



THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

1667 K STREET, NW • SUITE 1000 • WASHINGTON, DC 20006-1620

April 21, 2006

VIA E-MAIL

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Re: Comments on the Proposed United States-Republic of Korea Free Trade Agreement

Dear Ms. Blue:

The Society of the Plastics Industry, Inc. (SPI) hereby responds to the Trade Policy Staff Committee's request for comments on the proposed free trade agreement with the Republic of Korea. See 71 Fed. Reg. 6820 (Feb. 9, 2006). We welcome the opportunity to discuss the plastics industry's views on these important free trade negotiations.

Introduction

SPI is the only U.S. plastics industry trade association representing companies that operate in the primary segments of the supply chain – plastics products processors, manufacturers of machinery, molds, and raw materials (resins, polymers, additives, and colorants). Our 1,100 members participate in an industry that in 2004 shipped goods worth \$345 billion worldwide and employed 1.3 million workers in nearly 19,000 facilities in all 50 states. SPI's members range from large multinational corporations to small and medium-sized companies, many of which are family-owned businesses, all playing a vital role in the delivery of myriad plastics products that enhance every aspect of our lives.

In 2005, the plastics industry shipped goods worth \$883 million to the Republic of Korea. However, plastics imports from Korea were valued at \$1.16 billion, resulting in a deficit of nearly \$300 million in bilateral plastics trade. Therefore, while SPI supports, in principle, free trade talks with Korea, it is imperative that the final agreement result in a comprehensive and balanced relationship that achieves concrete market access for plastics industry goods and embodies the principle of reciprocity. With respect to a Free Trade Agreement (FTA) with Korea, this principle of reciprocity extends to two areas: reciprocity in market access and reciprocity in exchange rates.



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Reciprocity in Market Access

Most products manufactured and sold by SPI's members are covered by the following categories (at the four digit level) of the Harmonized Tariff Schedule of the United States (HTS):

Chapter 39 – Plastics and Articles Thereof

- 3901-3914: Resins/Polymers (raw materials)
- 3915-3926: Plastics products (manufactured goods, including intermediate, semi-finished, and finished products)

Chapter 84 – Nuclear Reactors, Boilers, Machinery and Mechanical Appliances; Parts Thereof

- 8477: Plastics machinery and parts
- 8480: Molds for plastics

Resins: Generally, U.S. tariffs on plastics resins are lower than those of Korea. Although Korea has generally adopted the chemical harmonization rates of 6.5%, U.S. tariffs are, for the most part, at that rate or lower. Given that resins are the raw materials used in plastics manufacturing operations, the plastics industries in both countries would benefit from immediate elimination of tariffs on these products. If, however, Korea is granted longer phase-in periods for particular resins (e.g., for polyterpenes classified at subheading 3911.10.30, Korea imposes an 8% tariff), then SPI requests that the same period be used to phase out U.S. tariffs.

Plastics Products: We are particularly concerned about tariff elimination on processed plastics products (HTS 3915-3926). Elimination of Korean tariffs on plastics manufactured goods is important to the industry because plastics processors comprise approximately 60-70% of the total domestic shipments of the plastics industry. This is also the industry segment dominated by small and medium-sized manufacturers. Plastics processors drive demand for resins/polymers (raw materials), machinery, and molds. The economic stability of our processors can impact the overall health of the industry.

In recent free trade agreements, such as those negotiated with Central American and Andean countries, tariffs on processed plastics products have been subject to longer phase-end periods while U.S. imports from these countries already had duty-free access via U.S. preferential trade programs. Given that Korea is a much larger and diverse market, SPI attaches great importance to reciprocity in the tariff treatment of plastics products.

Korean tariffs are uniformly at the rate of 6.5%, while U.S. tariffs are at that rate or lower. The plastics industry is already facing stiff competition from imports, resulting in a deficit that reached a record level high of \$ 6.1 billion last year. China is the largest contributor to the negative and declining balance of plastics product trade, with a bilateral deficit of \$6.4 billion in



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these products. Reducing rates of duty further on imports of plastics products would exacerbate an already unfavorable situation by increasing imports from Korea. Consequently, SPI requests that any phase-out use the maximum period allowed in the agreement and that any tariff reduction be reciprocal in that phase-out period for products falling under headings 3916-3926, inclusive.

Plastics Molds: Korean tariffs of 8% are far higher than U.S. tariffs ranging from zero to two percent. Overall, imports are more than double the level of U.S. exports. Because of the tariff disparity, the United States' manufacturers could benefit substantially from immediate tariff elimination of duties on plastic molds and would create immediate reciprocal treatment of these products for both industries. Any extended tariff phase-out would diminish any benefit to U.S. producers.

