KOREA

In 1996, the U.S. trade surplus with Korea was $3.9 billion, an increase of $2.7 billion from the U.S. trade surplus of $1.2 billion in 1995. U.S. merchandise exports to Korea were $26.6 billion, an increase of $1.2 billion (4.6 percent) from the level of U.S. exports to Korea in 1995. Korea was the United States' fifth largest export market in 1996. U.S. imports from Korea were $22.7 billion in 1996, a decrease of $1.5 billion (6.3 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Korea in 1995 was $5.3 billion, an increase of 30.4 percent from the level of U.S. FDI in 1994. U.S. FDI in Korea is concentrated largely in the banking, manufacturing, and wholesale sectors.

IMPORT POLICIES

Tariffs

Korea bound 92 percent of its tariff lines as a result of the Uruguay Round negotiations. The average bound rate for industrial products will be 8.2 percent once the commitments are fully implemented. The average applied tariff rate is 7.9 percent.

Except for rice, all agricultural products are bound. In January 1995, Korea began implementation of its Uruguay Round commitments to lower duties on over 30 agricultural products of primary export interest to the United States, including such intermediate and high value products as vegetable oils and meals, processed potatoes, mixed feeds, feed corn, wheat, fruits, nuts, popcorn, frozen french fries and breakfast cereals. Duties on these products will be reduced by 40 percent from the 1993 applied levels in 10 equal installments between 1995 and 2004.

Korea also established tariff-rate quotas that provide for minimum access to a previously closed market, or maintain pre-Uruguay Round access (see also Quantitative Restrictions). Within-quota tariff rates are to be maintained at zero or low levels. However, as a result of this "tariffication" of previous non-tariff trade barriers, the over-quota tariff rates on some products are quite high. For example, there are a number of agricultural products that have out-of-quota tariff rates of over 200 percent. Products with significant export interest from U.S. suppliers include natural and artificial honey, skim and whole milk powder, barley and barley malt, popcorn, ginseng root, and some processed ginseng products. Korea is in the process of phasing in tariff reductions to zero tariffs on most or all products in the following sectors: paper, toys, steel, semiconductors, and farm equipment. Korea is also in the process of harmonizing tariffs on chemicals to final rates of 0, 5.5, or 6.5 percent, depending on the product, and reducing tariffs on scientific equipment by 65 percent from pre-Uruguay Round levels.

Korea harmonized and bound most tariffs on textiles and apparel products at least at the level of U.S. rates: 7.5 percent for man-made fibers, 15 percent for yarns, 30 percent for fabrics and made-up goods, and 35 percent for apparel. However, duties still remain very high on a large number of high-value agricultural and fisheries products. Korea imposes tariff rates above 45 percent on most horticultural products of interest to U.S. suppliers, such as shelled walnuts, table grapes, and citrus. Products subject to a tariff rate of 30 percent or higher include certain meat, poultry, offal, most fruits and nuts, many fresh and processed vegetables, all flour and starches, peanuts, various vegetables oils, juices, jams, peanut butter, soups, beer and distilled spirits, and dairy products.

U.S. firms in a number of sectors continue to report that the combination of current tariffs and value-added taxes for agricultural and manufactured products is often sufficient either to keep imports out of the market or to raise their prices such that competitiveness is significantly diminished. The example of distilled spirits illustrates the burden that tariffs plus discriminatory domestic taxes can create. Although Korea reduced its tariffs on distilled spirits (other than grape brandy) to 20 percent on January 1, 1996, imported and domestic western-style distilled spirits are assessed significantly higher excise taxes than "Soju," a traditional local spirit. While Soju is taxed at 35 percent, whisky and brandy are taxed at 100 percent, other distilled spirits are taxed at 80 percent, and liquors are taxed at 50 percent. Korea's "Education Tax" further compounds the discrimination between imported and domestic distilled spirits. A 30 percent "Education Tax" is imposed on distilled spirits whose excise tax is 80 percent or higher, but the tax is only 10 percent on spirits, such as Soju, whose excise tax is under 80 percent.

Another example is foreign passenger vehicles, which are subject to an applied tariff rate of 8 percent, more than three times that of the United States. Korea then levies a "cascading" system of multiple, high taxes on top of the 8 percent tariff, three of which are based on engine size. For a car with a 2,000cc or larger engine, these nine taxes combine with the tariff to make the car significantly more expensive than a domestic equivalent. Korea also maintains the option within the WTO of increasing its tariff rate on passenger cars to as high as 80 percent.

