KOREA

TRADE SUMMARY

U.S. goods exports in 2014 were $44.5 billion, up 6.8 percent from the previous year. Korea is currently the seventh largest export market for U.S. goods Corresponding U.S. imports from Korea were $69.6 billion, up 11.6 percent. The U.S. goods trade deficit with Korea was $25.1 billion in 2014, an increase of $4.4 billion from 2013.

U.S. exports of services to Korea were $20.9 billion in 2013 (latest data available), and U.S. imports were $10.8 billion. Sales of Services in Korea by majority U.S.-owned affiliates were $12.2 billion in 2012 (latest data available), while sales of services in the United states by majority Korea-owned firms were $14.2 billion.

The stock of U.S. foreign direct investment (FDI) in Korea was $32.8 billion in 2013 (latest data available), up from $30.9 billion in 2012. U.S. FDI in Korea is led by the manufacturing, and finance/insurance sectors.

United States-Korea Free Trade Agreement

On March 15, 2012, the United States-Korea Free Trade Agreement (KORUS or the Agreement) entered into force. In the three years that this landmark agreement has been in effect, Korea has become the sixth largest trading partner of the United States, and exports of U.S. manufactured goods, services, and agricultural products have seen significant gains. The Agreement has also improved Korea's investment environment through strong provisions on intellectual property rights, services, investment, labor and environment, supporting U.S. exports, while helping to strengthen and expand ties with an important strategic partner in Asia.

Since entry into force of the agreement in 2012, the United States and Korea have carried out four rounds of tariff cuts and eliminations, creating significant new market access opportunities for U.S. exporters. The agreement has also expanded opportunities for our growing services trade, improved transparency in Korea's regulatory system, strengthened intellectual property protection, leveled the playing field for key U.S. exports, including autos, and enhanced market access for U.S. exporters of all sizes including small and medium businesses. Overall, U.S.-Korea goods and services trade has risen from $126.5 billion in 2011 to $145.2 billion in 2014.

Year-on-year goods exports to Korea for 2014 were up 6.8 percent compared to 2013. This brought goods exports to a record level of $44.5 billion. Manufactured goods account for most of this total at $37.4 billion. This reflects growth of 5.6 percent in 2014 – nearly four times faster than manufacturing export growth to the world at large – and a total that is now 8.7 percent above pre-FTA levels. This growth has been strong across high-technology manufacturing, autos, heavy industry, and consumer goods.

For agricultural products, through a combination of tariff elimination and expansion of tariff rate quotas, nearly two-thirds of U.S. agricultural exports have been enjoying duty-free status since the Agreement entered into force. U.S. exports of key agricultural products benefiting from tariff cuts and the lifting of other restrictions under KORUS continued to post significant gains. Last year's 31.2 percent growth in farm exports to Korea was nearly 7 times faster than U.S. agricultural export growth to the world at large. For agricultural goods that benefited from tariff elimination or reduction, there have been dramatic increases in exports in 2014 compared to 2011, including some particularly striking examples such as fresh cheese (563 percent), cherries (205 percent), shelled almonds (176 percent), and wine and beer (67 percent).

In addition, KORUS provides meaningful market access commitments across virtually all major services sectors, including improved access for telecommunications and express delivery services, and the opening up of the Korean market for foreign legal consulting services. The Agreement increases access to the Korean financial services market and ensures greater transparency and fair treatment for U.S. suppliers of insurance and other financial services. Korea is also in the process of opening its legal services market, and over a dozen U.S. law firms are now offering their services to Korea's increasingly global businesses.

U.S. services exports to Korea are a particularly strong point, up 24.4 percent to an estimated $20.7 billion in 2014 as compared to $16.7 billion in 2011. This rate of growth nearly doubled the overall 13.1 percent growth of U.S. services exports to the world.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Chemicals – Act on the Registration and Evaluation of Chemicals

In 2013, Korea enacted the Act on the Registration and Evaluation of Chemicals. This law requires manufacturers and importers of chemical substances to register and comply with annual reporting requirements. On February 18, 2014 Korea's Ministry of Environment (MOE) released draft implementing regulations, with entry into force on January 1, 2015. Concerns remain with registration and reporting requirements, in particular the high costs and potential release of sensitive business information. Both MOE and MOE's National Institute for Environmental Research – charged with implementing some of the technical details of the law – released 12 draft public notices covering issues such as the method of data submission and hazard examination, but only provided 20 days for interested parties to submit comments. Given the short comment period and the short time between the releases of the draft notices and the January 2015 implementation date, and in the interest of greater transparency, the United States requested that Korea notify those decrees to the WTO TBT Committee and provide additional time for comments before implementation. In 2015, the United States will continue to monitor developments and engage with Korean authorities as appropriate. .

