

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was \$13.4 billion in 2006, a decrease of \$2.6 billion from \$16 billion in 2005. U.S. goods exports in 2006 were \$32.5 billion, up 16.9 percent from the previous year. Corresponding U.S. imports from Korea were \$45.8 billion, up 4.7 percent. Korea is currently the 7th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Korea were \$10.3 billion in 2005 (latest data available), and U.S. imports were \$6.3 billion. Sales of services in Korea by majority U.S.-owned affiliates were \$4.3 billion in 2004 (latest data available), while sales of services in the United States by majority Korea-owned firms were \$378 million.

The stock of U.S. foreign direct investment (FDI) in Korea in 2005 was \$18.8 billion (latest data available), up from \$16.8 billion in 2004. U.S. FDI in Korea is concentrated largely in the manufacturing, banking, finance, and wholesale trade sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

USTR notified Congress of the President's intent to negotiate a United States-Korea Free Trade Agreement (KORUS FTA) on February 2, 2006. If successfully concluded, the KORUS FTA will have significant economic, political, and strategic benefits for both countries. It will be the most commercially-significant FTA the United States has completed in 15 years. Two-way trade between the United States and Korea is valued at \$78.3 billion and should grow once an FTA is concluded. An FTA with Korea will likely produce gains from increased services trade, increased agriculture and industrial goods trade, enhanced transparency in Korea's regulatory system, improvements in intellectual property protection in Korea and the promotion of bilateral investment.

Building on the close cooperation between the United States and Korea in the Asia-Pacific Economic Cooperation (APEC) forum and the Doha Development Agenda (DDA) negotiations in the World Trade Organization (WTO), an FTA will help strengthen Korea's partnership with the United States in multilateral and regional fora. The KORUS FTA will also further deepen a 50 year-old plus economic and strategic relationship with Korea. In addition, as the United States' first FTA negotiation with a North Asian partner, conclusion of this agreement would underscore the U.S. commitment to deepening and strengthening trade ties with the many dynamic and fast-growing countries in the region.

IMPORT POLICIES

Tariffs and Taxes

Korea's average applied tariff rate is 11.2 percent for all products and the simple average of Korea's WTO bound tariffs on all agricultural products is 52 percent. Although Korea bound 94.5 percent of its tariff lines in the WTO Uruguay Round negotiations, tariffs on most fishery products are not bound.

Korea's tariffs on many high-value agricultural and fishery products are very high. Korea imposes tariff rates of 30 percent or higher on most fruits and nuts, many fresh vegetables, starches, peanuts, peanut

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butter, various vegetable oils, juices, jams, beer and some dairy products. Many products of interest to U.S. suppliers, including apples, beef, certain cheeses, grape juice and grape juice concentrate, herbal teas, pears, table grapes, and a variety of citrus fruits are subject to tariff rates of 35 percent or higher.

Other products of interest to U.S. industry on which Korea imposes high tariffs include cherries, distilled spirits, frozen corn, frozen french fries, frozen uncooked and fully cooked poultry, pepperoni, prepared or mashed potatoes, soups, spicy pork, mixed vegetable juices and fruit wine. In many instances, Korea applies prohibitively high tariffs despite the absence of domestic production of certain agriculture products.

Korea also has established tariff-rate quotas (TRQs) intended to provide minimum access to previously closed markets or to maintain pre-Uruguay Round access. In-quota tariff rates may be very low or zero, but the over-quota tariff rates for some products, mostly agricultural and fishery, are prohibitive. For example, natural and artificial honey are subject to an over-quota tariff rate of 243 percent; skim and whole milk powder, 176 percent; barley, 324 percent; malting barley, 513 percent; potatoes and potato preparations, more than 304 percent; and popcorn, 630 percent. In addition, for some agricultural products such as corn grits, popcorn, and soy flakes, Korea aggregates raw and value-added products under the same quota. Domestic producer groups, which administer the quotas, invariably allocate the more favorable in-quota tariff rate to their larger members, who import raw ingredients.

In order to protect domestic agricultural, fishery and plywood producers, Korea also uses "adjustment tariffs" and compounded taxes to boost applied tariff rates. Most of the adjustment tariffs are imposed on agricultural and seafood products, including frozen croaker and skate, which are products of interest to U.S. exporters. In 2006, Korea renewed adjustment tariffs on 18 items, and reduced the tariff rates for eight of these 18 items.