Korea uses "adjustment tariffs" to respond to import surges and protect domestic producers. While Korea has not imposed any new adjustment tariffs since 1994, previous tariff increases have not been completely phased out. For example, in 1992, Korea raised the tariff on all carbon zinc and alkaline cell batteries from 11 percent to 30 percent. Although the rate has been subsequently reduced to 13 percent, Korea has still not restored tariffs to the 1992 level. Korea is also imposing antidumping duties on U.S. firms with increasing frequency. In 1996, the Korean Government imposed antidumping duties on lithium batteries, ethanolamine, fiberglass, and choline chloride, all of which affected U.S. firms. The Korean Government has also threatened to initiate antidumping actions against makers of razor blades and electric shavers.

Quantitative Restrictions

Korea implements quantitative restrictions through its import licensing system. All goods entering Korea previously required a foreign-exchange bank-issued import license, but from January 1, 1997, separate approval for payment in foreign currency is no longer required. The export-import notice contains lists of products which are restricted or prohibited. Most imported goods no longer require approval, but some tariff line items (mostly agricultural and fishery products) are restricted for import, i.e., subject to quotas or tariff-rate quotas with prohibitively high rates.

Under a 1989 agreement relating to liberalization of Korea's General Agreement on Tariffs and Trade (GATT) Balance of Payments (BOP) Measures, an additional 283 items (primarily agricultural and fishery products) are to have been liberalized between 1992 and 1997. Of these products, 133 items were liberalized under the 1992-1994 Agricultural Liberalization Program. Under a subsequent program, 50 items were liberalized in 1995 and 30 in 1996. Another 62 items will be liberalized in 1997. The remaining items, namely live cattle and beef products, will be liberalized on January 1, 2001, under an agreement reached during the Uruguay Round negotiations.

A bilateral agreement on beef imports was signed in 1990, and in July 1993, the United States and Korea concluded the second of three agreements aimed at fully establishing free-market conditions for the importation and distribution of imported beef in Korea. The third agreement was negotiated in the Uruguay Round. This agreement establishes the "Simultaneous Buy Sell" (SBS) system, which (1) lays out annually increasing minimum access levels; (2) guarantees direct commercial relations between foreign suppliers and Korean retailers and distributors (e.g., five star hotels and supermarkets) and (3) ensures that growing volumes of beef will be sold through that channel instead of through a government corporation. New retailers and distributors are added to the direct access system over the term of the SBS agreement. Each year the United States and Korea meet on a quarterly basis to ensure full implementation of the Agreement's provisions. The minimum import quota for beef is to expand from this year’s 167,000 ton quota to 225,000 tons by the year 2000. The proportion of the quota imported for private sector sales through the SBS system in 1997 is 83,500 tons and will increase until January 1, 2001. Korea has agreed to remove all non-tariff barriers to beef imports, including state trading, by January 2001.

Also as part of its Uruguay Round commitments, in 1995 and 1996, Korea began phasing out all import restrictions on a number of important U.S. agricultural exports, including beef, frozen pork, frozen chicken, oranges, orange juice, grapes, grape juice, apple and other fruit juice beverages, and dairy and whey products. Apples were also liberalized in 1995, though imports are prohibited for phytosanitary reasons. Under Korea’s Uruguay Round commitments, the final tranche of products will be liberalized on July 1, 1997. This includes frozen pork, frozen chicken, fresh oranges, orange juice, beef jerky and beef offal. A corresponding tariff-rate quota will continue to exist for fresh oranges through 2004.

Korea's administration of the tariff-rate quotas for certain products agreed under the Uruguay Round raises new market access problems. Over the past two years, the United States has expressed its concerns with Korea regarding the fair operation of quotas on several products. Products of interest to U.S. suppliers include fresh oranges, value-added soybean products, value-added corn products, whey products, and rice. For oranges, Korea has designated Korea’s only citrus cooperative as the sole importer of fresh oranges under the tariff-rate quota. The United States has repeatedly expressed its concern that such an arrangement can present a conflict of interest. For soybean, corn and whey products the Korean Government continues to control allocation of the quotas, effectively restricting access to the Korean market for value-added products, such as soyflakes and corn grits.

As for rice, a state trading organization imports the product while the government assumes immediate control upon entry into Korea. Thus, the government maintains full control over distribution and end-use. This process effectively restricts access to the Korean market for U.S. suppliers of high-quality table rice.

