

February 10, 2011

The Honorable Jong-Hoon Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to confirm the following understanding reached between the representatives of the Government of the Republic of Korea and the Government of the United States of America (“the Parties”) during the course of discussions regarding issues related to the *United States – Korea Free Trade Agreement* (KORUS):

Section A: Tariffs

1. Notwithstanding paragraph 2 of Article 2.3 and the United States Schedule to Annex 2-B of the KORUS, the United States shall eliminate duties on certain goods as follows:
 - (a) For originating goods of heading 8703 subject to staging category “A” or “C”, duties shall remain at the base rate during years one through four. Such goods shall be duty-free, effective January 1 of year five; and
 - (b) For originating goods of subheading 870390, duties shall be reduced in five equal annual stages, and such goods shall be duty-free, effective January 1 of year five.
2. Notwithstanding paragraph 2 of Article 2.3 and Korea’s Schedule to Annex 2-B of the KORUS, Korea shall eliminate duties on certain goods as follows:
 - (a) For originating goods of heading 8703 subject to staging category “A”, duties shall be reduced to four percent *ad valorem* on the date the KORUS enters into force. Duties shall remain at four percent *ad valorem* during years one through four, and such goods shall be duty-free, effective January 1 of year five;
 - (b) For originating goods of subheading 870390, duties shall be reduced to four percent *ad valorem* on the date the KORUS enters into force. Beginning on January 1 of year two, duties shall be reduced in four equal annual stages, and such goods shall be duty-free, effective January 1 of year five; and
 - (c) For originating goods of item 0203299000, duties shall be reduced to 16 percent *ad valorem*, effective January 1, 2012; 12 percent *ad valorem*, effective January 1, 2013; eight percent *ad valorem*, effective January 1, 2014; four percent *ad valorem*, effective January 1, 2015; and such goods shall be duty-free, effective January 1, 2016.¹

¹ For greater certainty, duties shall remain at the base rate until December 31, 2011 or the date that the KORUS enters into force, whichever is later.

Section B: Safety Standards

1. In lieu of paragraphs 2(a) and 2(b) of the self-certification provisions of the letters the Parties exchanged on June 30, 2007 regarding Chapter Nine of the KORUS, Korea shall provide that an originating motor vehicle² produced by a manufacturer that sold no more than 50,000 originating motor vehicles in the territory of Korea during the previous calendar year shall be deemed to comply with Korean Motor Vehicle Safety Standards (KMVSS) if the manufacturer certifies that the motor vehicle complies with U.S. Federal Motor Vehicle Safety Standards (FMVSS).^{3,4}
2. Korea shall provide that a motor vehicle replacement part shall be deemed to comply with KMVSS if the part complies with U.S. FMVSS and is designed to be installed on an originating motor vehicle that was deemed, pursuant to paragraph 1, to comply with KMVSS. If the part is regulated under KMVSS but not regulated under U.S. FMVSS, Korea shall provide that the part shall be deemed to comply with KMVSS if:
 - (a) it meets the same specifications and performance as the part originally installed on the motor vehicle at the time of its initial import; or
 - (b) it exceeds the specifications and performance of the part originally installed on the motor vehicle at the time of its initial import.⁵
3. Notwithstanding paragraphs 1 and 2, commercial vehicles⁶ shall comply with the KMVSS items identified in the attached Annex. On request of either Party, the Automotive Working Group as established by Annex 9-B of the KORUS shall discuss modification of the Annex, including its coverage.
4. (a) In exceptional circumstances, where the operation of paragraph 1 or 2 creates a serious risk for road safety, human health, or the environment based on substantiated scientific or technical information, Korea may take measures necessary to address the risk, provided that the measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable

² “Originating motor vehicle” means a motor vehicle that qualifies as an originating good of the United States for purposes of the KORUS.

³ For purposes of this Section, “U.S. FMVSS” refers to the whole set of safety standards with which motor vehicles of a particular type must comply in order to be sold or offered for sale in the United States.

⁴ For greater certainty, nothing in this paragraph shall prevent Korea from applying relevant provisions of Korea’s Automobile Management Act, as amended, relating to post-market verification and associated regulations pertaining to witnessing of tests and comments on the results of the compliance investigation, to verify the compliance of the originating motor vehicles with U.S. FMVSS. For that purpose, the United States shall, upon request, provide Korea with relevant scientific and technical information related to U.S. FMVSS without undue delay.