Information Technology Equipment – Electrical Safety Regulations

U.S. stakeholders have been working closely with the Korean Agency for Technology and Standards (KATS) and the Radio Research Agency on Korea's reorganization of safety regulations for information technology equipment. The United States and U.S. stakeholders have advocated for streamlined procedures that reflect the realities of contemporary manufacturing and provide an appropriate level of safety certification for low risk information technology equipment, such as printers and computers. KATS released its final Safety Regulations rule for information technology equipment, effective July 1, 2013. These regulations addressed many long standing U.S. concerns, including by expanding the scope of products subject to a supplier's declaration of conformity, and adopting the most current International Electrotechnical Commission (IEC) standard. However, some concerns continue to be outstanding. For example, the regulation requires separate safety certification with respect to each factory's products, even for identical products produced by the same company but in a different factory and does not establish a certificate renewal process. Furthermore, despite being a Member of the IEC System for Conformity Testing and Certification of Electrical and Electronic Components, Equipment and Products Certification Bodies' Scheme (CB), KATS is not currently accepting CB reports without additional testing. Finally, the final rule imposes burdensome labeling requirements for information that could be disclosed instead in an insert or manual. Such an adjustment is particularly appropriate for products that have small physical sizes such as cell phones. In 2015, the United States will continue to monitor implementation of the regulation and urge Korea to allow adequate implementation time for new products as its scope increases.

Solar Panels – Testing Requirements

Korea requires solar panels to be certified by the Korea Management Energy Corporation (KEMCO) before they can be sold in Korea for projects receiving government support (which comprise the vast majority of solar projects in Korea). KEMCO's certification standards prevent, in practice, certain types of thin film solar panels manufactured in the United States from entering the Korean marketplace. For example, KEMCO has established a standard for thin film solar panels that can only be satisfied by panels manufactured from amorphous silicon and Copper Indium Gallium Selenide. As a result, other leading types of thin film solar panels, types made principally by U.S. firms, including Cadmium Telluride (CdTe), cannot be tested or certified under the Korean standard. The United States has consistently urged Korea in bilateral trade consultations and at the WTO TBT Committee meetings over the past years to adopt in full the relevant international standard, IEC 61646, without limiting its application solely to the type of thin-film solar panel its industry produces. Korea conducted an environmental impact review in March 2014 on the use of cadmium in solar panels and determined that a hazard existed for using CdTe. U.S. stakeholders have raised methodological concerns with the studies Korea used to disqualify CdTe. The United States will continue to discuss this issue with Korea in 2015.

Repair History Reporting

Pursuant to an amendment of the Motor Vehicle Management Act, Korea requires as of January 8, 2015, that all auto manufacturers or dealers report vehicle repair histories to vehicle purchasers in order to account for any damages taking place between the manufacturing site and customer delivery. (While not regulated at the Federal level in the United States, 36 states have some type of damage reporting requirement, though these differ in important ways from the new Korean requirement, such as exempting certain types of damage and establishing *de minimis* levels of damage that would not need to be reported). U.S. stakeholders raised concerns that this new reporting requirement discriminates against auto importers because local auto manufacturing sites are co-located with the Pre-Delivery Inspection (PDI) facility and thus vehicles are unlikely to require any reportable reconditioning. Since imported vehicles routinely undergo some kind of reconditioning that would require reporting under this law, consumers perception of imported vehicles could be harmed.

U.S. stakeholders have requested that Korea's Ministry of Land, Infrastructure, and Transportation (MOLIT) draft subordinate implementing regulations that would clarify the underlying law so that Korea would recognize Korean PDI facilities as the conclusion of the manufacturing process, and requested that Korea consider establishing a *de minimis* rule on what repairs require reporting. MOLIT has not accepted this request, but met with foreign industry representatives in early January 2015 to clarify some definitions and technical details that addressed some stakeholder concerns. The U.S. Government has raised this issue with Korean authorities, and will continue to address the issue in 2015.

Information Technology Equipment – Cybersecurity Testing Requirements

Korea launched the Network Verification Scheme (NVS) on October 1, 2014. NVS sets forth new Korea-specific requirements for network equipment such as routers or switches procured by Korean government entities, and requires agencies to submit procured equipment to the National Intelligence Service (NIS) for mandatory testing. Although Korea is a member of the Common Criteria Recognition Arrangement (CCRA), which sets cybersecurity standards for government-procured IT equipment, NIS does not accept CCRA-certified equipment as compliant with NVS absent additional in-country testing. U.S. stakeholders raise concerns that NVS ignores Korean commitments in CCRA. In addition to these concerns, the U.S. government has raised concerns with Korean authorities that the implementation of NVS lacked transparency. The U.S. Government has raised concerns with Korea on multiple occasions during 2014 and will continue to monitor the situation in 2015.