As a result of its Uruguay Round commitments, Korea has eliminated tariffs on most or all products in the following sectors: paper, toys, steel, furniture and farm equipment. Korea has harmonized its chemical tariffs to final rates of zero percent, 5.5 percent, or 6.5 percent, depending on the product. However, industry reports that Korea does not apply these tariff rates to soda ash, which is dutiable at 8 percent. In addition, tariffs on scientific equipment have been reduced by 65 percent from pre-Uruguay Round levels. However, on textile and apparel products, Korea's bound tariffs are relatively high: 30 percent on several man-made fibers and yarns, 30 percent on many fabrics and most made-up and miscellaneous goods (for example, pillow cases and floor coverings) and 35 percent on most apparel items.

Quantitative Restrictions

Korea implements quantitative restrictions through its import licensing system which is administered by domestic producer groups or government buying agencies such as the Korea Agro-Fisheries Trade Corporation and the Public Procurement Services. The restricted products are listed on a Korean government export-import notice.

Rice

In the Uruguay Round, Korea received a ten year exception to tariffication of rice imports in return for establishing a Minimum Market Access (MMA) quota. This arrangement expired at the end of 2004, but Korea negotiated a ten year extension of the MMA arrangement. The extension called for Korea to double its total rice imports over the next ten years, increasing the MMA quota from 225,575 metric tons in 2005 to 408,698 metric tons in 2014. Along with the Country-Specific Quota (CSQ) commitments to purchase minimum amounts of imports from China, Thailand and Australia, Korea also agreed to

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purchase at least 50,076 metric tons annually from the United States until 2014. In addition, the quality of access has improved as rice marketed to consumers as table rice was for the first time included as a portion of the MMA quota. The table rice portion increases from 10 percent of the quota in 2005 to 30 percent in 2010. Korea's rice MMA quota has been in effect since 2005 and tendering commitments for 2007 are currently underway.

Customs Procedures

The Korea Customs Service frequently classifies "blended products" under the Harmonized System (HS) heading for the major ingredient of that product, rather than under the HS heading for the blended product itself, which usually has a lower tariff rate. Changes in classification are often based on seemingly arbitrary standards and are at odds with practices followed by other OECD members. For example, in order for dehydrated potato flakes to be classified as a blended product, they must include at least 10 percent non-potato ingredients. Blended products disadvantaged by this practice also include soybean flakes, flavored popcorn, and peanut butter chips.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing and Certification)

Korea maintains certain standards, technical regulations, and conformity assessment procedures which are burdensome and have a disproportionate impact on imports. Certain Korean standards are more restrictive than international standards. For example, food that is "generally recognized as safe" in the United States is frequently detained when imported into Korea. The Korean Food and Drug Administration (KFDA) defines product categories for specific food additives narrowly, making it more difficult to obtain approval for microbial standards and food additives. Additionally, KFDA's determination that a product is new if formula ratios are changed, or if substitute ingredients are used, sets its procedures apart from other OECD countries.

Korean government agencies require prior approval to import pharmaceuticals, chemicals, cosmetics, computers, medical devices, telecommunications equipment, and other products. While many other countries require prior approval for some products, Korea's requirements cover a much broader range of products.

Korea's regulation of cosmetics includes burdensome requirements that do not appear to enhance product safety, quality, or efficacy. These burdensome requirements and a general lack of transparency in the regulatory system impede the ability of U.S. companies and products to compete in the Korean market.

Beef

Korea's market has been closed to imports of U.S. beef since the December 2003 detection of a single cow with Bovine Spongiform Encephalopathy (BSE) in the state of Washington. Before the ban, Korea was the third-largest export market for U.S. beef and beef products and other ruminants, with annual exports valued at \$1.3 billion in 2003.

On January 13, 2006, the United States and Korea reached an initial agreement allowing resumption of U.S. "deboned" beef imports from cattle aged 30 months or less under a Beef Export Verification Program. However, three subsequent shipments of U.S. beef to Korea have been rejected by the Korean government due to the presence of "bone chips." The U.S. Government continues to consult with Korean

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government officials and has urged Korea to bring its BSE measures in line with international guidelines set by the World Organization for Animal Health (OIE) by allowing imports of all beef products deemed safe. The United States will continue to work vigorously toward achieving this important objective.

Throughout the ban on beef products, Korea continued to permit the imports of certain products containing ruminant ingredients, such as pharmaceuticals and cosmetics. However, U.S. exporters of those products have noted that since the ban on Korean beef was imposed, Korea's requirements for BSE-free certification have become increasingly burdensome and have begun to impede the flow of U.S. exports of these products to Korea.