Korea

The Korean Government has repeatedly stated that it will not allow imported table rice to be directly marketed to Korean consumers.

In contrast, the Korean Government has been relatively responsive to U.S. comments about the implementation of the tariff-rate quota on frozen pork and poultry. Though problems with Korea's quota auction system (QAS) occurred during the first year of implementation in 1995, the process has proceeded much more smoothly in 1996 and 1997. Both products become fully liberalized on July 1, 1997.

Since 1987, Korea has maintained an "import diversification" policy which effectively bans Japanese products (see also "Motor Vehicles"). Japan has declined to challenge the WTO-inconsistent law. However, U.S. companies that source their products or parts from Japan or use Japanese components have been adversely affected by the ban. In response to U.S. requests, Korea allowed the importation of Japanese parts for heavy equipment and autos in 1996. On January 1, 1997, the number of items subject to import diversification restrictions dropped from 152 to 127, and Korea plans to abolish the system by the end of 1999.

Import Clearance

In 1996, U.S. suppliers of food and agricultural products experienced an upsurge in the number of restrictive measures encountered at Korean ports of entry. This trend developed as the Korean Government began expressing with greater frequency its concern over the rising overall trade deficit. Korea's agricultural sector trade deficit of almost $10 billion has made imported food products an obvious target for any import-curbing efforts.

Most disturbing is the scrutiny at Korean ports that is affecting products for which market access was liberalized under bilateral or multilateral trade agreements. As trade in specific products began to increase with implementation of liberalization commitments, Korean Government officials used alternative measures to impede imports of those products.

Prior to 1996, Korea's import clearance process was already one of the most frequently cited trade barriers to U.S. exports. Although Korea has made changes to its import clearance procedures over the last year, clearance times are still excessively slow and clearance procedures are arbitrary. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days. The lone exception is Korea, where import clearance typically still takes two to four weeks (except for clearance times for perishable fruits and vegetables), and sometimes up to three months.

The Korean Ministry of Health and Welfare (MOHW) and the Ministry of Agriculture and Forestry (MAF), including its National Plant Quarantine Service (NPQS), account for the greatest delays. These departments share responsibility for administering Korea's health and food safety system, which includes sampling, inspection and testing procedures, as well as standards-setting. Both MOHW and MAF impose numerous requirements that prohibit access or inhibit import clearance while adding costs to importers (see also the section of this chapter entitled "Standards, Testing, Labeling, and Certification").

Problems with Korea's import clearance procedures have included (1) 100 percent, rather than random, or "suspect," sampling; (2) requirements for listing of ingredients by percentage, i.e., proprietary "recipe" information; (3) mandatory incubation testing for horticultural products from areas certified as "pest free"; (4) mandatory sorting for separation of spoiled produce; (5) mandatory fumigation for insects found and not controlled in Korea; and (6) standards in Korea's Food and Food Additives Codes and associated conformity assessment procedures that are not based on scientific risk assessments and that do not conform with international norms.

The United States has been raising its concerns about Korea's import clearance procedures for a number of years at high political levels, as well as at the technical working level. In April 1995, the United States requested consultations under the World Trade Organization's (WTO) dispute settlement procedures after U.S. citrus exporters complained that grapefruit and orange shipments had been detained at the port for up to three weeks, causing catastrophic levels of decay. After two rounds of talks, Korea revised its inspection procedures to allow fresh fruit and vegetables to clear customs within five working days. While this positive step significantly reduced delays for many perishable products, delays for other agricultural and food products still remain unacceptably long.

In December 1996, Korea announced implementation of specific changes to its import clearance procedures. The Plant Protection Act, which revised NPQS testing procedures, became effective in December 1996. A government gazette notice published in December 1996 revised MOHW's guidelines on sampling and testing procedures.

In January 1997, in another round of dispute settlement consultations in Seoul, Korean officials indicated that they had (1) established a new sampling system; (2) developed a quarantine pest list for purposes of determining fumigation requirements; (3) eliminated mandatory incubation testing for California fruit; (4) eliminated all sorting requirements; and (5) made ingredient listing by percentage requirements less onerous. However, the January consultations also revealed areas in which Korean import clearance procedures remain burdensome, slow, and out-of-step with scientific and international norms, even after implementation of changes. The United States will continue its dialogue with the Korean Government on its import clearance procedures until clearance times in Korean ports of entry are comparable to those in other Asian ports and Korean procedures are based on science and comport with international norms.