Organic Products

On July 1, 2014, the United States and Korea adopted an equivalence arrangement for processed organic food products. This arrangement allows processed products certified as organic in the United States or Korea to be sold as organic in either country without having to go through a costly certification process again under the importing country's standards. Exports to Korea in this fast-growing sector, worth $35 million annually based on U.S. industry analysis, includes products like organic condiments, cereal, baby food, frozen meals, and milk. A bilateral Organics Working Group plans to meet annually to review operations of the arrangement, discuss the scope of the arrangement, assess progress on identified technical issues, and discuss best practices and other issues related to organic food products. The United States is interested in expanding the scope of products covered by the arrangement to include all food and agricultural products.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Korea's regulatory system for agricultural biotech continues to lack predictability and transparency in the approval of new biotech events. Furthermore, certain documentation requirements for biotech approvals go beyond the provisions of the Cartagena Protocol on Biosafety. For example, Korea's data and information requests are often redundant, leading to delays in the approval of new products and at times lack scientific justification. The United States will continue to engage with Korea to avoid disruptions to exports of U.S. biotech products.

Beef and Beef Products

Prior to 2008, Korea restricted the importation of U.S. beef and beef products over BSE-related concerns. Following a 2008 bilateral agreement to fully re-open Korea's market to U.S. beef and beef products, Korean beef importers and U.S. exporters have operated according to a voluntary, commercial understanding that imports of U.S. beef and beef products are derived from animals less than 30 months of age, as a transitional measure, until Korean consumer confidence improves. To date, this agreement has operated smoothly. In 2014, the U.S. exported an all-time record of $847.4 million in beef (including variety meats) to Korea, an increase of 39.1 percent from the previous year, making Korea the fifth-largest export market for U.S. beef.

Poultry and Poultry Products

In December 2014, Korea banned all poultry imports from the entire United States due to the detection of HPAI in backyard flocks in Washington and Oregon. This action is inconsistent with World Organization for Animal Health (OIE) guidelines, which recommend that countries take regional approaches to imposing trade restrictions on poultry and poultry products from countries with HPAI findings in commercial or backyard flocks. USDA is working to resolve trade-related issues associated with HPAI. U.S. poultry exports to Korea were valued at nearly $106 million through the first 11 months of 2014.

Maximum Residue Limits

Korea is in the process of shifting to a new "positive list" system for agrochemical residues and will no longer allow imports of food containing agrochemical residues unless the substance has been listed, or approved, for the commodity in question and a maximum residue level (MRL) has been established. In the process of making this shift, Korea is requiring new import tolerances for agrochemicals not already registered for use in Korea. This process may prove a significant challenge to U.S. exporters of fruit and grain if import tolerances are not set at an appropriate level and in a timely manner. The United States will continue to encourage Korea to maintain MRLs for substances currently approved, allowing sufficient time for a smooth transition to a new positive list system.

In addition, U.S. stakeholders remain concerned with Korea's increase in pesticide residue testing for U.S. commodities following residue violations in U.S. export shipments. After a single MRL violation by an export shipment to either Korea or another country, Korea may impose restrictive import requirements on that product's grower, shipper, and importer, and may require a set number of compliant shipments to Korea before the requirement is removed.

Potatoes

In August 2012, Korea prohibited the importation of fresh potatoes from the states of Idaho, Oregon, and Washington due to the presence of zebra chip in the region. Korea continues to prohibit the importation of fresh table-stock potatoes from the Pacific Northwest even though Korea does not have the presence of an insect that can carry zebra chip from one potato plant to another, the only means the disease spreads. Additionally, U.S. potatoes exported to Korea are treated with sprout inhibitor and are destined for consumption or processing – not propagation, and for that reason also U.S. potatoes do not present a phytosanitary threat. The U.S. government continues to engage with Korea to remove the suspension.

IMPORT POLICIES

Origin Verification

KORUS permits each Party's customs services to undertake investigations to verify the origin of goods for which preferential tariff treatment was claimed and allows for customs authorities to exercise their authority to enforce the Agreement and prevent circumvention. The United States generally approaches verifications by targeting specific shipments, selected using a risk-based approach, and conducts verifications based on commercial documents typically kept in the course of business.