⁵ For greater certainty, nothing in this paragraph shall prevent Korea from applying relevant provisions of Korea’s Automobile Management Act, as amended, relating to post-market verification and associated regulations pertaining to witnessing of tests and comments on the results of the compliance investigation, to verify if the replacement parts are installed only on originating motor vehicles, to verify the compliance of the replacement parts with U.S. FMVSS, to verify if the parts meet the same specifications and performance as the parts originally installed on the motor vehicle at the time of its initial import, or to verify if the parts exceed the specifications and performance of the parts originally installed on the motor vehicle at the time of its initial import. For that purpose, the United States shall, upon request, provide Korea with relevant scientific and technical information related to U.S. FMVSS without undue delay.

⁶ “Commercial vehicles” does not include pickup trucks with a gross vehicle weight of 4.5 metric tons or less that comply with all U.S. FMVSS relevant for that vehicle type and are produced for general consumers rather than custom-built to a specific order.

discrimination against the products of the other Party or a disguised restriction on trade.

- (b) Before it implements any such temporary emergency measure, and as soon as practicable, Korea shall notify the United States and the importer, and provide an objective, reasoned and sufficiently detailed explanation of the motivation of the measure. Korea should in most cases provide interested persons and the United States a reasonable opportunity to comment on the measure.
- 5.
- (a) Neither Party shall prevent or unduly delay the placing on its market of a motor vehicle product on the ground that the product incorporates a new technology or a new feature which has not yet been regulated unless the Party can demonstrate, based on scientific or technical information, that this new technology or new feature creates a risk for human health, safety, or the environment.
 - (b) When a Party decides to refuse the placing on its market or require the withdrawal from its market of a motor vehicle product on the ground that the product incorporates a new technology or a new feature creating a risk for human health, safety, or the environment, the Party shall immediately notify the other Party and the importer of the product of its decision. The notification shall include all relevant scientific or technical information.

Section C: Transparency

1. Except in those urgent circumstances referred to in Articles 2.10 and 5.7 of the TBT Agreement, for any technical regulation or conformity assessment procedure that would require a substantial change in motor vehicle design or technology, each Party shall provide an interval between the date of publication of the technical regulation or conformity assessment procedure and the date on which compliance with the measure becomes mandatory that is usually not less than 12 months.

2. Each Party shall periodically⁷ conduct post-implementation reviews of its existing significant regulations affecting motor vehicles. For purposes of this paragraph, “post-implementation review” means an examination of the effectiveness of a standard, technical regulation, or conformity assessment procedure after it has been implemented, including an assessment of whether it achieves its stated objectives, the burden it imposes, and its compatibility with other standards, technical regulations, or conformity assessment procedures the Party has adopted. This paragraph shall apply to Korea beginning two years after the date the KORUS enters into force.

3. Notwithstanding Article 23.3 of the KORUS, Article 21.1 of the KORUS shall apply to a new taxation measure of Korea on motor vehicles that is based on fuel economy or greenhouse gas emissions. The Parties shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of this paragraph. Neither Party may have recourse to dispute settlement under this understanding for any matter arising under this paragraph.

⁷ “Periodically” means normally at least once no later than ten years after the date a measure is adopted, and as appropriate thereafter.

Section D: Motor Vehicle Safeguard

A Party may apply a safeguard measure with respect to a motor vehicle of heading 8703 or 8704 using the procedures set forth in Chapter Ten of the KORUS, with the following procedural modifications:⁸

- (a) In lieu of paragraph 5(b) of Article 10.2, the following shall apply: Neither Party may apply a safeguard measure for a period exceeding two years, except that the period may be extended by up to two years if the competent authorities of the importing Party determine, in conformity with the procedures specified in Article 10.2, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years;
- (b) Paragraphs 6 and 7 of Article 10.2 and paragraph 2 of Article 10.3 shall not apply;
- (c) In lieu of Article 10.4, the following shall apply:⁹
 - (i) A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the safeguard measure. The Party shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure;
 - (ii) If the consultations under subparagraph (c)(i) do not result in an agreement on trade liberalizing compensation within 30 days after the consultations begin, the Party whose goods are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the Party applying the safeguard measure; and
 - (iii) The right of suspension referred to in subparagraph (c)(ii) shall not be exercised for the first 24 months during which a safeguard measure is in effect, provided that the safeguard measure conforms to the provisions of the KORUS with the procedures in this understanding; and
- (d) In lieu of the definition of transition period contained in Article 10.6, the following definition shall apply: **transition period** means the period beginning