Poultry

The U.S. Government has requested that Korea accept the "regionalization" concept to ensure that U.S. poultry is not completely banned should there be another outbreak of highly pathogenic avian influenza (HPAI). The U.S. Government continues to consult with Korea on this matter.

Convention on Biological Diversity

Korea has stated its intention to ratify and implement the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (CPB) in 2007. Environmental risk assessments for biotechnology crops will become mandatory when the CPB is implemented in Korea. To date, 27 applications have been submitted for voluntary environmental assessments (13 for corn, one for soybeans, six for cotton, one for alfalfa, and six for canola) and 18 of those have been completed to date. The U.S. Government continues to urge Korea to notify the appropriate WTO Committee of new requirements resulting from the implementation of the CPB in a timely manner and to implement minimally restrictive requirements.

Functional Foods

The United States continues to urge the KFDA to provide for sport nutrition or herbal products in Korea's functional food categories, as these categories are widely accepted in other countries. For instance, according to industry, sports nutrition products, such as glutamine and creatine powder, and herbal ingredients, such as milk thistle, bilberry and garlic, are not permitted by KFDA for use in making functional foods although these ingredients are widely used in sports nutrition or herbal products in the United States. Further, according to KFDA requirements, only tablets, capsules, granules, liquids and powders may be marketed as functional foods although sports nutrition products also come in other forms such as nutrition bars.

Organic Foods

KFDA only accepts copies of USDA National Organic Program (NOP) certificates issued to producers, manufacturers, or processors even though certificates issued to brokers or other handlers also meet the NOP requirements. Also, insufficient communication between KFDA headquarters and regional offices about changes in required import clearance documents, and the arbitrary interpretation of Korean regulations by KFDA field inspectors, continue to cause delayed clearance for imported organic products. The U.S. Government has expressed its concern with these practices and delays and urged the KFDA to take steps to eliminate them.

KFDA maintains a policy of zero tolerance for the presence of biotechnology products in processed food that is labeled as organic. In many countries, including the United States, Japan, and the European Union, organic standards are process-based (i.e. agriculture products must be produced and handled in certain

ways in order to be certified as organic). As a result, the United States, Japan, the European Union and others have established regulations that allow for trace levels of biotechnology products in certified organic products. The United States will continue to urge KFDA to recognize this system-based approach and to reconsider its zero tolerance policy for presence of biotechnology products in foods that are labeled as organic.

Telecommunications Standards

The Korean government has been an active participant in the development of its telecommunications equipment market, both directly, through licensing conditions that mandate particular technology standards or require the use of particular technologies, and indirectly, through industry associations and quasi-governmental organizations such as government-affiliated research institutes. The U.S. Government has urged the Korean government to adhere to a policy of technology neutrality and to refrain from imposing mandatory standards or requiring the use of particular technologies that unnecessarily restrict trade or discriminate against U.S. suppliers of telecommunications or broadcast technologies or services. (See also "*Telecommunications*")

Labeling Requirements

U.S. exporters cite Korea's non-transparent and burdensome labeling requirements as barriers to entry for a variety of goods. In particular, the distilled spirits industry has raised concerns with the cost of complying with both existing and constantly changing labeling requirements. Korea has recently indicated it is changing its requirements for end-use labeling of distilled spirits in order to minimize the burden of storing inventory for importers.

Korea has mandatory labeling requirements for biotechnology corn, soybeans, soybean sprouts, and fresh potatoes, and for processed foods containing biotechnology enhanced corn and soybeans. The United States has expressed concern to Korea that these labeling requirements appear more burdensome than necessary to achieve their stated goal of providing Korean consumers clear information. As a result, MAF officials have indicated to the U.S. Government that fresh potatoes are exempt from biotechnology labeling requirements and that any extra documentation is not necessary as long as no biotechnology potatoes are produced in the United States. Korea also accepts a notarized self-declaration as certification that products meet the criteria for exemption from biotechnology labeling.

In 2006, the U.S. apparel industry raised concerns about new labeling rules proposed by Korea for apparel. The new rules would require the name of the importer on some form of label or hangtag on every single garment. According to industry, providing such information is particularly onerous, especially when supplying thousands of individual garments to multiple importers. The United States continues to discuss this issue in the context of Doha Development Agenda negotiations in the WTO.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). Under the GPA, Korea covers the procurement of a number of Korean central government agencies, several provincial and city governments and approximately two dozen government-invested companies. For procurement of construction services by sub-central and government enterprises covered under the GPA, Korea has a threshold of \$22 million. The U.S. Government seeks to expand access to Korea's government procurement market for U.S. goods and services providers in both market access negotiations under the GPA and in bilateral negotiations.