During 2013, Korean customs authorities initiated a number of origin verifications to determine whether U.S. goods for which importers sought KORUS benefits met the Agreement's rules of origin. Investigations were initiated with respect to many categories of U.S. exports. These investigations led to determinations that many of these goods would not qualify for preferential tariff treatment. U.S. stakeholders raised concerns that the Korea Customs Service (KCS) conducted these verifications in ways that may have posed undue difficulties in proving goods meet the rules of origin, and thereby compromised eligibility of U.S. goods to receive benefits under the KORUS agreement.

Throughout 2013 and 2014, the United States worked closely with Korea to arrive at a common approach to verification procedures that would facilitate legitimate trade under the KORUS agreement and ensure that importers, exporters, and producers receive the benefits to which they are entitled. During 2014, a newly created ad-hoc Origin Verification Working Group met several times, helping to facilitate the issuance of positive determinations granting tariff benefits for U.S. exports, substantially resolving U.S. concerns on this issue. The United States will continue to monitor developments in this area in 2015 and will raise origin verification issues with Korea as necessary.

Tariffs and Taxes

Under KORUS, Korean tariffs on almost two-thirds of U.S. agricultural exports have been eliminated, including tariffs on wheat, corn, soybeans for crushing, whey for feed use, hides and skins, cotton, cherries, pistachios, almonds, orange juice, grape juice, and wine. Other agricultural products are receiving immediate duty-free access under new tariff rate quotas (TRQs), including skim and whole milk powder, whey for food use, cheese, dextrins and modified starches, barley, popcorn, oranges, soybeans for food use, dehydrated and table potatoes, honey, and hay.

Korea applies annual "adjustment tariffs" or a variable tariff on some agricultural, fishery, and plywood products. These adjustment tariffs do not exceed KORUS or WTO bound rates. To help offset the increasing cost of food, in 2013 Korea announced voluntary duty-free most-favored nation TRQs on a wide range of agricultural commodities including raw sugar, wheat for milling, malting barley, malt for beer brewing, rape seeds for oil crushing, soybean oil, and over 30 other products.

Rice

During the Uruguay Round of multilateral trade negotiations, Korea negotiated a 10-year exception to "tariffication" (the WTO obligation to convert quantitative restrictions to tariffs) of rice imports in return for establishing a Minimum Market Access (MMA) quota that was set to expire at the end of 2004. Korea subsequently negotiated a 10-year extension of the MMA arrangement in 2005, which called for Korea to increase its total annual rice imports over the succeeding 10 years, from 225,575 metric tons in 2005 to 408,700 metric tons in 2014. The arrangement included country specific quota commitments to purchase minimum amounts of imports from China, Thailand, and Australia, and to purchase at least 50,076 metric tons annually from the United States through 2014.

This agreement has operated smoothly and access to the Korean rice market for U.S. exports improved significantly under the arrangement. In 2014, U.S. exports of rice totaled 35,518 metric tons, with an associated value of $32.5 million. The MMA arrangement expired at the end of 2014, and Korea has initiated the tariffication process, as provided for under the WTO. The United States will work closely with Korea to urge it to ensure that any new arrangement takes appropriate account of our strong trading relationship in this commodity.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). Under KORUS, U.S. suppliers now have the right to bid on the covered procurements of more than 50 Korean central government entities, 9 more than are covered under the GPA. The Agreement also expands the scope of procurements to which U.S. suppliers will have access by reducing by more than one-half the threshold for eligible procurement contracts applied under the GPA, from $204,000 to $100,000. KORUS does not cover procurement by Korean sub-central and government enterprises; however, such procurement is covered under the GPA. Under the GPA, for procurement of construction services, Korea applies a threshold of over $23 million, which is three times the threshold applied by the United States. The revised GPA entered into force in April 2014. However Korea has yet to deposit its instrument of acceptance. As such U.S. and Korea obligations are defined under the 1994 GPA.

Encryption and Security Requirements for Public Procurement of Information and Communications Technology Equipment

Korea and the United States are both members of the CCRA, under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. However, the Korean government requires government agencies procuring network equipment such as routers and switches to undergo additional verification in Korea by Korean government authorities, even if the products received CCRA certification outside Korea. Korea's NIS has managed this process in a non-transparent fashion without any public comment periods, and has broadly construed these requirements to apply to any government entity, including schools, local governments, and even libraries and museums. U.S. stakeholders have also raised concerns that Korea is expanding the scope of these requirements (including the additional verification) to products not normally considered "security" products, such as routers, switches, and IP-PBXes. The U.S. Government has raised this issue with Korea in bilateral consultations and will continue to work with Korea, including within the CCRA, in 2015 to address concerns.

