

April 6, 2006

Ms. Gloria Blue
Executive Secretary
The United States Trade Representative
600 17th Street N.W.
Washington, D.C. 20508

Dear Ms. Blue:

The Consumer Electronics Association (“CEA”) commends the Office of the United States Trade Representative (“USTR”) on the initiation of free trade negotiations with the Republic of Korea. CEA supports a United States-Korea free trade agreement (“KFTA”) and welcomes the opportunity to provide comments on the U.S. negotiating agenda. The KFTA has the potential to significantly promote and enhance trade in the important consumer electronics industry sector, to the benefit of businesses and consumers in the United States and Korea.

I. Background on CEA

CEA is the preeminent trade association promoting growth in the consumer electronics (“CE”) industry through technology policy, events, research, promotion and the fostering of business and strategic relationships. CEA represents more than 2,000 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, mobile electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services.

CEA's members account for more than \$121 billion in annual sales in the United States. This figure represents approximately 40 percent of all CE sales worldwide. U.S. exports of CE products in 2005 amounted to \$28.6 billion. In addition, the CE industry directly employs approximately 1.9 million workers in the United States. Of these, 212,000 jobs are in manufacturing, 574,000 are in retail, 38,000 are in transportation, and 1,073,000 are in parts of the U.S. economy that solely depend on the utilization of CE products, such as the motion picture and sound recording industries, telecommunications, broadcasting, and software development. Many of these jobs are on the cutting-edge of technology, including jobs related to the research and development of new technologies, as well as the marketing and design of new products. In 2005 alone, the U.S. CE industry added nearly 30,000 jobs – growing nearly 1.5 percent in the last 12 months and 19 percent in the last 15 years. Today, the industry represents approximately 1.4 percent of total non-farm employment.

This robust industry picture has occurred despite the fact that CE markets around the world are not as open as they should be. The World Trade Organization (“WTO”) Information Technology Agreement (“ITA”), while an important boon to the global technology industry,

does not include most CE products. Consequently, many CE products are still subject to significant tariffs and non-tariff barriers around the world. The persistence of these trade barriers informs CEA's position with respect to trade negotiations. CEA sees bilateral negotiations, and in this instance, the KFTA, as one important step in reaching the larger goal of multilateral trade liberalization. In fact, Korea is one of the four countries, with Japan, Singapore and the United States, that has proposed an electronics sector in the Non-agricultural Market Access talks of the WTO's ongoing trade liberalization efforts.

The CE industry is a highly competitive, efficient, and globally integrated industry. These factors, coupled with the large investment needed to manufacture CE products, result in CE products often having narrow profit margins. In the absence of a multilateral agreement covering CE products, small price changes resulting from FTA duty savings can have the effect of shifting quantities of products demanded to those products produced by favored manufacturers, i.e., those trading with the benefit of an FTA. Accordingly, CEA favors global trade liberalization, which best avoids the trade distortions that may benefit some members while disadvantaging others, and ultimately could be detrimental to consumers.

In view of these global market realities, CEA has been a strong advocate for a multilateral sectoral approach to tariff elimination in CE products and appreciates USTR's strong leadership in advancing this approach in WTO Doha Development Agenda negotiations. Furthermore, the timing of the U.S.-Malaysia FTA negotiations is advantageous in that a parallel and successful outcome with Malaysia could be an important stepping stone to a comprehensive regional agreement. Moreover, lowering barriers on a reciprocal basis will have a positive effect in terms of maximizing areas in which the U.S. CE industry has competitive edges, such as in high technology parts, R&D, design, and the launching of new products.

As negotiations proceed and it becomes clearer how KFTA will fit within the framework of a broader regional or multilateral agreement, CEA will be in a better position to offer concrete input on product coverage and timing of tariff elimination. In the meantime, we pledge to work closely with USTR to achieve a KFTA that is beneficial for the consumer electronics sector. As a preliminary matter, we offer the following comments on specific issues of concern to CEA members, which we expect will prove helpful as the negotiations go forward.

II. National Treatment and Market Access for Goods

As you know, Korea is the seventh largest trading partner of the United States following Canada, Mexico, China, Japan, Germany and the United Kingdom. Korea is the fifteenth largest importer of CE products from the U.S., accounting for \$560 million in 2005. Korea is the fifth largest exporter of CE products into the U.S. accounting for \$8.2 billion of CE exports in 2005 -- though Korean CE products represent just 7 percent of the top 90 percent of CE products imported from the world. This has resulted in a U.S. \$7.7 billion trade deficit in CE products from Korea and apparently at least a restricted market for American CE goods.