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In response to concerns expressed by U.S. industry, the Korean National Intelligence Service (NIS) eliminated its required disclosure of source code in the procurement of certain information technology security products. However, the U.S. Government is continuing to work with Korea to address remaining concerns with the documentation that NIS requires related to the certification of such products.

INDUSTRIAL SUBSIDY POLICY

The U.S. Government has been concerned with Korean government assistance to targeted industries through its industrial policies and will continue to consult closely with U.S. industry to determine if these policies raise competitiveness concerns. Korea's past promotion and support for its semiconductor industry, which eventually resulted in the imposition of countervailing duties by the United States (as well as by the EU and Japan) is emblematic of our concerns in this area.

More specifically, the U.S. Government has expressed concerns about the role played by the government-owned Korea Development Bank (KDB) in supporting certain Korean industries. Historically, the KDB, which as a government-owned entity is not necessarily bound by the same constraints as commercial institutions, has been one of the government's main sources for policy-directed lending to favored industries. U.S. industries have reported that lending and equity investments by the KDB have contributed to overcapacity in certain Korean industries. The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The importance of IPR protection has increased in recent years as the digitization of Korea's economy has significantly increased the opportunity for unauthorized reproductions of copyrighted material. With Korean films and music increasing in popularity throughout the world and Korea's industrial products and trademarks enjoying global success, Korean creators of intellectual property would benefit from improvements in Korea's intellectual property regime.

The U.S. Government continues to urge Korea to strengthen its legal regime to protect intellectual property with respect to issues such as the following: protection of temporary copies, technological protection measures, Internet Service Providers' (ISP) liability, and copyright term extension. In addition, concerns remain on book piracy in universities, street vendor sales of illegally copied DVDs, counterfeiting of consumer products, protection of pharmaceutical test data and a lack of coordination between Korean health and IPR authorities to prevent marketing approvals for patent-infringing products.

IPR Enforcement

According to Korean government data on investigations, trials and convictions in IPR cases, there were a total of 26,741 indictments issued and 2,022 people were arrested for a variety of IPR violations during the first ten months of 2006. The bulk of indictments (19,832) were for violations of the Sound Recordings and Video Products Act. The majority of the remaining indictments (4,637) were for violations of the Trademark and Unfair Competition Prevention Acts. No information was available for convictions or penalties for these cases.

The Standing Inspection Team (SIT) of the Ministry of Information and Communication has police powers and is authorized to conduct raids on commercial firms and other institutions suspected of using illegal software. Korean police and prosecutors' raids against software end-users have become more consistent and are more frequently based on leads provided by the software industry. The United States remains concerned, however, about the lack of transparency regarding the Standing Inspection Team's

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enforcement process, including whether the SIT acts on leads provided by industry and whether rights holders will be able to participate in raids and be notified about all SIT raids, even when discovered infringements are minor.

Temporary Copies

Currently, Korean law does not extend the reproduction right to cover copies made in the temporary memory of a computer. The United States continues to urge Korea to strengthen the Copyright Act and Computer Program Protection Act, Korea's two principal copyright laws, by revising the laws to clarify that the copyright owner has the exclusive right to make copies, temporary or permanent, of a work or phonogram.

Copyright Act

The United States continues to press for stronger provisions in Korea's Copyright Act. For instance, the current Act does not appear to include technological protection measures (TPMs) that control who can access a work, nor does it prohibit the act of circumventing TPMs, only prohibiting the creation or distribution of circumvention tools. Secondly, while certain provisions of the Copyright Act that define Internet Service Provider (ISP) liability were harmonized with the Computer Program Protection Act (CPPA) in 2003, further clarification is required. The Copyright Act amendments still leave unclear the scope of the underlying liability of service providers and the limitations on, and exceptions from, liability. In addition, there are concerns that the documentation requirements for the rights holders in a "takedown" request are too burdensome.

The U.S. Government has informed the Korean government that the private copy exceptions in Article 27 and Article 71 of the Copyright Act should be re-examined in light of the growth of digital technologies. These exceptions generally should not be applicable to the Internet environment, which by its very nature extends far beyond private home use. In the digital environment, the market harm threatened by the unauthorized creation of easily transmittable perfect digital copies far exceeds the harm threatened by analog personal copying.

Korea currently provides copyright protection for the life of the author plus 50 years. In line with international trends, the United States is urging Korea to extend the term of copyright protection for works and sound recordings to the life of the author plus 70 years or 95 years from date of first publication where the author is a legal entity.