Korea requires network equipment being procured by public sector agencies to incorporate encryption functionality certified by NIS. NIS only certifies encryption modules based on the Korean ARIA and SEED encryption algorithms, rather than the internationally-standardized AES algorithm that is in widespread use worldwide. Some U.S. suppliers have been unable to sell virtual private network and firewall systems to Korean public sector agencies due to this restriction. The United States has urged Korea to ensure that equipment based on widely used international standards has full access to Korea's public sector market.

INDUSTRIAL SUBSIDY POLICY

Historically, the Korea Development Bank (KDB) has been one of the government's main sources of policy-directed lending to favored industries. In April 2013, the government of Korea launched a task force to consider the reorganization of the financial policy roles of government-owned banks and financial corporations, including the plan for the privatization of the KDB. After consideration of the recommendations of the task force the KDB Act was amended in May 2014, to halt the privatization of the KDB. Under the amended KDB Act, which became effective as of January 1, 2015, the public policy financing role of the KDB is to be strengthened and the KDB will continue its traditional role of providing public policy financial support to Korean industry and companies.

The U.S. Government has concerns regarding Korea's decision to reverse the plan to privatize the KDB, and will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In general, Korea has a strong IPR protection and enforcement regime. Under KORUS, Korea and the United States agreed to provide state-of-the-art protection for all types of intellectual property, *e.g.*, through requirements to join key multilateral IPR agreements and strong enforcement provisions. Intellectual property revenue from Korea has accordingly risen rapidly, from $4.5 billion in 2011 to $7.3 billion in 2013.

The United States recognizes the importance the Korean government places on IPR protection, a development that has accompanied Korea's shift to becoming a significant creator of intellectual property. However, some concerns remain over new forms of online piracy, corporate end-user software piracy, unauthorized use of software in the public sector, book piracy in universities, and counterfeiting of consumer products. With respect to unauthorized use of software in the public sector, the United States continues to urge the Korean government to take further steps to ensure that all government agencies fully comply with the Korean Presidential Decree mandating that government agencies use only legitimate, fully licensed software. This includes taking action to investigate and ensure that a sufficient number of licenses have been acquired to cover all users of the software in the respective agency. The U.S. Government continues to work with Korea to seek improvements in this area.

SERVICES BARRIERS

Screen and Broadcast Quotas

Korea maintains a screen quota for films requiring that any movie screen show domestic films at least 73 days per year. Overall, foreign programs may not exceed 20 percent of terrestrial TV or radio broadcast time or 50 percent of cable or satellite broadcast time determined on a semi-annual basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign films to 75 percent of all films for terrestrial broadcasts and to 80 percent for cable and satellite broadcasts; foreign animation to 55 percent of all animation content for terrestrial broadcast and 70 percent of all animation content for cable and satellite broadcasts; and popular music to 40 percent of all music content. Another quota, applied on a quarterly basis, limits content from any one country to 80 percent of the quota available to foreign films, animation, or music. KORUS protects against increases in the amount of domestic content required and ensures that new platforms, such as online video, are not subject to these legacy restrictions.

With more cinema choices opening up for Korean movie-goers, U.S. films drew record attendance, making up 5 of the 10 leading box-office performers.

Restrictions on Voiceovers and Local Advertisements

The Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. stakeholders, as they limit the accessibility of such channels in the Korean market.

Legal Services

Under KORUS, Korea is in the process of opening its legal services market. The first step involved creating a legal status for foreign legal consultants and allowing foreign law firms to open offices in Korea. The law allows foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. The second stage, implemented as of March 15, 2014, allows cooperative agreements between foreign and domestic firms. The third stage, to be implemented by March 15, 2017, will allow foreign-licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers. The United States looks forward to consultations and the ability to provide input on new rules implementing these changes.

Insurance and Banking

In order to implement its commitments related to the transfer of information under KORUS and the Korea-European Union Free Trade Agreement, Korea adopted new regulations in 2013 governing the outsourcing of data and IT facilities to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow certain data processing and other functions to be performed in affiliates outside Korea. However, U.S. stakeholders have raised concerns that vague guidelines and a lengthy application review period have hampered Korea's implementation of these data transfer commitments. In order to address these implementation concerns, the United States and Korea meet on a quarterly basis along with industry stakeholders to maintain thorough monitoring of Korea's implementation of the commitment. Stakeholders also raised concerns about strict new rules and enhanced penalties governing data privacy under the May 2014 Act on Promotion of Information and Communications Network Utilization and Information Protection. The United States will monitor Korea's implementation of this law and continue to work to ensure that KORUS commitments are fully implemented in practice.