Plastics Machinery: Korean tariffs of 8% are far higher than U.S. tariffs of 3.1%. U.S. imports of these products are almost double U.S. exports and immediate elimination of duty would have a positive impact on the trade balance. SPI recommends that, because of this disparity, that tariffs on these products be eliminated immediately to achieve reciprocal tariff treatment and to maximize the benefits of tariff reductions for U.S. manufacturers. Any extended tariff phase-out would diminish any benefit to U.S. producers.

Reciprocity in Exchange Rates

The deteriorating trade balance in U.S. plastics trade has been greatly influenced by the maintenance of undervalued currencies in the Asia-Pacific region, including the Korean won. During the Asian Financial Crisis, Korea – like other countries in the region – witnessed the decline in the value of its currency to align with the Chinese yuan, which had depreciated in 1994. Since then, South Korea has maintained an undervalued currency in order to retain its competitive position with respect to China. As a result, Korea's foreign exchange reserves have almost tripled from \$88 billion in 2000, to \$217 billion in January 2006. This increase in foreign exchange reserves has resulted in increases in Korea's money supply, increased credit, and increased excess production capacity, a direct result of a concerted government policy to maintain an undervalued currency to increase employment and to expand exports. SPI believes that South Korea's policy of subsidizing its exports through its exchange rate distorts competition and unfairly disadvantages U.S. manufacturers of resins, plastic products, molds and machinery.

In this regard, some mechanism in the FTA is necessary that requires Korea to maintain a market-determined exchange rate that is not the result of government interference, in one direction, which results in an undervalued currency. SPI believes that currencies should be a neutral factor in determining competition for markets and that currency valuation should be



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determined by market fundamentals, not government policies, to pursue export-led growth through a subsidized currency.

Non-Tariff Barriers

A comprehensive FTA with Korea should also address the plethora of regulatory and standards-related issues that impede access to Korea's market. The plastics industry has specific concerns about the following Korean measures:

(1) Korea's Food Sanitation Act

Administered by the Korean Food and Drug Administration (KFDA), this law regulates the materials that may or may not be used in plastic food packaging. Korea currently permits approximately 40 polymer resins to be used in plastic food packaging. It does not, however, identify processing aids, catalysts, or adjuvants that may be used in the manufacturing of each polymer. If the material is not identified on the KFDA's list of approved polymers, the manufacturer must obtain pre-market approval from the KFDA. This approval process requires the company to submit detailed proprietary information. Moreover, although the KFDA asserts that the typical review process takes 30 days, U.S. companies have experienced far more lengthy approval periods.

While we appreciate the KFDA's authority to regulate such materials for the protection of public health, the approval process may unnecessarily impede market access for U.S.-produced plastic packaging materials. For example, the U.S. Food and Drug Administration (FDA) and its counterparts in Europe and Canada have already subjected many of the materials omitted from the KFDA's approved list to extensive scrutiny and scientific analyses under their respective regulatory programs. In fact, the U.S. FDA has approved over 4,000 of such materials as components in food packaging products. SPI members that produce/supply these materials are currently subject to FDA's extensive regulations. Korea's acceptance as valid of those materials that are already accepted by the FDA would significantly enhance market access for these plastic packaging materials.

We also note that colorants used in plastic food packaging materials are treated as additives under Korea's Food Sanitation Act and the Food Additive Code. We recall that USTR has already raised concerns with the Korean government about implementation of import clearance procedures as related to agricultural products.¹ Given the broad coverage of the Food Additive Code, U.S. plastics companies confront similar obstacles for their plastic packaging materials marketed/sold in the Korean market.

¹ See 2006 National Trade Estimate Report on Foreign Trade Barriers (NTE Report) at 396-97; 2005 NTE Report at 362-64.



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(2) Packaging and Labeling Standards

We urge USTR to continue to raise concerns with Korea's standards that severely restrict the use of PVC-shrink wrap and promotional packaging.² As the United States has noted, Korea's rationale for its restrictions is overly broad and unnecessarily impedes market access for such packaging in the Korean market.

(3) Toxic Chemical Control Law (TCCL)

SPI's resin/polymer-producing members are also concerned about Korea's implementation of its chemical regulatory system. Although recent amendments to the TCCL have alleviated certain burdensome reporting requirements, U.S. exporters remain subject to other onerous provisions. For example, under the amended TCCL, importers must submit the "Confirmation Document on Chemical Substances" once a year for *each* chemical product. This requirement is an enormous burden on U.S. companies that export myriad chemical products to the Korean market, particularly when these products have already been registered and approved under the TCCL system. Korea also now requires a separate filing for imported products that qualify for a low-volume exemption. To our knowledge, Korea is the only authority that imposes such a requirement on exempted imports.