In December 2006, Korea passed a new copyright law that will come into force in June 2007. The new law is still being analyzed but it does appear to contain some improvements. In particular the new law introduces an obligation requiring peer-to-peer network operators to apply measures against the distribution of infringing copies on their networks when requested by the rights holder. The new law, however, does not address previous shortcomings in sound recording protections and private copying exceptions. Producers' rights for digital sound transmission are limited to remuneration rights, rather than exclusive rights. Additionally, the new law provides for broad copying exceptions at the university level.

Computer Program Protection Act (CPPA)

Korea's Computer Program Protection Act (CPPA) was amended in October 2006 to meet current challenges as well as to comply with new global norms. This amended CPPA increases the power of the Program Deliberation and Mediation Committee (PDMC) and increases penalties for assorted violations

of Korean IPR-related laws. The U.S. Government continues to urge the Ministry of Information and Communications (MIC) to further amend the CPPA to provide for protection of temporary copies and improved protection for technological protection measures. It is also important that the dispute mediation function of the PDMC be performed only when all parties to the dispute have voluntarily agreed to subject themselves to the judgment of the PDMC. Moreover, it is important that mediation by the PDMC not be a prerequisite for any civil, administrative, or criminal adjudication of rights. The U.S. Government also believes that the amendments should include minimum penalties for offenses under the CPPA. The United States has also recommended that the Korean government clarify the availability of injunctive relief in civil enforcement actions under the CPPA, as required under the TRIPS Agreement.

Data Protection

KFDA decided on March 31, 2005 that slightly altered versions (such as using a different “salt”) of original drugs undergoing post-marketing surveillance (PMS) in Korea are subject to Korea's data protection regulations. This means that the manufacturers of the altered version have to supply a full portfolio of clinical data in order to obtain market approval if they intend to market their drug while the original drug is still under PMS, in line with Article 39.3 of the WTO TRIPS Agreement. This interpretation of the law, however, is not clearly delineated in Korea's laws and industry has expressed concern about KFDA taking a different interpretation at a later time.

Book and Video-DVD Piracy

The Publication and Printing Business Promotion Act allows private sector involvement in enforcement measures against book piracy. The U.S. Government has urged Korean authorities to coordinate with foreign book publishers and rights holders in order to provide effective enforcement against book piracy, especially textbooks, and will continue to monitor implementation of this law.

Pirated audio-visual DVDs, sold on the street by unlicensed vendors, continue to be a problem in Korea. This type of piracy is increasing due to the growing sophistication of illegal production facilities and advanced distribution technologies. The U.S. Government has urged the Korean government to meet this digital piracy challenge with stronger enforcement efforts and deterrent penalties.

Patent and Trademark Acts, and Trade Secrets

The Korean Intellectual Property Office (KIPO) has amended relevant laws to address U.S. concerns regarding restrictions on patent term extension for certain pharmaceutical, agrochemical and animal health products (which are subject to lengthy clinical trials and domestic testing requirements, see *"Standards, Testing, Labeling and Certification"*). An issue of continuing concern, however, has been the lack of coordination with the Korean Food and Drug Administration and the KIPO, which results in the granting of marketing approval for products that may infringe on existing patents. U.S. firms have also identified concerns with the Korean courts' apparent unwillingness to provide injunctive relief in cases where a rights holder's patent has been infringed, allowing the infringing products to remain on the market until a final determination has been made. Although Korean civil courts have the authority to issue injunctive relief, in practice they rarely, if ever, do so in patent-related cases.

Korea's Trademark Act has been amended over the years to strengthen provisions that prohibit the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject any registrations made in "bad faith." Despite this change, the complex legal procedures that U.S. companies must follow to seek cancellation discourages U.S. companies from pursuing legal remedies. In particular, problems still arise with respect to "sleeper" trademark registrations filed and registered in

Korea without authorization in the late 1980s and early 1990s, when KIPO was still developing a more effective and accurate trademark examination and screening process.

Korean laws on unfair competition and trade secrets provide a basic level of trade secret protection in Korea, but are insufficient in some instances. For example, some U.S. firms, particularly certain manufacturers of chemicals, pet food, and food products, face continuing problems with government regulations requiring submission of very detailed product information, such as formula or blueprints, as part of registration or certification procedures. U.S. firms report that, although the release of business confidential information is forbidden by Korean law, in some instances, government officials do not sufficiently protect this proprietary information and the trade secrets that were made available to Korean competitors or to their trade associations.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors. In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. (*See also "Investment Barriers"*)

Advertising

Korea is among the world's top twelve largest advertising markets; however, the market remains highly restricted. Because broadcast advertising time is still sold exclusively through the state-sponsored Korea Broadcast Advertising Corporation (KOBACO), advertisers and their agencies must work through KOBACO to advertise on broadcast television. Further, U.S. industry has noted its concerns with Korean restrictions on broadcast advertising of beverage products containing 17 percent or greater alcohol by volume.