Credit and Debit Card Payment Services

U.S. stakeholders have raised concerns that the Financial Services Commission (FSC) and the Financial Supervisory Service (FSS) appear to be exerting pressure on financial institutions to steer customers toward domestic brand cards rather than international brands, as well as pursuing other policies that may discriminate against U.S. branded credit and debit card services. The U.S. Government will closely monitor developments in the credit and debit card services area and work with the Korean government to ensure there is no discrimination against U.S. service providers.

Telecommunications

Korea prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end-users without going through a company established in Korea. Given the current investment restrictions and the fact that establishing a local presence may not be economically justified, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market.

In line with its KORUS obligations, Korea now allows U.S. investors to wholly own Korean telecommunications operators, and started allowing U.S. investors to own some broadcast service providers as of March 15, 2015.

Internet Services

Prohibitions against storing high resolution imagery and related mapping data outside Korea – which Korea justifies on security grounds – have led to a competitive disadvantage for international online map services, since their locally-based competitors are able to provide several services (such as turn-by-turn driving/walking instructions, live traffic updates, interior building maps) that international service providers cannot. Since map data supplied by such competitors are visible outside of Korea, it is unclear how a prohibition on foreign storage furthers security goals. New legislation passed in 2014 establishes a more inclusive committee process for approving export of cartographic data. The United States is highly sensitive to Korea's national security concerns and will monitor the committee's work, and work with Korea to explore possible ways to update its mapping data-related system in a manner that reflects the globalized nature of the Internet.

Cloud Computing Services

The United States and U.S. stakeholders have also raised concerns with Korea about proposed legislation submitted to the National Assembly by the Ministry of Science, Information and Communications Technology, and Future Planning (MSIP), which would provide a jurisdictional basis for regulating cloud computing services. Following engagement by the United States and extensive comments from U.S. and other foreign stakeholder groups, MSIP made some changes to its original draft to reflect many stakeholder concerns before submitting the bill to the National Assembly. However, the U.S. Government and stakeholders remain concerned about this draft legislation, which could impose additional Korea-specific regulations on what is a dynamic, global technology. The United States will continue to monitor this issue closely.

Express Delivery Services

KORUS has provided greater access to Korea's market for U.S. express delivery services. According to KORUS, "under normal circumstances" formal entry documents are not required for express shipments valued at $200 or less. The United States has raised this issue with Korea in the KORUS Committee on Trade in Goods and will continue to urge Korea to adopt more trade facilitative practices in this area.

Franchising Services

U.S. stakeholders has raised concerns for several years about the activities of the National Commission on Corporate Partnership, now renamed the Korea Commission on Corporate Partnership (KCCP), which have imposed restrictions on the expansion of some U.S.-owned restaurant franchises and opened proceedings into numerous other sectors as well. The KCCP is a partially government-funded organization, created by Korea's National Assembly, with a mandate to mediate complaints of unfair or unequal competition between large and small businesses. KCCP's mission, according to its government-appointed chairman, is to level the playing field between large businesses and small and medium enterprises (SMEs) in two ways. First, it annually issues a "win-win scorecard" on how large businesses co-exist with SMEs. Second, and of most concern for U.S. businesses, KCCP can "designate suitable industries for SMEs."

In 2013, KCCP designated the family restaurant sector as reserved for SMEs, imposing restrictions that affected U.S. franchising companies in the sector by forcing them to choose between significant geographic restrictions on where they could open new stores or a limit of only five new stores a year nationwide for the next three years. KCCP during 2014 also opened proceedings into U.S.-based restaurant chains and systems integration businesses, potentially affecting significant U.S. investors in Korea. The United States has raised concerns about KCCP's, activities, urging Korea to consider carefully the effect that KCCP has on Korea's business climate and on foreign investors. The United States will continue to monitor its activities closely in 2015.