In addition to the import clearance issues described above, U.S. exporters also cite Korea's country-of-origin and general labeling regulations as barriers to entry for agricultural and processed food products. These regulations impose unnecessarily burdensome labeling requirements. For example, "inner packaging" labels are required if agricultural imports are to be distributed in packaging other than that which is evident in the customs clearance process.

At least three separate ministries maintain regulations governing labeling of imported food products. This leads to non-transparent requirements and enforcement procedures that are often arbitrary. Korea's country-of-origin and other labeling requirements change frequently, often without notice. Shipments will have already arrived at the port when an exporter discovers that the products must be unpacked and relabeled at considerable expense. Many U.S. exporters believe Korea's excessive country-of-origin and other labeling requirements reflect the government's efforts to discourage Korean consumers from purchasing food products.

The Korean Customs Service's (KCS) unannounced, unpublished, and arbitrary changes in customs classifications are also of great concern. Recently, customs reclassifications have become a particularly frequent problem cited by U.S. firms attempting to enter the Korean market.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

While traditional border barriers to imports have fallen in Korea, the government maintains numerous internal, regulatory barriers that undercut the major trade reform initiatives of the late 1980s.

Lack of transparency and inadequate notification by the Korean Government of its changes to laws and regulations continue to impede trade with Korea. Korea often fails to meet its obligations to notify WTO members of a planned legislative or administrative change and to allow an adequate time period for review and comment. When Korea does notify the WTO, the change notified frequently is not described in full, nor are requests granted for extensions on comment periods to allow time for translation. On some occasions, Korea has notified changes only after their implementation.

Most Korean laws and regulations are very general and discretionary. Their implementation is directed by unpublished "internal guidance," which is developed by the relevant ministries. The Korean Government generally does not provide advance or timely notice of changes to laws and regulations in domestic official publications. Importers and exporters therefore have little if any time to familiarize themselves with these changes before they are applied. Implementation periods are unrealistically short; this tends to disrupt trade.

Laws and regulations characterized by the Korean Government as intending to protect health and safety often deviate substantially from international norms and practices both on substantive content and implementation method. Such rules do not appear to be based on scientific risk assessments and are frequently drafted to target imports. For example, the Korean Food Code lists specific products that are familiar to Korean regulations. Unless a product is included in the Food Code, it is subject to regulatory review prior to import. Such products have ranged from peanut butter to popcorn. One of the most frequent subjects of U.S. industry complaints has been Korea's requirement that importers of foods provide a listing of product ingredients by percentage. This requirement has effectively restricted trade since this information is often either of a proprietary nature or simply unavailable.

Korea's Food Additives Code also restricts food imports by failing to recognize additives that have already been approved by the CODEX Alimentarius Commission of the Food and Agricultural Organization (FAO), the Joint FAO-World Health Organization Expert Committee on Food Additives, or the U.S. Food and Drug Administration.

Contrary to international practice, Korea approves food additives on a case-by-case basis, rather than allowing additives that are "generally recognized as safe" (GRAS) to be used in <u>all</u> food products. In particular, the Food Additives Code will often allow a food additive in a traditional Korean food product and not allow it in an imported product. This is the case even when the average daily intake (ADI) of the Korean product would presumably be much higher than the ADI of the imported product.

Korea's Imported Food Products Management Guidelines also restrict imports. Prior to 1996, under the Guidelines, Korea maintained a 100 percent sampling, inspection and testing regime, rather than using random, or "suspect," sampling for purposes of organoleptical inspection and laboratory testing. Although Korean officials have indicated in dispute settlement consultations with the United States that they have revised their sampling, testing, and inspection system for imported food and agricultural products, questions remain as to whether the new system will prove any less trade restrictive than the previous regime.

Also of concern is the assignment of jurisdiction over testing of imported and domestic fruit to different authorities in Korea. The Korean Food and Drug Administration (KFDA) tests imported fruit, while provincial or municipal authorities have jurisdiction over testing of domestic fruit. This leads to questions on national treatment and conflict of interest.

In addition, Korea has required incubation testing for all imported fruit, even if the fruit has been in transit for weeks and even when the shipment was accompanied by an APHIS certificate indicating that the fruit originated in a "pest-free" area. Requiring fruit to be unnecessarily tested and treated is costly, discourages imports and often leads to deterioration and eventual destruction of the fruit. Korea's Plant Protection Act includes language that has removed the incubation testing requirement for California fruit, but Korea maintains this requirement for fruit from Florida.

