source: U.S. Census Bureau data, compiled by the International Trade Administration, U.S. Department of Commerce, based on North American Industry Classification System (NAICS), accessed at TradeStatsExpress, *http://tse.export.gov/TSE/TSEhome.aspx*.

As shown in Table 2, more recently, U.S. manufactured goods exports to South Korea grew 20.2 percent from the first quarter of 2011 (January to March) to the first quarter of 2014 (January to March). Korean manufactured exports to the United States over the same period grew 21.9 percent. The NAM will be continuing to review these data throughout the rest of 2014 as trends may change throughout the year.

Table 2: U.S. Manufactured Goods Exports to and Imports from South Korea, January to March 2011 to 2014

NAICS Total Manufactures (U.S.$)	Jan. –Mar. 2011	Jan.-Mar. 2012	Jan.-Mar. 2013	Jan.-Mar. 2014
Exports	7,876,412,594	9,169,205,290	8,890,914,085	9,474,246,794
Imports	12,470,539,888	13,424,351,096	14,677,294,082	15,205,568,112
Trade Balance	-4,594,127,294	-4,255,145,806	-5,786,379,997	-5,731,321,318

Source: U.S. Census Bureau data, compiled by the International Trade Administration, U.S. Department of Commerce, based on North American Industry Classification System (NAICS), accessed at TradeStatsExpress, *http://tse.export.gov/TSE/TSEhome.aspx*.

In addition to the elimination of tariff and non-tariff barriers, KORUS has helped improve transparency in South Korea's regulatory system for some sectors, opened markets to investment and provided stronger investment protections and has helped strengthen protections for intellectual property rights

by improving the enforcement of copyrights, patents and trademarks and by lengthening the terms of copyrights.

Outstanding Implementation Concerns

Despite these positive indicators, the NAM has also heard significant concerns about the implementation of the KORUS FTA across a wide range of U.S. manufacturing industries that continue to face serious challenges in South Korea. The broad spectrum of issues and sectors affected include:

- Refusal to accept self-certification of origin and excessive origin and other verification requirements that are denying manufacturers in the United States access to the KORUS FTA tariff benefits;
- A range of new and modified non-tariff barriers on auto imports into South Korea that are preventing the promised opening of that market, including the development of new emissions regulations, such as bonus/malus, that would improperly penalize U.S. automotive exports to South Korea;
- The imposition of new noise standards on motorcycles that limit the use of large motorcycles on South Korean highways;
- The failure to implement fully *de minimis* rules on an MFN basis and without exception (*e.g.*, for e-commerce);
- The lack of full implementation of transparency and due process provisions for pharmaceutical products and medical devices, including but not limited to, not appropriately rewarding innovation as set out in the agreement; and,
- Increased misuse of antitrust policies to foster industrial policy, setting a dangerous precedent for the region and in complete disregard of the agreement's competition obligations.

The NAM and its members have discussed these issues with the Office of the United States Trade Representative (USTR) and appreciate that President Obama, USTR and other parts of the Administration have been working diligently with the government of South Korea towards resolving these serious issues to ensure that that government fully lives up to its KORUS obligations. As a result of the underlying KORUS commitments and the direct intervention of the U.S. government and industry, some issues have been resolved.

Despite these strong efforts and direct industry discussions with the South Korean government, however, the issues identified above remain outstanding and, in some cases, are getting worse. Sustained attention and continued concerted effort are needed to address the South Korean government's failure to implement all of their KORUS commitments fully.

Unlike barriers that manufacturers face in non-free trade agreement (FTA) countries, however, South Korea has committed to high standard provisions

backed up by binding enforcement mechanisms. That is the strong value that FTAs provide in helping manufacturers secure a more level playing field in foreign markets. While dialogue can and has been effective in some cases, there is concern that dialogue is not producing the results needed in all areas – even after two years of discussions. Manufacturers in the United States are continuing to lose out to their competitors in Europe and in other countries with FTAs that are not facing the same difficulties in South Korea, and those losses in the market have very real impacts here at home on decisions about future investment and job retention. It is time for the dispute settlement provisions of the KORUS FTA to be considered for those areas where South Korea's actions are inconsistent with their FTA commitments and where dialogue is producing no substantial improvements in South Korea's effective implementation of its commitments.

The non-politicized dispute settlement processes contained in the World Trade Organization (WTO) and in our FTAs are exactly the type of enforcement tool that has prompted strong support from a wide variety of U.S. industries and Congress. The inclusion of these processes in each of the United States' major FTAs helps ensure that the commitments made are enforced and that market access issues and other problems are successfully resolved.

South Korea's desire to join the Trans-Pacific Partnership (TPP) talks adds new focus to its implementation of the KORUS FTA such that South Korea should reaffirm concretely by full implementation of its KORUS obligations that these types of trade agreements represent meaningful commitments that will be implemented in good faith.

The NAM strongly appreciates U.S. government efforts to resolve critical KORUS FTA implementation issues and urges it to continue working on full implementation using all the tools at its disposal.

