



MINISTER FOR TRADE
MINISTRY OF FOREIGN AFFAIRS AND TRADE
SEOUL, KOREA

June 20, 2011

The Honorable Ron Kirk
United States Trade Representative
Washington, D.C.
United States of America

Dear Ambassador Kirk:

I, too, enjoyed meeting you at the recent Ministerial meetings. The APEC meeting in Big Sky was a good sign for the success of APEC this year and the demonstration of your excellent chairmanship.

In response to your letter, I would like to follow up on my letter of February 24, 2010 regarding Geographical Indications (GIs) in our free trade agreement with the European Union. I understand that this issue continues to be of concern to your government, and seek to offer some further clarifications.

First, with regard to some of the GI terms that are set forth in Annex 10-A to the Korea-EU Free Trade Agreement (Geographical Indications for Agricultural Products and Foodstuffs), as you will note, a number of those terms are compound terms; i.e., they are terms comprised of more than one element. For example, the terms include “Brie de Meaux,” “Emmental de Savoie,” “Grana Padano,” “Mozzarella di Bufala Campana,” “Parmigiano Reggiano,” “Pecorino Romano,” and “Provolone Valpadana.”

With respect to these terms, the Government of Korea understands that any restrictions or requirements it may impose on the use of these compound terms would pertain only to the protection of the compound terms in their entirety. In other words, the individual components of the compound terms, for example, “grana”, “parmigiano”, “provolone”, or “romano”, themselves, including their translation or transliteration, are not the objects of GI protection under the Korea-EU FTA. Accordingly, the Government of Korea further understands that Article 10.21.1 of the Korea-EU FTA will govern the scope of protection of compound term GIs in relation to the use of their individual components.

The Government of Korea understands that the terms “camembert,” “mozzarella,” “emmental,” and “brie,” in either the English or Korean languages, are generic terms that indicate types of cheeses in Korea, and that the use of these terms is therefore not restricted as a result of the Korea-EU FTA. In addition, I confirm that these terms are merely illustrative examples, not an exhaustive list of generic terms in Korea. My Government believes that “cheddar,” among others, may be another such example that indicates a type of cheese.

I confirm, further to my letter of February 24, 2010, that any protection Korea may extend to an asserted GI, pursuant to the Korea-EU FTA or otherwise, will not limit existing rights that a right-holder, or an entity authorized by a right-holder, may have with respect to the continued use of a trademark, including collective marks and certification marks, or with respect to the maintenance of a trademark registration. Further, any protection that Korea may extend to an asserted GI would not be a basis for Korea to deny a request by the owner of an existing trademark that would otherwise be granted under Korea's law, including, for example, a request to re-new or otherwise secure protection of the trademark before the owner's registration lapses.

I also confirm that names to be protected under the GI provisions of the Korea-EU FTA are the original language expressions listed in the left column of the tables in Annex 10-A to the FTA. Therefore, the Korea-EU FTA does not create any right for the GI right holders to use the GI in translation or transliteration in any other language. The GIs rather shall be protected against the use of their translation or transliteration in accordance with Article 10.21.1(b) of the Korea-EU FTA. Even in such a case, continued use of prior trademarks will not be prejudiced, as discussed above.

Finally, in my February 24, 2010 letter, I noted that the third party opposition procedure will be provided in accordance with the relevant provisions of the Korea-US FTA in a timely manner. To further clarify this matter, I confirm that Korea will allow third parties to oppose any proposal to designate any term as a GI, whether these proposals are made pursuant to the Korea-EU FTA, or to any other future agreements with other trading partners. In addition, before Korea identifies additional terms as GIs under the Korea-EU FTA, it will provide, by published administrative guidelines, that designations of asserted GIs may be opposed in Korea on the grounds that would include: (1) the term is generic in Korea; (2) the term is confusingly similar to a pre-existing trademark or geographical indication that was either previously applied for or registered or established through use; (3) the term is confusingly similar to a well-known trademark; and (4) the term does not meet the definition of a GI.

I hope that this will help address your concerns. I, too, look forward to working closely with you to take the KORUS Agreement into entry into force as soon as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jong-Hoon Kim', with a long horizontal flourish extending to the right.

Jong-Hoon Kim