For horticultural products, Korea also continues to maintain fumigation requirements that are premised on a definition of "quarantine pest" that differs from the internationally accepted definition.

Korea's government-mandated shelf-life requirements were the subject of a Section 301 petition filed by the U.S. beef and pork industries in November 1994. These requirements effectively prohibited shipping because expiration dates were so short that, by the time a product cleared Korean customs, the dates had expired. Korea's shelf-life requirements were not based on scientific studies, nor were they enforced equally for domestic and imported products.

After consulting under WTO dispute settlement procedures, the United States and Korea reached a settlement agreement on shelf life in July 1995. Under the 1995 agreement, Korea agreed to phase in the common international practice of manufacturer-determined "sell-by" dates for many food products, including meat, beginning in October 1995 and ending in July 1996. The United States continues to consult with Korean authorities to ensure that the 1995 agreement is implemented fully and faithfully, including through proper notifications to the WTO and internal guidance that in no way undercuts the liberalization mandated by the agreement.

Korea continues to maintain government-mandated shelf-life requirements for sterilized milk products such as ultra heat-treated (UHT) milk, and for bottled water. The United States reserves the right to use WTO dispute settlement procedures to address these restrictions.

Korea

U.S. cosmetic producers often cite Korea's duplicative testing requirements as impediments to trade. The Korean Government requires annual testing of cosmetic products and batch testing for each shipment, including animal testing, and does not accept a certificate of analysis from a U.S. firm as a substitute. Importers of cosmetics are still required to share confidential business information (on both quantities and pricing) with the Korean trade associations that are their competitors. American pharmaceutical firms cite similar problems.

U.S. pharmaceutical companies report significant delays in obtaining final approval from the Ministry of Health and Welfare (MOHW) for the local sale of products developed outside of Korea within the last three years. New products developed in Korea can proceed directly from phase 2 to phase 3 clinical trials. For products developed outside of Korea, however, MOHW has thus far refused to allow Korean phase 3 clinical trials to begin until they are first completed in a third country and the product receives a Certificate of Free Sale (CFS) from a third country. After the presentation of the CFS, there is a 145-day delay in registration approval before the approximately one-year clinical trial can begin. This process delays the introduction of foreign-developed products into the Korean market by about two years.

Non-transparent standards also affect imports of industrial products, such as medical equipment and veterinary instruments. U.S. suppliers report that product approval requirements not only lack clarity but are being applied inconsistently both across product categories and among the several Korean agencies designated to register and test medical devices.

After consultations in 1995, Korea agreed to reform its standards for medical equipment to base them on international standards. Korea’s proposed amendments were notified to the WTO on January 20, 1997. Comments were due on February 28. The United States has asked the Korean Government to provide written clarification of its new rules and to delay finalizing them until the United States can provide substantive comments.

Although the 1995 U.S.-Korea Memorandum of Understanding on automobiles liberalized many Korean standards and certification procedures, burdensome standards and certification procedures still make it difficult and costly to introduce new car models to the Korean market. The U.S. industry claims that although U.S. safety and emission standards meet or exceed Korea's, documentation related to vehicle preparation and testing consumes nearly 500 hours per model. Korea’s plans to adopt new auto safety and emissions standards that are not compatible with international standards will increase this burden.

GOVERNMENT PROCUREMENT

The newly-renamed Supply Administration (SAROK) is responsible for procurement on behalf of government agencies and at times on behalf of public corporations or other enterprises in which the government holds a majority share. The ministries concerned formulate their government agency procurement needs.

The Ministry of Trade, Industry and Energy (MOTIE) no longer officially screens procurement requests to determine whether they can be met from local sources. However, the Korean Government still encourages local procurement through a variety of less explicit means. As a result, U.S. participation in attractive public sector projects is often precluded, or made feasible only by participating in consortia led by Korean conglomerates or industrial groups (“chaebol”).

Korea completed its accession negotiations to the WTO Government Procurement Agreement (GPA) and agreed to cover goods and services procurement (including construction) by central government entities, sub-central entities and many government-owned commercial enterprises. Korea also agreed to provide access to its computer network procurement. The special regulations and presidential decree implementing the GPA took effect on January 1, 1997. Limits regarding national treatment, non-discrimination in international tendering, local content, offsets and technical transfers will no longer be required. In construction projects, a new provision allows performance bonds by foreign firms. Dispute settlement and bidding procedures are specified in the WTO Agreement. The Korean Government will publish its international bidding schedules in English, French, and Spanish.