Screen Quota

On July 1, 2006, the Korean government reduced its screen quota requirement to 73 days of the year. Korea had previously required that domestic films be shown on each cinema screen for a minimum of 146 days of the year, corresponding to a 40 percent market share. The domestic market share for Korean films has, for the last several years, far surpassed 40 percent. In 2006, for instance, Korean films achieved a 60 percent market share in Seoul.

Foreign Content Quota for Broadcast Television

Korea restricts foreign activities in broadcast television by limiting the percentage of monthly broadcasting time (not to exceed 20 percent) that may be devoted to foreign programs. Annual quotas also limit broadcasts of foreign programming to a maximum of 75 percent for motion pictures, 55 percent for animation, and 40 percent for popular music. Foreign investment is not permitted for broadcast television operations.

Foreign Content Quota for Cable Television

Korea restricts foreign participation in the cable television sector by limiting per channel airtime for most foreign programming to 50 percent. Annual quotas limit foreign motion pictures to 75 percent and foreign animation to 65 percent. In addition, according to the industry, Korea implemented a rule in 2002 limiting the content by any one country to 60 percent of the quota, thus the maximum U.S. programming is limited to 45 percent and 39 percent, respectively. The Korean government also restricts foreign

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ownership of cable television-related system operators, network operators, and program providers to 49 percent. For satellite broadcasts, foreign participation is limited to 33 percent.

Satellite Re-Transmission

The Integrated Broadcast Law mandates that Korean firms that wish to re-broadcast satellite transmissions of foreign programmers must have a contract with the foreign program provider in order to obtain approval from the Korean Broadcasting Commission (KBC). Foreign re-transmission channels are limited to 20 percent of the total number of operating channels. This restriction limits the amount of international broadcasting that could otherwise be made available to Korean consumers and limits foreign investment in the broadcasting sector.

Restrictions on Voice-overs and Local Advertisements

Presently, the Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voice-overs (dubbing) and local advertising for foreign re-transmission channels. Allowing Korean language voice-overs would make broadcasts more accessible to Korean consumers (especially for breaking news and children's cartoons); it would also benefit the Korean economy by creating more studio-production jobs and attracting foreign investment. The prohibition on local advertising for foreign re-transmission channels restricts the long-term viability of these channels in the Korean market.

Legal Services

The Korean government plans to open its legal services market in stages. The first step would be to regularize the legal status of foreign legal consultants. The U.S. Government has also been informed that the law would allow foreign law firms to open offices in Korea, although they would not be allowed to hire Korean attorneys or advise on domestic law. As of the publication of this report, the Korean government has not submitted draft legislation to its National Assembly. The U.S. Government continues to urge the Korean government to allow foreign law firms to practice law in Korea.

Insurance

Korea is the second-largest insurance market in Asia and seventh-largest in the world. Korea's laws and regulations do not restrict foreign entry into insurance markets.

Korean and foreign companies (including U.S. firms) active in Korea's insurance and savings markets are concerned about the supply of insurance services by Korea Post, a government agency, the National Agricultural Cooperative Federation (NACF), and the National Federation of Fisheries Cooperative (NFFC). These entities are not regulated by the Korean Financial Supervisory Commission (FSC) or the Financial Supervisory Service (FSS) as are private insurers. U.S. companies recognize that changing the regulation of these entities is difficult but seek a mechanism that would begin to address this concern. The U.S. Government has urged the Korean government to consider ways to bring these entities under the regulatory authority of the FSC and FSS. In response, the Korean government appears to be considering ways to improve the regulation of Korea Post's and the cooperatives' financial activities. The U.S. Government will continue to raise these issues with Korea.

Banking

The Korean government-controlled Korea Deposit Insurance Corporation still owns nearly 79 percent of Woori Financial Holdings which fully controls Woori Bank, the country's second-largest bank. The Korea Deposit Insurance Corporation also directly owns 67.7 percent of the Industrial Bank of Korea, the fourth-largest bank in Korea.