ELECTRONIC COMMERCE

Restrictions on storing customer information outside of Korea have posed barriers to the provision of some Internet-based services, in particular online vending and payment processing. Under the Regulation on Supervision of Credit-Specialized Financial Business, electronic commerce firms selling goods in Korean won are prohibited from storing Korean customers' credit card numbers in company information systems. (U.S. electronic commerce firms continue to sell legally into the Korean market from abroad, setting prices in dollars, but are prevented from accepting Korean branded credit cards.) As a result, U.S. electronic commerce firms that are unwilling to develop Korea-specific payment systems have been prevented from entering the Korean market. The United States has raised the issue with Korea on multiple occasions, urging it to lift what appear to be unreasonable and unnecessary restrictions. In November 2013, the Korean Financial Services Commission amended regulations to partially address this issue, enabling online digital content stores operating in more than five countries and headquartered abroad to receive "payment gateway" registrations, locate information technology (IT) facilities offshore, store customer credit card numbers, and allow one-click purchases from mobile devices. This amendment is a positive step that gradually moves Korean regulation in this area in line with global norms. But U.S. stakeholders have raised concerns regarding slow and unclear implementation of the changes, and other firms have expressed concern that the changes only partially address the underlying issue of Korea's divergence from global norms on electronic payments. The United States will continue to raise this issue with Korea in 2015.

INVESTMENT BARRIERS

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, individual foreign ownership, and foreign investment in the government, corporate, and special bond markets. These reforms have also liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. Some U.S. investors have raised concerns, however, about possible discrimination and lack of transparency in investment-related regulatory decisions, including by tax authorities.

Foreign investment is not permitted in terrestrial broadcast TV operations. For satellite broadcasts, foreign participation is limited to 49 percent. Foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels. However, in line with its KORUS obligations, Korea now allows U.S. investors to wholly own Korean telecommunications operators, and will allow U.S. investors to own some broadcast service providers starting on March 15, 2015.

In addition to the investment restrictions in telecommunications and key services sectors described above, Korea maintains other important restrictions on foreign investment. Specifically, Korea prohibits foreign investment in rice and barley farming and imposes a 50 percent foreign equity limitation on meat wholesaling. Moreover, Korea limits foreign investment in electric power generation, distribution, and sales to 50 percent. It also limits foreign investment in news agency services and publishing and printing, where it has foreign equity limitations of 30 percent for enterprises publishing newspapers and 50 percent for enterprises publishing other types of periodicals.

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has played an increasingly active role in enforcing Korea's competition law and in advocating for regulatory reform and corporate restructuring. The KFTC has a broad mandate that includes promoting competition, strengthening consumers' rights, creating a competitive environment for small and medium-sized enterprises, and restraining the concentration of economic power. In addition to its authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring and patent right abuses, the KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigators. Decisions by the KFTC are appealable to the Korean judiciary. As a result of KORUS, the KFTC has implemented a consent decree process, which it continues to refine.

During the past year, some U.S. firms have raised concerns regarding misuse of competition remedies to pursue industrial policy goals, and further express concern at expedited procedures that potentially grant inadequate due process.

OTHER BARRIERS

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the U.S. Government. Upon entry into force of KORUS, Korea immediately reduced the tariff on passenger vehicles from 8 percent to 4 percent (and will eliminate the remainder of its tariff in 2016) and eliminated its 10 percent tariff on trucks. In addition, KORUS contains provisions designed to address nontariff barriers, including requirements to allow U.S. exporters to market cars in Korea built to U.S. safety standards rather than Korean standards, greatly reducing the cost of supplying U.S.-made autos to the Korean market. Korea also modified its key motor vehicle taxes so that U.S. cars are now in the same tax brackets as their Korean competitors. And, finally, transparency provisions in the agreement ensure that automakers have sufficient opportunity to participate in the setting of new regulations and adequate time to adjust to changes new regulations. These tariff and non-tariff provisions resulted in an increase in auto exports to Korea of 140 percent by value between 2011 and 2014, more than five times faster than U.S. auto exports to the world (up 26 percent). Korea is now our tenth largest export market for autos, with annual exports exceeding $1 billion in 2014. U.S. vehicle exports have more than doubled since KORUS entered-into-force.

Pursuant to a law passed by the National Assembly in March 2013, throughout 2013 and much of 2014, the Ministry of Environment worked on developing regulations to implement an incentive/penalty ("bonus/malus") system based on automotive greenhouse gas emissions under which a buyer of a new vehicle would receive either a rebate or an additional charge depending on that car's emission profile. Since the law passed, U.S. automakers have raised concerns with the proposed system. Under the authorizing law, this "bonus/malus" system was to go into effect in January 2015. The United States urged the Korean government to consult fully with U.S. stakeholders and with the U.S. Government on its plans, particularly with respect to how different types of vehicles would be classified under the system, what levels of penalties they may be subject to, and how, and by whom, the incentive or penalty is administered (*i.e.* by the government itself or by the automotive dealers). In September 2014, the Korean government made the decision to delay implementation of aspects of the "bonus/malus" system until January 2021 at the earliest, and will go forward only with implementing a portion of the intended bonus system for fuel-efficient hybrid and electric vehicles.