Among the major government-owned enterprises covered by the GPA are the Korea Electric Power Corporation, the Korea Petroleum Development Corporation, Korea Gas and Korea Telecom (KT). In the case of KT, telecommunications commodity products, network equipment and satellites were excepted, thereby removing KT's most important purchases from Korea's WTO obligations.

Prior to the agreement, U.S. companies reported that bids including offsets were encouraged, but no longer required outright. Offsets are still a condition of sale for major military procurement. In Korea, such offsets can range from 30 to 50 percent of the total contract value. The Korean Government argues that procurement for national security and defense purposes (munitions) is recognized as an exception by Article XXIII of the GPA, and that Korea's offsets are relatively moderate when compared to those of other countries. Other purchases by the Ministry of National Defense are subject to the agreement.

The Ministry of Trade, Industry and Energy estimates Korean total procurement for 1997 at around 40 trillion won, or $47.6 billion, about half of which will be subject to international bidding. Out of SAROK's expected 1997 purchases of goods worth 4 trillion won, about 20 percent, worth $933 million will be under international tendering. One analyst predicted that contracts worth about 10 trillion won, or $12 billion will be awarded to foreign bidders. All of these estimates for procurement from foreign sources seem highly inflated, especially given the procurement provisions emphasizing small enterprises and regional development.

Under the terms of the 1992 bilateral agreement on telecommunications with Korea, U.S. providers of commodity products and network equipment should already be able to compete for KT's procurement contracts. The United States reviews annually Korea's compliance with this bilateral agreement, as required under Section 1377 of the 1988 Trade Act. Each year, U.S. companies report serious instances of non-compliance with the 1992 agreement, including excessive type approval requirements, lack of protection for trade secrets and proprietary information, and de facto "buy local" policies. Korea was designated in July 1996 as a priority foreign country under Section 1374 of the 1988 Trade Act, and bilateral negotiations are continuing (see also Other Barriers). Korea has not yet fully liberalized mobile communications services, or "special service providers." The current Korean regulatory structure and practice continue to restrict foreign access to various mobile services, including cellular, paging, and various trunking services.

Korea

U.S. companies operating in Korea do not receive national treatment with respect to drug reimbursement under Korea's national health insurance system, which effectively discourages hospitals and other large end-users from buying imported drugs. Under the system, imported pharmaceuticals are reimbursed based on their actual transaction prices, while domestically manufactured pharmaceuticals are reimbursed on a schedule established through local price reviews. This allows hospitals, clinics, and pharmacies to profit from reimbursement from domestic products, but not from imported products. Dispensers of imported products must also comply with additional administrative procedures for reimbursement. Korea is reviewing the reimbursement system to redress these differences, but the review's outcome is uncertain.

EXPORT SUBSIDIES

In the past, Korea aggressively promoted exports through a variety of policy tools. Korea has committed to phasing out the remaining programs which are not permitted under the WTO Agreement on Subsidies and Countervailing Measures, to which it is a signatory. Korea will retain permissible programs under the WTO Agreement, principally in the form of tax incentives and targeted credit, and focused on small and medium-sized enterprises and research and development.

Shipbuilding Support

Traditionally, the Korean Government has provided large subsidies to its shipbuilding industry. U.S. shipbuilders have operated without U.S. Government subsidies since 1981. In response to continuing foreign shipbuilding subsidy practices, the Shipbuilders Council of America filed a Section 301 petition in 1989 seeking the elimination of subsidies and trade distorting measures for the commercial shipbuilding and repair industry. As a result, a shipbuilding agreement was negotiated under the auspices of the Organization for Economic Cooperation and Development (OECD). On December 12, 1995, Korea, the European Union, and Norway formally ratified the OECD Shipbuilding Agreement, which is designed to eliminate all subsidies and to create a new antidumping mechanism to address the predatory pricing of ships. The agreement text was scheduled to enter into force after its ratification by all parties to it. The United States has not yet ratified the agreement.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Korea has made an effort to strengthen its intellectual property rights (IPR) laws and the enforcement of those laws. Korean officials have placed priority on prosecution and increased penalties. The publication by the supreme prosecutor's office of a manual of guidelines for IPR enforcement in May 1996 significantly addressed the difficulties caused by Korea's inconsistent application of its various laws. The Korean Government has continued this campaign, including sponsoring public awareness seminars. Since 1992, Korea has been identified as a "priority watch list" country under Special 301 procedures.