Foreign banks are permitted to establish as subsidiaries or branches. Capital markets are open to foreigners, permitting foreign financial institutions to engage in non-hostile mergers and acquisitions of domestic financial institutions. Korea allows foreign bank branches to borrow from their head offices and to include the net borrowing as "Class B capital." However, the Korean government does not allow foreign branches to use capital from head offices to meet regulatory lending limit requirements and continues to restrict the operations of foreign bank branches based on branch capital requirements. These restrictions limit: (1) loans to individual customers; (2) foreign exchange trading; and (3) foreign bank capital adequacy and liquidity requirements. Foreign banks are subject to the same lending ratios as Korean banks, which require them to allocate a certain share of their loan portfolios to Korean companies that are not one of the top four *chaebol* conglomerates and to small and medium-sized enterprises.

Korea continues to suffer from a lack of transparency in the financial regulatory system and all banks must seek approval before introducing new products and services. Korea has largely deregulated foreign exchange and capital account transactions for individuals, but a few restrictions (applied to both domestic and foreign institutions) on foreign exchange transactions and derivatives trading by corporations and financial institutions still remain.

Telecommunications

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. In addition, Korea affords non-facilities based carriers less rights in terms of access to, and use of, the telecommunications network (e.g., with respect to interconnection) as compared with facility-based competitors.

INVESTMENT BARRIERS

The Roh Administration has continued Korean government support for the establishment of a more favorable investment climate in order to facilitate foreign investment in Korea. The positive attitude toward foreign investment on the part of the Korean government, many in private industry and by a growing number of Koreans is helping to open the Korean economy. The United States is working to build on the progress made in recent years by seeking to improve regulatory transparency, ensure that U.S. investors are not treated less favorably than Korean investors or investors from third countries and lock in other internationally-accepted investor protections.

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. The United States is pressing the Korean government to liberalize foreign equity restrictions with respect to investments in various state-owned firms and many types of media, including basic telecommunications service providers, cable and satellite television services and channel operators.

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Although the Korean government has taken several important steps to privatize state-owned corporations, no new privatizations took place in 2006. In addition, on November 30, 2005, the government announced that it would seek to more tightly control state-run companies and no longer has immediate plans to privatize Korea Gas Corporation. As noted in the “Banking” section of this report, the Korean government has also postponed any announcement of a definitive schedule for the privatization of its nearly 79 percent share in Woori Financial Holdings, which owns the country’s second-largest bank.

The Korean government also has opened Free Economic Zones (FEZs) with an extensive range of incentives including tax breaks, tariff-free importation, relaxed labor rules, and improved living conditions for expatriates in areas such as housing, education, and medical services. Establishing these zones is an important step in making Korea's business environment more open, liberal, and responsive to economic needs, in conjunction with encouraging Korea to reform other key areas of its regulatory structure to enhance additional foreign investment into Korea.

ANTICOMPETITIVE PRACTICES

Competition Policy

The Korea Fair Trade Commission (KFTC) has been playing an increasingly active role in enforcing Korea's competition law and in advocating for regulatory reform and corporate restructuring. In addition to KFTC's authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring, KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigations.

A number of U.S. companies have expressed concerns that respondents in KFTC investigations have not been afforded a sufficient opportunity to review and respond to the evidence against them, including an opportunity to cross-examine those who testify in KFTC investigatory hearings. Concerns have also been raised that procedural rules for KFTC hearings have not been sufficiently transparent and that KFTC lacks the authority to enter into settlement agreements with respondents by mutual agreement. In response to the concerns raised by U.S. companies, the U.S. Government is monitoring KFTC activities closely and has encouraged it to develop a balanced approach in a manner that affords appropriate transparency and other procedural protections without imposing unnecessary restrictions on commercial activity.

ELECTRONIC COMMERCE

Korea is considered to be a global leader in technology. Korea has more high-speed Internet connections per household than any other country in the world and the government has actively pursued legislation to encourage electronic commerce.

The Korean National Assembly has been working to address data privacy issues by drafting a Personal Information Protection Act, formerly the Basic Privacy Act, and revising or adding sector-specific laws. Industry-specific issues will be addressed separately by regulations to be put in place over a period of six months to two years following the passage of the Act. The U.S. Government looks forward to working with Korea to ensure that resulting regulations do not inhibit the cross-border flow of information, which would negatively impact Korean and American companies and would limit consumer choice.

Numerous privacy issues have been discussed on the margins of the APEC Privacy Framework, an initiative to which Korea has contributed. Non-governmental organizations in Korea are asking for stricter requirements in a number of areas which may impact cross-border data flows, thus hindering

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electronic commerce. Korea is also considering establishment of a central point of contact responsible for data privacy, similar to data protection authorities that exist in other countries.

