

September 15, 2009



Ms. Carmen Suro-Bredie
Chairman
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: USTR-2009-0020 U.S.-Korea Free Trade Agreement

Dear Ms. Suro-Bredie:

In accordance with your office's *Federal Register* Notice of July 27, 2009, please find attached the comments of Intel Corporation regarding the U.S.-Korea Free Trade Agreement.

Sincerely,

A handwritten signature in cursive script that reads "Greg S. Slater/bk".

Greg S. Slater
Director, Global Trade and Competition Policy

A handwritten signature in cursive script that reads "Brian Huseman".

Brian Huseman
Senior Policy Counsel

Intel Corporation respectfully submits these comments in response to The Office of the United States Trade Representative's Request for Comments Concerning the Free Trade Agreement with the Republic of Korea ("KORUS FTA").

In addition to Korea being a key market for U.S. exports, the KORUS FTA has strategic importance for Intel and others in the U.S. semiconductor industry as a means for furthering trade liberalization initiatives in Asia. The majority of Intel's manufacturing is located in the U.S. and approximately 80% of its revenue is generated overseas, with the greatest portion coming from Asia.

Many of our major foreign competitors are pursuing negotiating strategies with Korea to open markets for their companies and workers on a preferential basis, putting American companies and workers at a severe competitive disadvantage. Korea now has FTAs with the EU and India (both in the last few months), Chile, Singapore, EFTA, and ASEAN. Korea currently is negotiating with Japan, Canada, Mexico, GUC, Australia, New Zealand and Peru, and preparatory discussions are underway with China, MERCOSUR, Turkey, Russia, Colombia, Israel, SACU. Products of the United States will face discrimination and higher tariffs than foreign products subject to these other trade agreements that Korea is or has negotiated if the KORUS FTA is not approved.

Accordingly, Intel strongly supports congressional approval of the KORUS FTA. These comments focus on three specific aspects of the Agreement -- the competition policy, technical barriers to trade and intellectual property chapters -- the value of which may not be fully evident to policy makers who have not been involved in the KORUS FTA negotiations.

Competition-related matters (Chapter 16)

There are now over 100 competition agencies established in the world. Many of these agencies are responsible for implementing new antitrust laws and have little to no experience on how to ensure investigations are conducted in a fair and efficient manner. The lack of adequate procedural safeguards in many antitrust regimes, an issue which is receiving increased academic attention, means that competition policy may not consistently produce the intended objectives of protecting the competitive process. Worse yet, it also means that competition policy can more easily be used as an industrial policy tool to protect domestic industries from foreign competition.

The competition chapter in the KORUS FTA goes beyond the antitrust related obligations set forth in prior U.S. FTAs by addressing a number of significant process issues, and as such, it will help promote the competitive process. This chapter hopefully will set a solid precedent for other FTAs with Asian countries in which emerging antitrust laws could be applied in a discriminatory manner against foreign companies.

There is a clear obligation in the FTA that each Party must have the authority to resolve administrative or civil enforcement actions by settlement (mutual agreement) with the subject of such actions (Art. 16.1.5). This is the first time such a provision has appeared in a U.S. FTA, and it will facilitate efficient and market-based resolution of

antitrust investigations. The settlement language in the FTA is a critical tool for breaking the Korean domestic stalemate on this issue and ensuring that its Assembly grants settlement authority to the Korea Fair Trade Commission (KFTC) settlement.

The competition chapter also contains state of the art due process provisions. The FTA clarifies that a person should be able to cross-examine witnesses and review all documents on which the charges against it (or the sanction or remedy) are based (Art. 16.1.3 and 16.1.4). Specifically, an entity under investigation will have an opportunity to present evidence in its defense, including a reasonable opportunity to review and rebut evidence and other collected information on which any determination or remedy would be based. There also is an opportunity to cross-examine any witness or other person who testifies. This language regarding cross-examination and review of documents is more specific than in prior FTAs.

The FTA includes an obligation that each Party publish rules of procedure for administrative hearings, including rules for introducing evidence (Art. 16.1.6). This obligation is a very useful addition to the text that helps address concerns regarding fair and transparent procedures in enforcement actions.

Finally, consistent with the U.S. position to develop international convergence on antitrust principles where possible, there is a consultation process provided for any policy or specific matter (Art. 16.1.7 and Art. 16.7). In sum, having clear obligations on settlement authority, due process, and transparency will help ensure fair treatment of U.S. companies by the KFTC.

Technical Barriers to Trade (Chapter 9)

Some high tech companies have had significant concerns in the past with non-tariff technical barriers to trade in Korea. Accordingly, the Agreement's requirement that Korea allow U.S. stakeholders to participate on an equal footing in regulatory proceedings and the development of standards and conformity assessments supported or promulgated by central government bodies is critical (Art. 9.2.1 and 9.6.1).

Intel also appreciates the Agreement's requirement to allow private parties to comment on technical regulations, standards, and conformity assessments that must be notified under the WTO Agreement on Technical Barriers to Trade (TBT) (Art. 9.6.3). These public participation rights extend beyond those provided by the TBT Agreement, which requires national treatment only as applied to importation of goods and provides that only governments, not their citizens or industries, can comment on developing technical regulations and standards. This chapter sets an excellent precedent for achieving the same important protections through FTAs with other Asian countries with similar trade barrier issues.

Under the Agreement, the Korean government also committed to provide national treatment to non-governmental conformity assessment bodies in the U.S. when testing and certifying U.S. products (Art. 9.5.3). Under Korean law, however, only governmental and quasi-governmental bodies can perform the certification for a broad

range of manufactured products. Thus, the foregoing commitment is of limited value at this time and the Korean government's overall control of the conformity assessment system remains a concern. In the meantime, however, it is useful that the Agreement requires a Party to explain its reasons for refusing to accredit, approve, license or recognize a body of the other Party assessing conformity with a technical regulation or standard that it already has successfully assessed in its own territory (Art. 9.5.3).

The agreement establishes a Technical Barriers to Trade Committee to monitor implementation, promote cooperation, and facilitate discussion of such topics as good regulatory practice and alternative regulatory approaches to facilitate the cross-border acceptance of conformity assessment results. This is a potentially useful body for addressing TBT issues.

Intellectual property (chapter 18)

Intel appreciates how well the KORUS FTA fills in the gaps in Korea's enforcement structure pertaining to intellectual property rights. Of note are (i) the FTA's criminalization of end-user piracy and counterfeiting (Art. 18.10.26); and (ii) except in exceptional circumstances, Korea's guarantees of authority to seize and destroy not only counterfeit goods but also the materials and equipment used to produce them, with such destruction being a requirement in criminal proceedings (art. 18.10.27) and at the right holder's request in civil proceedings with regards to the infringing goods (Art. 18.10.9). Moreover, under the FTA, customs officials can bring about IPR enforcement actions without having to wait for formal complaints from right-holders, who may not even know their goods have been counterfeited. (Art. 18.10.22. The Parties also have agreed to accede to the WIPO internet treaties. (Art. 18.1.3). As with other chapters in the KORUS FTA, not only are these provisions valuable with regard to a very important export market, but they also set a very useful precedent for future agreements with other countries in Asia.

Conclusion

In conclusion, Intel Corporation endorses the U.S. – Korea Free Trade Agreement. We believe the agreement is in the best economic interest of the United States. We also believe the U.S. – Korea agreement is a comprehensive state-of-the-art agreement that not only will benefit the U.S. and Korean economies and employment opportunities, but also will provide a strong base on which to construct additional bilateral or regional agreements in the Pacific region.

We appreciate the opportunity to comment on the Agreement.