Because the ITA does not include most CE products, there are a number of U.S. CE exports that face significant tariffs in Korea. A sample of those products are –

Product Category	HTS #	2005 US Exports to Korea **	US	Korea
<i>Stereo Receiver (i.e. Stereo Receiver with CD Player)</i>	8527	\$14.2M	0%	8%
<i>Television Receivers, Monitors and Projectors (i.e. LCD Monitors, Color Video Monitors and Projectors)</i>	8528	\$21.5M	0-5%	8%
<i>Radar and Radio Navigation Devices (i.e. Global Positioning System)</i>	8526	\$28.7M	0%	8%
<i>Storage Batteries (i.e. Lithium Ion Batteries)</i>	8507	\$4.2M	3.4%	8%
<i>Microphones, Loudspeakers and Headphones (i.e. amplifiers)</i>	8518	\$91.2M	4.9%	8%
<i>Recorders (i.e. Portable MP3 Player)</i>	8520	\$11.8M	0%	8%

This chart makes plain that there are a number of discrepancies between U.S. and Korean tariffs on CE products and a KFTA would help level the playing field for U.S. CE companies and their workers.

III. Rules of Origin

CEA is pleased that in recently concluded free trade agreements there has been an effort to simplify the complex rules of origin found in the NAFTA, which impose unnecessary burdens on companies and raise the cost of doing business internationally. We note that the product-specific rules of origin under CAFTA for Chapters 84, 85, and 90 are generally subject either to a pure tariff shift rule or a tariff shift plus minimum regional value content (“RVC”) rule. RVC requirements are contained, for example, in the rules of origin for ADP parts and accessories, telephone equipment, fax machines, microphones, loudspeakers, TVs, and video cameras. With this in mind, to the greatest extent possible and where there is no longer domestic manufacturing, U.S. trade negotiators are urged to seek rules of origin that:

- embrace a pure or simplified tariff-shift rule; and
- avoid the use of regional value content (“RVC”) thresholds or process-based rules of origin in lieu of, or as an additional requirement to, tariff shift rules, which can actually discourage and limit local production rather than protect it. (However, CEA does not oppose the inclusion of RVC thresholds or process-based rules where those rules are provided as an alternative in addition to a tariff shift rule. See, for example, the CAFTA rule of origin for 8517.90, which provides for the origin rule to be satisfied if either: (1) a tariff shift rule is met, or in the alternative (2) an RVC threshold is satisfied.)

CEA hopes that the approach to the rules of origin negotiations will be a flexible one and will provide the high-tech sector an opportunity to propose changes to specific rules of origin as necessary based on the sector’s experience since the implementation of the NAFTA and other FTAs.

IV. Customs Administration

A transparent, efficient and non-discriminatory customs administration regime is beneficial to all businesses engaged in international trade but especially to CE companies that rely on just-in-time inventory and global supply chain methods of delivery. Accordingly, CEA supports streamlined release and clearance of goods; timely publication and availability of customs information and decisions; greater transparency with respect to rulings; greater discipline on fees and charges associated with import/export regimes; and the adoption of the World Customs Organization (“WCO”) HS Convention on Classification. In addition, we raise the following specific issues:

- **Revised Kyoto Convention:** Both Korea and the United States have acceded to the WCO Revised Kyoto Convention (“RKC”) (formerly known as the Amendment to the International Convention on Simplification and Harmonization of Customs Procedures). With that in mind, U.S. negotiators are strongly urged to secure inclusion of the RKC provisions in the KFTA. The provisions include, among other items, codes of conduct for Customs officials; compatible electronic data interchange systems and common data elements; and customs information dissemination (i.e., Internet publication).
- **Documentary Proof of Origin:** U.S. trade negotiators should seek agreement with their Korean counterparts to eliminate certificates of origin. Instead, a simple statement of origin on, for example, invoices or other existing documents should suffice.
- **Tariff Classification:** We note that as of January 1, 2007 the high-tech chapters 84, 85, and 90 of the Harmonized Tariff System will undergo significant changes as a result of the transition of the WCO from HS2002 to the HS2007. CEA strongly urges U.S. trade negotiators to ensure that there is a mechanism in place to guarantee that

market access benefits achieved through FTA negotiations are not adversely affected by this transition.

- **Duty Drawback:** The duty drawback program is one of the last remaining export promotion programs that helps U.S. companies compete in the global marketplace against trading partners that often benefit from trade barriers and other trade-distorting practices. The importance of duty drawback to U.S. exporters is reflected in the fact that the WTO Agreement on Subsidies and Countervailing Measures contains specific provisions stating that a properly constructed duty drawback regime does not confer prohibited export subsidies and allows members to continue to provide drawback. As has long been expressed by the electronics industry, we have serious concerns with FTA provisions that phase-out drawback in the absence of a global consensus on the elimination of tariffs. These phase-outs accelerate the elimination of a program that benefits U.S. exporters, placing them at a competitive disadvantage with respect to exporters of other trading partners. Duty drawback merely levels the playing field for U.S. companies.