OTHER BARRIERS

Regulatory Reform and Transparency

A general lack of transparency in Korea's rule-making and regulatory system is a cross-cutting issue affecting U.S. firms in many different sectors, including the automotive, pharmaceutical, agricultural, financial services and telecommunications sectors, and continues to be one of the principal problems cited by U.S. traders and investors seeking to compete in the Korean market.

Korean laws, regulations, and rules often lack specificity, and Korean officials exercise a great deal of discretion in applying broadly drafted laws and regulations. This can result in the inconsistent application of regulations and uncertainty for businesses on how to fully comply with them. Just as importantly, the jurisdictions and regimes of several authorities (notably the Korea Fair Trade Commission and the Financial Supervisory Service) overlap, constituting a heavy regulatory burden for firms doing business in Korea.

Korea's Administrative Procedures Act (APA) stipulates that the public comment period for draft regulations that are subject to the APA shall be no less than 20 days. However, in many cases, the 20 day time minimum is insufficient. In addition, in many instances the final versions of regulations do not reflect the comments provided.

Motor Vehicles

Increased access to Korea's automotive market for U.S. suppliers remains a key priority for the U.S. Government. As a result, the U.S. Government continues to urge the Korean government to address concerns in Korea's automotive sector including its 8 percent tariff and a range of non-tariff barriers, such as discriminatory taxes based on engine size, standards and regulatory matters, and consumer perception (anti-import bias).

The United States has urged the Korean government to eliminate Korea's 8 percent tariff on imported automobiles, which is more than three times the U.S. tariff, and eliminate the discriminatory element of Korea's engine displacement taxes. The effect of the tariff, compounded by the cascading effect of multiple automotive taxes, raises the effective rate to above 12 percent.

The U.S. Government is also urging Korea to create a formal mechanism to consult on automotive regulatory and standards issues in order to enhance transparency and provide early input into the development of these regulations and standards in Korea. In addition, the U.S. Government continues to urge the Korean government to address specific issues of concern in the area of automotive emissions and safety standards.

In the past, U.S. automotive companies have experienced problems with anti-import campaigns, with imported vehicles often listed as specific targets. The United States is seeking ways to ensure no future anti-import incidents occur.

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Motorcycles

Although progress was made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, several market access issues remain including a highway ban, tariff and tax levels, and absence of ownership titles. Korea's ban on driving motorcycles on expressways and on designated bridges restricts the market potential for heavyweight motorcycles even though they are designed for safe highway use.

Pharmaceuticals

On December 29, 2006, the Korean Ministry of Health and Welfare announced that the regulations to implement its Drug Expenditure Rationalization Plan (DERP) had taken effect. The main elements of the DERP include a shift from a negative to a positive list system for drug reimbursement (pharmaceuticals with marketing approval had previously qualified automatically for reimbursement unless specifically disallowed; under the "positive list" system, pharmaceuticals will only be reimbursed if specifically allowed) and the introduction of a negotiation procedure for setting the amount of reimbursement for drugs. The U.S. Government will continue to work with the Korean government to ensure that the DERP will be implemented in a fair, transparent, reasonable, and non-discriminatory manner and will adequately reward innovation.

Corruption in the Healthcare System

Corruption continues to be a widespread problem in the Korean healthcare system. The complex distribution system and lack of transparency in the government decision-making process are large contributors to this problem. The U.S. Government will continue to work with the Korean government to control improper practices by wholesalers and distributors and provide predictability for U.S. companies in pharmaceutical pricing, reimbursement guideline setting, and regulatory affairs.

Medical Devices

KFDA requires re-registration of all products transferred to a manufacturing site outside its original country of origin. This re-registration is equivalent to a new registration. The U.S. Government would like to expand existing licenses to cover dual sites and permit notification of the change to KFDA without the need for re-registration; this may be possible if a verifiable and enforceable Good Manufacturing Practices paradigm consistent with international best practices is introduced and adopted, which the United States hopes would happen sometime in 2007.

KFDA requires medical devices to include Directions For Use (DFUs) in the local language. The industry accepts this burden, as this practice better insures patient safety. It is currently accepted practice in many other regions to provide an electronic version of a DFU. The product package references a Website or CD-ROM containing the proper DFU. The U.S. Government has urged that KFDA formally create, publish, and implement guidelines that define how manufacturers can provide DFUs and required labeling in an electronic format.