Importance of Trade Promotion Authority

As indicated at the outset, the NAM strongly believes that a robust trade policy to grow manufacturing in the United States must include the negotiation and implementation of new trade agreements that open new markets for U.S. exports and sales. In addition, an ambitious trade agenda must encompass polices that improve the competitiveness of manufacturers in the United States and ensure that trade rules and international obligations of the United States and our trading partners are fully enforced. In manufacturing communities across America, the gains from trade can and should be increased through the negotiation of new market-opening trade agreements. While the United States achieved a record level of $1.38 trillion in manufactured exports, in 2013 – with nearly half of those exports going to our 20 free trade agreement partners –

America can and should do better to expand manufacturing and jobs here at home.

Manufacturers in the United States continue to face real barriers overseas, most prominently, with countries where we have not negotiated free trade agreements. Tariffs and non-tariff barriers and the lack of transparency to the weak protection of intellectual property and the lack of basic rules of fairness with respect to investments overseas limit many manufacturers' ability to reach their full potential. Furthermore, manufacturers are losing ground and increasingly being shut out of foreign markets as our competitors in Canada, China, the European Union, Mexico and elsewhere benefit from preferential agreements negotiated by their governments that exclude U.S.-manufactured goods from new market openings and therefore create an even greater competitive disadvantage for manufacturers in the United States.

To address this growing competitive imbalance, the NAM has long championed Trade Promotion Authority (TPA) so that U.S. negotiators can bring back the type of high-standard, comprehensive, and market-opening trade agreements that have driven export growth and supported and grown jobs across the country. TPA legislation is absolutely vital.[2] TPA has been in place and was utilized during the negotiation and implementation of the Uruguay Round Agreements creating the WTO and for FTAs negotiated with 20 countries since 1974.[3] Since TPA was put in place most recently in 2002, U.S.-manufactured goods exports more than doubled from $623 billion to $1.38 trillion.[4] Those exports support millions of American jobs, including, for example, 212,000 in Michigan, 189,000 in Pennsylvania, 185,000 in New York and 107,000 in New Jersey.[5] In Oregon, Delaware and Maryland, manufacturing accounts for more than 80 percent of all state exports. Full state fact sheets are available on the NAM's website.[6]

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[2] It is sometimes argued that hundreds of trade agreements have been negotiated without TPA. Those agreements are not the type of agreement that opens markets overseas or includes binding and state-of-the-art dispute settlement. For example, Trade and Investment Framework Agreements provide a useful opportunity for the United States to engage in economic discussions with foreign governments, but do not obligate either country to open its market or address barriers.

[3] Of all U.S. market-opening FTAs, only the U.S.-Jordan FTA was implemented without TPA. Notably, the Jordan FTA is much less comprehensive or developed than our other FTAs, and most prominently lacks the state-of-the-art time-limited dispute settlement provisions that are found in the North American Free Trade Agreement and all subsequent FTAs.

[4] U.S. Department of Commerce, International Trade Administration, **TradeStats Express**, accessed at http://tse.export.gov/TSE/TSEhome.aspx.

[5] NAM, **U.S. Manufacturing Statistics – Manufacturing and Trade Data by State**, accessed at http://www.nam.org/Statistics-And-Data/State-Manufacturing-Data/Manufacturing-by-State.aspx.

[6] Id.

Earlier this year manufacturers welcomed introduction of the Bipartisan Congressional Trade Priorities Act of 2014.[7] This legislation sets forth the much-needed Executive-Congressional framework to ensure that both branches of government work to achieve the strongest possible outcomes in our trade agreements. This legislation also provided important updates to the traditional TPA framework, including with respect to priority negotiating issues. From the NAM's perspective, this legislation provides the type of framework needed to secure new, market-opening trade agreements.

Action on TPA is essential to ensure that U.S. negotiators can bring home the strongest possible outcomes in the ongoing Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (T-TIP) talks that will set in place new and stronger rules to create new commercial opportunities globally. These agreements need to provide substantial new and concrete market access, include the strongest possible outcomes on key issues important for manufacturers from transparency and intellectual property to investment, fair competition rules with both private and state-owned entities, new rules to ensure that data may be moved across borders, and strong enforcement provisions to ensure full implementation. If successful, these agreements will expand access for manufacturers in the United States to more than 60 percent of the world's economy. To open markets and provide major new opportunities to grow manufacturing in the United States, the NAM, therefore, urges this Committee to move TPA to the floor as quickly as possible.

Conclusion

The NAM appreciates the Finance Committee's review of the KORUS FTA and its attention to the difficult and ongoing challenges that a number of manufacturing industries are facing in seeking to realize fully the benefits of the KORUS FTA. We urge the Committee and the Administration to work strenuously to ensure full implementation, including considering where appropriate and needed the use of the FTA-negotiated dispute settlement procedures so that industries, workers, consumers and communities in the United States can benefit fully from the strong provisions that were negotiated. The NAM also urges the Committee to act quickly to reauthorize TPA so that the United States can achieve even stronger outcomes in the ongoing negotiations in the Asia Pacific and with Europe and more broadly.