V. Non-Tariff Barriers

As has been noted in recent USTR annual reports, technical barriers to trade in general are major deterrents to an open Korean market and we hope to see significant progress in this area in the KFTA. In particular, Korea's non-recognition of international standards, as exemplified by the dispute last year concerning wiBro, as well as discrimination in distribution channels, pose subtle but costly barriers for U.S. manufacturers. CEA also urges USTR to address Korea's general practice of "Korea-specific" standards, competition policy that favors domestic producers, trademark registration practice that disproportionately favors Korean registrants, regulatory agency practices that seem to favor Korean Government industrial development objectives, and government procurement practices that advantage Korean suppliers. The following are some specific areas of particular concern:

- **Redundant testing and certification requirements:** Today, Korea maintains a number of conformity assessment procedures for CE and information technology ("IT") products. As specifically applied to Electromagnetic Compatibility (EMC) & Safety, they are:
 - i. Conformity Assessment Procedures as Applied to EMC: Korea maintains regulations in connection with its Radio Wave Act, which is administered by the Ministry of Information and Communication ("MIC"). Under these regulations, a product sample is required for in-country testing and certification. The mutual recognition agreement ("MRA") between the U.S. Federal Communications Commission ("FCC") and the MIC, however, allows for the acceptance of test results from laboratories recognized by the FCC (thereby avoiding the need to send products to Korea for in-country testing). As of January 2006, only fourteen U.S. laboratories have been

accredited under the MRA. The MIC regulations are inconsistent with the MRA and should be revised accordingly.

- ii. Conformity Assessment Procedures as Applied to EMC & Safety: Korea also maintains a regulation in connection with its Electrical Appliance & Material Safety Law. The Ministry of Commerce, Industry and Energy is responsible for administering these provisions. As with the EMC requirements above, a product sample is required for in-country testing and certification. Here, too, the KFTA should expand mutual recognition of testing and certification procedures in order to avoid the needless burden of in-country testing for U.S. exporters.

To the extent possible, U.S. negotiators are urged to negotiate the adoption of the “One-Standard One-Test, Supplier’s Declaration of Conformity” (“known as 1-1 SDoC”) approach to clearing the import of CE and IT products. At a minimum, U.S. negotiators are urged to secure mutual acceptance of test results in this regard.

- **Taxation Issues:** In addition, CEA has been informed that Korea applies a VAT to unfinished products in bonded warehouses that are merely in transit for assembly into finished goods. If so, such a practice appears to be at odds with the manner in which most countries levy VATs and could have a negative effect on U.S. exports. We urge U.S. negotiators to inquire about this practice and, if confirmed, consider requesting that Korea make appropriate changes to its VAT.

VI. Investment

CEA strongly supports the negotiation of an investment chapter with strong protections for investors, as well as transparent and investor-friendly investor-state dispute settlement procedures. We are troubled by accounts of Korean Government actions that appear to discriminate against, or at least provide unduly hostile treatment, to U.S. and other investors who provided much needed capital to Korean industries after the 1997 financial crisis. A smoothly functioning, non-discriminatory investment regime is critical to a good trade relationship.

VII. Intellectual Property Rights

CEA members support provisions in FTAs that give copyright holders the protection necessary to exercise and enforce their intellectual property rights. At the same time, however, we have advocated the balance between copyright holders and the rights of consumers to use lawfully acquired content as they are entitled to under the U.S. legal principle of “fair use.” Such a balance of interests is crucial not only to the rights of consumers and copyright holders but also to the notion of fostering innovation. *Per se* standards that create ambiguity about “fair use” diminish consumer demand, chill innovation, and reduce sales of technology products.

While CEA acknowledges the balance of interests found in the Digital Millennium Copyright Act (“DMCA”), we nevertheless believe that innovation would be enhanced most if USTR were to adhere to the language in the U.S.-Chile FTA as it relates to provisions concerning anti-circumvention. The agreement provides in part as follows:

17.7.5. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, protected by copyright and related rights:

- (a) each Party shall provide that any person who **knowingly circumvents*** without authorization of the right holder or law consistent with this Agreement any effective technological measure that controls access to a protected work, performance, or phonogram shall be civilly liable and, in appropriate circumstances, shall be criminally liable, or said conduct shall be considered an aggravating circumstance of another offense. No Party is required to impose civil or criminal liability for a person who circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, but does not control access to such work.

*Emphasis added. The Chile FTA further provides in a footnote that “[f]or purposes of paragraph 5, knowledge may be demonstrated through reasonable evidence taking into account the facts and circumstances surrounding the alleged illegal act.”

We strongly recommend that the Chile FTA “knowingly” standard be adopted, since this standard does not allow for violations to occur unwittingly. The clarity this standard offers would avoid the imposition of unreasonable economic burdens on electronics manufacturers.

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We thank USTR for this opportunity to comment on the KFTA and look forward to working with you to achieve a free trade agreement that will forge even better relations with an important U.S. strategic partner and will enhance prospects for greater multilateral trade liberalization, leading to growth in the consumer electronics industry to the benefit of consumers worldwide.

Sincerely,



Elizabeth A. Hyman
Senior Director & Tax and Trade Counsel
The Consumer Electronics Association