⁸ For greater certainty, for purposes of a safeguard measure on a motor vehicle good referenced in Section A of this understanding, references to “the Agreement” or a Party’s “Schedule” in Chapter Ten shall be understood to refer to Section A of this understanding, and the term “end of the tariff elimination period” shall be understood to refer to the end of the tariff elimination period set out for that good in Section A of this understanding.

⁹ The absence of a provision on termination of the right of suspension shall not prejudice a panel’s interpretation of this paragraph.

on the date the KORUS enters into force and ending on the date that is ten years after the end of the tariff elimination period, as the case may be for each good.

Section E: Measures Related to Pharmaceutical Products

Notwithstanding paragraph 1 of Article 18.12 of the KORUS, paragraph 5(b) of Article 18.9 of the KORUS shall apply to Korea beginning three years after the date the KORUS enters into force.

Section F: Final Provisions and Dispute Settlement

1. The Parties shall apply Article 1.3 (Extent of Obligations), paragraphs 2 through 5 of Annex 2-B, Article 22.16 (Private Rights), paragraph 1 of Article 23.1 (General Exceptions), Article 23.2 (Essential Security), Article 23.4 (Disclosure of Information), and Article 24.6 (Authentic Text) of the KORUS to this understanding, *mutatis mutandis*.
2. Except as otherwise provided in this understanding, terms used in this understanding that have an assigned meaning in Article 1.4, Article 2.15, Article 9.10, or Article 10.6 of the KORUS shall have that assigned meaning for purposes of this understanding.
3. The Joint Committee established pursuant to the KORUS shall address a matter arising under this understanding, and to this end the Parties shall apply Section A of Chapter 22 of the KORUS to this understanding, *mutatis mutandis*.
4. The Parties shall apply Section B of Chapter 22 and Annex 22-A of the KORUS to this understanding, *mutatis mutandis*.¹⁰
5. The Annex and footnotes to this understanding constitute an integral part of this understanding.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments, which shall enter into force on the date that the KORUS enters into force and terminate on the date that the KORUS terminates.

Sincerely,

Ron Kirk

¹⁰ For greater certainty: (a) Where a matter arises under the KORUS and this understanding, a Party may include claims regarding provisions of either or both agreements in a single consultations request, Joint Committee referral, and panel request, and a single dispute settlement proceeding shall address the matter set forth by the Party; (b) The contingent list, model rules of procedure, and code of conduct under Chapter 22 of the KORUS shall be used for this understanding; (c) For purposes of this understanding, the reference to “a benefit the Party could reasonably have expected to accrue to it” in Article 22.4(c) refers to a benefit the Party could reasonably have expected to accrue to it under Section A of this understanding; (d) For purposes of this understanding, the reference to “benefits” that a Party may suspend in Article 22.13 includes benefits accruing to the other Party under this understanding and benefits accruing to the other Party under the KORUS; and (e) Neither Party may claim in a dispute settlement proceeding that a measure is inconsistent with one or more provisions of the KORUS if the measure is consistent with the relevant provisions of this understanding.

Attachment

Annex

No.	KMVSS Items	KMVSS Citations
1	Maximum length, width and height	Article 4
2	Maximum gross vehicle weight	Article 6
3	Weight distribution	Article 7
4	Maximum stable inclination angle	Article 8
5	Minimum turning radius	Article 9
6	Driving system: mudguard	Article 12.3
7	Steering effort	Articles 14 & 89
8	Brake systems (with or without anti-lock brake system) (except passenger cars)	Articles 15 & 90 (except 90.1)
9	Fuel device (including liquefied petroleum gas container)	Article 17
10	Frame and body: side guard	Article 19.3
11	Rear underrun protection (except trailers)	Article 19.4 & 96
12	Inside height and width for standing passengers	Articles 28 & 31
13	Militarization device: pintle hook	Article 46
14	Retro-reflection device	Articles 49 & 107
15	Speedometer	Articles 54.1 & 110
16	Speed limiter	Articles 54.2-4 & 110-2