

Office of the President

June 26, 2007

The Honorable Marilyn R. Abbott
Secretary
United States International Trade Commission
500 E Street, SW
Washington, DC 20436

RE: U.S. – Korea Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects, Investigation No. TA-2104-24

Dear Secretary Abbott:

The American Council on Education respectfully submits the following comments with respect to the pending U.S. – Korea Free Trade Agreement (the “KORUS FTA”). Our comments solely address the portions of the KORUS FTA that pertain to higher education services.

We have reservations about the proposed inclusion of higher education as a sector for coverage under Chapter 12 (Cross-Border Trade in Services) of the KORUS FTA. The Schedule of the United States to Annex II (Non-Conforming Measures for Services and Investment) includes “market access improvements” for higher education services.¹ Our concerns about the inclusion of higher education services in the KORUS FTA follow our previously expressed reservations with respect to the most recent U.S. offer on higher education services in the General Agreement on Trade in Services (“GATS”) portion of the Doha Round negotiations. In particular, we have explained that the U.S. GATS offer fails to provide adequate protections to three unique features of the U.S. higher education sector: (1) the diverse mix of public and private institutions; (2) institutional autonomy; and (3) decentralized governance (i.e., the primary regulation of higher education is at the state, not the federal, level). We have met repeatedly with officials from the Office of the United States Trade Representatives (USTR) over the past six years regarding this issue.

¹ The “market access improvements” are as follows: “Insert new commitments with no limitations for modes 1-3 and mode 4 ‘Unbound, except as indicated in the horizontal section.’ ” Draft KORUS FTA Schedule of the United States to Annex II at II-US-11, available at http://www.ustr.gov/Trade_Agreements/Bilateral/Republic_of_Korea_FTA/Draft_Text/Section_Index.html (last visited June 16, 2007).

USTR explained in a recent letter responding to our concerns with respect to the U.S. GATS offer on higher education services in the Doha Round that “[w]e have crafted a position that requires no changes to any policies or regulations, and recognizes and protects the unique blend of private and public higher education and institutional autonomy in the United States...[T]he U.S. has no interest in putting forward commitments that we feel leave us exposed to challenges.”² We are of the view, however, that the current language of the KORUS FTA fails to go far enough to protect the diverse mix of public and private institutions that, as USTR recognized, has made the United States “a global leader in education services.”³

The services chapter of the KORUS FTA applies to measures taken by “non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.”⁴ This is the same language that is provided in GATS Article I.3(a)(ii) and raises concerns for our members because the language may subject public institutions of higher education to different treatment from private institutions because public institutions may exercise delegated powers of government. In its recent letter to ACE, USTR did not disagree that this language threatens differential treatment for public and private institutions of higher education. USTR attempted to assuage our concerns, however, by claiming that this language does not threaten to treat public and private universities differently because “there is an important distinction between delegation to one entity of power to regulate other entities (e.g., independent state licensing boards empowered to enforce state laws) and delegation to an entity to govern itself (e.g., a public university empowered to determine standards of coursework creditworthiness).”⁵ We would welcome further explanation from USTR on how this “important distinction” ensures equal treatment of public and private institutions of higher education. In the meantime, we urge that no further U.S. commitments be made with respect to higher education services in either the KORUS FTA or the GATS.

² Letter from Deputy USTR John K. Veroneau to ACE President David Ward at 1 (received on June 7, 2007).

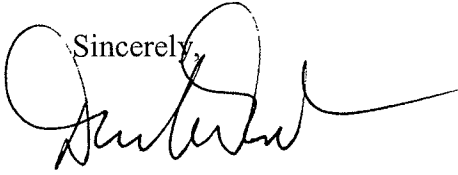
³ Id. at 2.

⁴ Draft KORUS FTA Chapter 12: Cross-Border Trade in Services, Art. 12.1.2(b) (emphasis added), available at http://www.ustr.gov/Trade_Agreements/Bilateral/Republic_of_Korea_FTA/Draft_Text/Section_Index.html (last visited June 16, 2007).

⁵ Letter from Deputy USTR John K. Veroneau to ACE President David Ward at 1.

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Thank you for consideration of these comments.

Sincerely,


David Ward
President
American Council on Education

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