In order to comply with its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), Korea passed four acts (patent, utility model, design, and trademark) in December 1995, and implemented new copyright, computer software, and customs laws in 1996. Although Korea has attempted to implement developed-country IPR obligations in many areas, it still claims developing country status. Of particular concern is the fact that Korea's copyright law provides limited retroactive copyright protection to 1957, rather than providing 50 years of retroactive protection, as required under the TRIPs Agreement.

There has been some improvement over the past several years in removing pirated and counterfeit goods from the Korean market. In particular, through administrative guidance, Korea significantly curtailed the copying and sale of certain U.S. copyrighted works created before 1987. Korea also established "special enforcement periods," during which significant resources are devoted to raids, prosecution and other copyright enforcement activities. The 1996 special enforcement period resulted in a 7.5 percent increase in prosecuted cases. Enforcement against audio, video and software piracy has improved considerably. U.S. businesses and industry groups have reported that piracy by large Korean corporate end-users has diminished. Piracy for home use continues to be a problem, however.

Also of concern to the software industry is that Korea's customs valuation of software is not based on the value of the medium but on the full value of the content. This valuation method is not transparent and leaves great room for future discretion. Korea's decision in 1996 to unilaterally reduce its duty on software has temporarily quieted the issue. Upon implementation of the Information Technology Agreement (ITA), Korea will bind the relevant tariffs at zero.

Korea has taken steps to reduce the number of cases in which Korean companies register trademarks similar to U.S.-owned marks, but cases of unauthorized registration were still a problem in 1996. These "sleepers" are marks that were filed and registered by Koreans without authorization during the late 1980s and early 1990s, when the Korean Industrial Property Office (KIPO) was still developing a more effective and accurate trademark examination and screening process. "Sleeper" registrations were not commercially used until the U.S. owner of the mark wanted to enter the lucrative Korean market, but found it was blocked by the previous first-to-file registration. KIPO has worked to resolve individual cases more expeditiously.

Trade dress is only partially protected under both the prevention of unfair competition law and the design law, and the design law grants protection only after registration is completed. To strengthen trade dress protection, Korea plans to introduce a draft trade dress law in 1997, to become effective in 1998. Although the Korean trademark law does not allow the registration of three-dimensional marks and trade dress per se, the law text authorizes their registration as long as they are filed in pictorial forms. In addition, the protection of color or combination of color trademarks with a sign, character, figure, or any combination thereof was introduced in the trademark law in 1996. Korea has long been a source of exports of infringing goods. As textile designs are not fully protected, some Korean companies pirate U.S.-copyrighted textile designs and export them to third countries, competing with genuine U.S.-produced goods. Progress has been made in improving customs procedures and cooperating with the U.S. private sector to identify and stop exports and imports of counterfeit goods to and from third countries. The U.S. Government continues to seek more active involvement of Korean Government officials in this area.

It is difficult to estimate the size of potential sales lost by U.S. firms due to IPR violations; but the scale of the problem can be illustrated by customs seizures of counterfeit goods. The Korean Customs Service claims that it seized pirated products valued at approximately $456,000 in 1995, and that it has a program of intensively inspecting exports of commonly-pirated products such as clothing and shoes. U.S. Customs

Service seizures of counterfeit goods from Korea were valued at $5.1 million in fiscal year 1996. The actual volume of counterfeit goods produced is probably much higher than seizures reflect.

Although Korean laws on unfair competition and trade secrets provide some trade-secret protection in Korea, they remain deficient. For example, U.S. firms face significant problems with government regulations requiring submission of very detailed product information (i.e., formulae or blueprints) as part of registration or certification procedures. Korea claims that its requirement for the submission of semiconductor product information is similar to that of Japan or the United States. U.S. firms, however, report that although the release of business confidential information is forbidden by Korean law, submitted information is not given sufficient protection by government officials and, in some cases, is made available to Korean competitors or to their trade associations.