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[7] NAM, **Statement for the Record for Senate Finance Committee Hearing on "Advancing Congress' Trade Agenda, the Role of Trade Negotiating Authority**," (Jan. 16, 2014, accessed at http://www.nam.org/~/media/CD7BF524D1244FCD82CDB106EEFDE6E4.ashx.

Written Comments Of
National Pork Producers Council
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On

The U.S.-Korea Free Trade Agreement:
Lessons Learned Two Years Later
July 29, 2014

United States Senate
Finance Subcommittee on International Trade,
Customs and Global Competitiveness

Submitted on August 4, 2014

The National Pork Producers Council (NPPC) hereby submits comments in response to the Committee on Finance hearing on July 29, 2014, on "The U.S.-Korea Free Trade Agreement: Lessons Learned two Years Later." This submission is for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

Introduction

The National Pork Producers Council (NPPC) is an association of 44 state pork producer organizations that serves as the voice in Washington for the nation's pork producers. The U.S. pork industry represents a significant value-added activity in the agriculture economy and the overall U.S. economy. Nationwide, more than 69,000 pork producers marketed more than 111 million hogs in 2013, and those animals provided total gross receipts of over $20 billion. Overall, an estimated $21 billion of personal income and $35 billion of gross national product are supported by the U.S. hog industry. Economists Dan Otto and John Lawrence at Iowa State University estimate that the U.S. pork industry is directly responsible for the creation of nearly 35,000 full-time equivalent pork producing jobs and generates about 128,000 jobs in the rest of agriculture. It is responsible for approximately 111,000 jobs in the manufacturing sector, mostly in the packing industry, and 65,000 jobs in professional services such as veterinarians, real estate agents and bankers. All told, the U.S. pork industry is responsible for more than 550,000 mostly rural jobs in the United States.

Exports of pork continue to grow. New technologies have been adopted and productivity has been increased to maintain the U.S. pork industry's international competitiveness. As a result, pork exports have hit new records for 20 of the past 22 years. In 2013, the United States exported more than $6 billion of pork, which added about $54 to the price that producers received for each hog marketed. Net exports last year represented almost 26 percent of pork production. The U.S. pork industry today provides 23 billion pounds of safe, wholesome and nutritious meat protein to consumers worldwide.

United States-Korea Free Trade Agreement

For the U.S. pork industry, the United States-Korea Free Trade Agreement (KORUS FTA) is an extremely important trade agreement. South Korea is our fifth largest overseas market, with U.S. pork sales valued at $284 million in 2013.

The KORUS provides the kind of access opportunities for U.S. pork that NPPC would like to see in all U.S. FTAs. South Korean import duties on most U.S. pork cuts of commercial significance were lowered to zero on January 1, 2014. Import duties on all U.S. pork products are eliminated over a short period of time. Safeguards are applied to a very small number of commercially insignificant pork tariff lines, and where they exist, they are phased out over a short time period.

The KORUS, in our view, set the stage for the current Trans-Pacific Partnership (TPP) negotiations by demonstrating to other Asian countries that they can obtain open access to the U.S. market if they are willing to provide the same kind of duty-free market access opportunities to the United States.

Following the implementation of the KORUS in March 2012, U.S. pork exports to South Korea actually declined somewhat, totaling 102,000 metric tons in 2013. However, we expect this to be

a short-lived decline and are very bullish on the long-term prospects for U.S. pork sales to South Korea under the KORUS.

The United States was able to achieve an extraordinary agreement with South Korea on pork despite the fact that the South Korea livestock industry was adamantly opposed to the KORUS and to free trade with the United States. South Korea's politically powerful farmers were extremely vocal, and sometimes even violent, in their opposition to the KORUS. Despite this strong political pressure, the South Korean government took the courageous action of going to fully free trade in pork under the KORUS.

South Korean tariff commitments on pork under the KORUS are in stark contrast to the position Japan has taken in the Trans-Pacific Partnership (TPP) negotiations. After months of grueling TPP talks, Japan still insists that it must maintain high duties on U.S. pork, under what is commonly referred to as the Gate Price. Japan takes this position despite the fact that it committed at the time it joined the TPP negotiations to comprehensive tariff elimination for all products.

Opening the market to U.S. pork is no more politically sensitive in Japan than it is in South Korea. As noted, the South Korean government withstood intense pressure from its livestock producers, who wanted to maintain duties on pork and other meat products under the KORUS. U.S. FTA developing country partners, such as the Central American countries, have also agreed to eliminate duties on U.S. pork despite the high level of political sensitivity and the disproportionate size of the agricultural sector in these countries. There is absolutely no reason Japan should be treated differently from other U.S. FTA partners. As we have noted in earlier letters and submissions to Congress, allowing Japan to maintain duties on pork and other agricultural products in the TPP would not only seriously damage our trading prospects with Japan, it would severely compromise the ability of the United States to seek duty elimination in all other current and future FTA negotiations.

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