The 2016-2020 update of Korea's CO2/Corporate Average Fuel Economy (CAFE) emissions and fuel efficiency regulations were finalized and promulgated on December 30, 2014. In comments submitted during the 60 day comment period Korea provided for the draft regulations (published September 11, 2014), the domestic Korean, U.S., European, and Japanese auto industries opposed what they considered overly ambitious targets (97 g/km average carbon dioxide emissions by 2020). U.S. stakeholders also raised concerns that the 97 g/km target was arbitrary, since the Korean government developed it without sharing any underlying scientific study or methodology. U.S. stakeholders also requested that Korea maintain the volume threshold for small-volume manufacturers (sales of 4,500 or fewer vehicles in 2009) as is found in the current (2011-2015) regulations, including a leniency factor of 19 percent for small-volume manufacturers. U.S. stakeholders also submitted comments related to the regulation's flexibility mechanisms, such as technology credits and carry-forward/buy back of emissions credits. In the final regulations, Korea reflected stakeholder comments related to the small-volume manufacturer threshold, but will gradually reduce the 19 percent leniency factor to 8 percent by 2020. Korea also reflected most stakeholder comments related to the flexibility mechanisms, and additional clarifications on these mechanisms, as well as with respect to penalties for non-compliance, will be forthcoming. However, Korea decided to maintain the draft regulation's general 97 g/km target, stating that it was necessary in order to fulfill the government's climate change mitigation plan for the transportation sector, which is part of the international commitments Korea has undertaken under the UN Framework Convention on Climate Change. The United States will continue to engage with Korea to ensure that its automotive emissions policies are implemented in a fair, transparent, predictable manner, consistent with the KORUS.

Motorcycles

Korea's longstanding ban on driving motorcycles on expressways continues, which U.S. stakeholders argue constrains potential sales. Korea views this ban as a necessary safety measure, and has pointed to a 2011 study on the safety of motorcycles on highways commissioned by the Korean National Police, which highlighted inadequacies in Korea's regulatory and safety practices surrounding the licensing of motorcycle drivers and the proliferation of young, untrained motorcycle riders driving dangerously on city streets. The United States maintains that fit-for-purpose heavy motorcycles riding on expressways do not pose the same safety concerns as smaller, lighter motorcycles and continues to urge Korea to allow large motorcycles on expressways.

Pharmaceuticals and Medical Devices

Under KORUS, any new Korean regulations affecting general pricing and reimbursement of pharmaceuticals and medical devices must be published in advance for notice and comment, and the Korean government is required to respond to public comments in writing and explain any substantive revisions made to proposed regulations. KORUS also contains provisions regarding appropriately recognizing the value of patented pharmaceuticals and medical devices. The United States continues to urge Korea to refrain from implementing reimbursement policies that may discourage companies from introducing advanced medical products to the Korean market or serve as a disincentive to innovation and investment in research and development.

The U.S. innovative pharmaceutical industry continues to report concerns regarding the lack of transparency and predictability of the pricing and reimbursement policies, and their underlying methodology, of the Korea's Ministry of Health and Welfare (MOHW). These aspects of such policies, including with respect to the expanded price-volume agreement announced by MOHW in September 2013 as well as Korea's therapeutic reference pricing policy, continue to generate considerable uncertainty for stakeholders, which depend on long-term planning for the investment decisions that support research and development. The United States has urged Korea to seriously consider stakeholders' concerns and ensure that pharmaceutical reimbursement pricing is conducted in a fair, transparent, and non-discriminatory manner that recognizes the value of innovation, as set forth in KORUS. In December, 2014, a new PVA was announced for new drugs for export to receive a refund instead of price reduction, to begin in 2015. The United States will continue to monitor the situation closely in 2015.

U.S. companies have also continued to express concern about insufficient transparency in the regulation of pricing and reimbursements. The U.S. medical devices sector continues to cite concerns regarding transparency and the availability of opportunities for meaningful engagement regarding such regulation, including with respect to the October 2013 reimbursement plan for medical devices based on import price or manufacturing cost that would further lower the prices of U.S. medical device exports in Korea. U.S. stakeholders believe this does not adequately reflect the full value of such devices, including with respect to research and development and other costs. The United States has expressed its concern that the reimbursement pricing of medical devices should be determined in a fair, non-discriminatory, and transparent manner and urged MOHW to engage directly with stakeholders to address their concerns.