Practical considerations also give reason to believe that imported and domestically-produced chemical products are treated differently. Imports are subject to a stringent product registration process and clearance by the Korean customs agency. However, there does not appear to be a clearly-designated enforcement authority to ensure compliance by Korean chemical producers. Moreover, the new confirmation documents for imports require a three-month lead time while domestic producers are afforded a six-month lead time for compliance with the new requirements. The rationale for this different treatment is not readily apparent and can give domestic producers a competitive advantage in terms of their ability to comply with the new confirmation requirements. The U.S. plastics industry believes that the lead time for product registration should be the same for imports and domestically-produced chemical products.

Finally, SPI members have raised concerns about inadequate transparency in the overall operation of the system. They cite difficulty in identifying the appropriate form to submit to the Korean Chemical Management Association because accurate and updated information regarding the products listed in the various categories (i.e., new, toxic, observational, restricted, or prohibited) is not readily available. If the Korean customs agency determines that documentation filed by the importer is incomplete or inaccurate, it will delay or reject the shipments.

² See 2006 NTE Report at 401; 2005 NTE Report at 370.



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A key objective for the FTA talks is addressing these troublesome aspects of Korea's regulatory framework under the Food Sanitation Act and the TCCL. Satisfactory resolution will enhance market access for U.S.-produced resins and food packaging materials.

Protection of Intellectual Property Rights

Sustained innovation to develop new materials, applications, processes, and highly efficient machinery is a hallmark of the U.S. plastics industry. The nearly \$40 billion in plastics industry goods exported from the United States last year attests to the significant worldwide demand for the superior, high-value goods manufactured by U.S. plastics companies. The plastics industry must be assured that its patents and trademarks, in particular, are not infringed upon to safeguard investments in innovation and competitiveness. For this reason, an effective mechanism to strictly enforce intellectual property rights protections is another key objective for the U.S.-Korea FTA negotiations for SPI members.

We urge USTR to obtain specific commitments from Korea to ensure better coordination between the Korean Food and Drug Administration and the Korean Intellectual Property Office to avoid market approval for goods that infringe upon existing patents. We also request U.S. trade negotiators to resolve problems that have arisen under "sleeper" trademark registrations. Such "sleeper" trademarks were registered prior to the institution of an effective screening process and works to the detriment of foreign trademark owners. Moreover, we fully support obtaining commitments from the Korean government to strengthen its enforcement mechanisms for trade in infringing goods. This is a particular concern with imports into Korea of counterfeited and pirated goods originating in China. While Korea has agreed to cooperate with the United States' "Strategy Targeting Organized Piracy" (STOP!), we would like to see specific commitments on steps Korea will take to combat the problem of goods infringing on intellectual property rights crossing its borders.

Sanitary and Phytosanitary Issues

Another area of great concern to SPI members is the unfair competitive advantage that Korean plastics producers are afforded from uneven regulations governing food contact substances or additives in their packaging materials. U.S. plastics companies that manufacture plastic packaging materials are subject to very stringent standards enforced by the U.S. Food and Drug Administration (FDA). Our members report that their Korean competitors are not subject to standards that are nearly as stringent as the U.S. FDA, but they may freely market and sell their materials in the United States because there is currently no U.S. enforcement



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mechanism to reject the goods at the border for failing to meet FDA's standards. We have learned of instances where SPI members have imported plastic bags from Korea and were

compelled to put them in landfills because the bags contained heavy metal pigments, which are prohibited in the U.S. market. Other members have detected substances in Korean-produced packaging materials which have been flagged as carcinogenic in FDA toxicology analyses.

Needless to say, Korean packaging imports that fail to meet the same standards that U.S. packaging materials must meet raise serious public health and safety concerns. This situation also gives Korean producers an unfair cost advantage because they do not have to comply with similarly stringent requirements. Thus, a potential impact of this FTA could lead to increased imports of Korean-produced packaging materials that do not meet FDA food contact substances and additive standards, resulting in a loss of market share for U.S. producers.

We strongly believe that USTR should further explore the comparability of food contact substances and additive standards with Korean authorities in the FTA talks. At a minimum, this issue should be identified as a specific topic for discussion in any Sanitary or Phytosanitary Consultative Mechanism established under the FTA. Such consultations should seek input from industry participants in both countries to explore the impact of different standards in the two markets.

Market Access for Critical Plastics End Markets

Finally, we emphasize the importance of addressing the concerns of several sectors that are critical to the plastics industry. The U.S. plastics industry is a major supplier to several key manufacturing sectors such as automotive, pharmaceuticals (packaging), electronic and electrical equipment, and medical devices and packaging – to name a few. We are aware that several of these industries have identified specific non-tariff barriers that impede market access for their goods. SPI members share their concerns because greater market access for these industries will generate economic benefits for the plastics industry. Therefore, we urge USTR to work closely with these industries to seek specific commitments from the Korean government to resolve their identified concerns.

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We hope the TPSC staff finds this information helpful as it develops its negotiating objectives for these talks. If you need additional information or have questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

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