Korea's copyright law provides protection only for cartoon characters that possess artistry and creativity, while the trademark law does not protect some famous U.S. cartoon characters because they have not been registered as trademarks with KIPO. The Korean Supreme Court exonerated infringers of famous U.S. characters, including Mickey Mouse, because the specific product with the infringing design had not been registered. Subsequent enforcement efforts by prosecutors, however, has helped mitigate the negative impact of the supreme court decision.

Korea does not have effective laws or procedures to protect various industrial designs. Although the 1996 revision of the design law allows firms to claim compensation for infringements of industrial designs, the firm must first publish its design in the official gazette or complete registration with KIPO before it can make a claim. Even though some U.S. product designs or machinery layouts have been copied by Korean competitors, U.S. firms have no legal recourse.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors through a "negative list." In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. Korea continues to restrict foreign investment in a number of services sectors which are of interest to U.S. companies.

Telecommunications Services

Each year the United States reviews foreign telecommunications trade practices under Section 1377 of the 1988 Omnibus Trade and Competitiveness Act. In 1989, the United States designated Korea as a “Priority Foreign Country” for its denial of mutually advantageous market opportunities to U.S. companies. During the 1996 review, Korea and the United States concluded a bilateral agreement which clarified a number of Korean commitments under existing bilateral agreements, included value-added services, protection of intellectual property rights, and regulatory transparency. Korea also agreed to consult with the United States on a number of priority issues which are not covered by existing bilateral arrangements. These new priorities include the elimination of foreign ownership restrictions for basic telecommunications services suppliers, access for U.S. satellite services suppliers, enhanced transparency in regulatory and licensing procedures, and government non-interference in procurements by private operators.

After intensive efforts, the United States and Korea did not reach an agreement on either these services-related or other priority issues. Subsequently, on July 26, 1996, USTR designated Korea a “priority foreign country” under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act (see also the section of this chapter entitled “Other Barriers”).

In terms of multilateral efforts, in the recently concluded WTO negotiations on basic telecommunications services, Korea made commitments on all basic telecom services and adopted the reference paper on regulatory commitments. Korea retained foreign investment restrictions on facilities, resale, and Korea Telecom.

Advertising

The government-affiliated Korean Broadcasting Advertising Corporation (KOBACO) has a monopoly over the allocation of television and radio advertising time. In October 1995, KOBACO eliminated the locked-time allocation system, which effectively blocked U.S. firms from obtaining access to prime-time television advertising slots. KOBACO's system of allocating air time only in 3-12 month packages makes it harder for advertisers to enter the market on a short-term basis or to specifically orchestrate a campaign around a product introduction. In late 1996, KOBACO proposed rule changes creating longer ad slots and allowing commercial breaks during programs. If implemented, these changes would substantially improve the ability of foreign firms to gain consumer acceptance in the Korean market.

Ministry of Health and Welfare (MOHW) restrictions on advertising also create special difficulties for foreign companies. Korea’s MOHW requires that cosmetics advertising copy be pre-approved by the local manufacturers association, which gives domestic firms advance notification of foreign firms' new products and future marketing activities. Demonstrations of product effectiveness are not permitted for cosmetics and pharmaceuticals, and comparative advertising is effectively discouraged.

Audiovisual (see also “Other Barriers”)

Screen Quota: By requiring that domestic films be shown in each cinema a minimum number of days per year, Korea effectively imposes a screen quota on imported motion pictures. The quota acts as a deterrent to cinema construction, which is needed to expand theatrical distribution in Korea.

Foreign Content Quota for Free TV: Korea restricts foreign activities in the audiovisual sector by limiting the percentage of weekly broadcasting time that may be devoted to imported programs, not to exceed 20 percent.

Foreign Content Quota for Cable TV: Cable channels may devote only 50 percent of air time to foreign sports, science and documentary programs. All other types of foreign programming, including movies, are subject to an even stricter quota of 30 percent. These quotas are applied on a per-channel basis. There are only two movie channels (one basic and one premium) and a strict content quota. These restrictions severely limit the market for foreign products. Additionally, cable TV programming must be translated into Korean, which effectively prevents satellite transmission by Korean cable TV companies.

Korea

The United States will consult with Korea in light of its commitments under the WTO General Agreement on Trade in Services (GATS). Estimated losses due to services barriers alone are at $5 million annually.

Financial Services

Insurance: Korea is the second largest insurance market in Asia -- after Japan -- and the sixth largest in the world, with $38 billion in premiums paid in 1995. The environment for foreign insurance companies has improved considerably since Korea first opened its market in 1986. Most recently, Korea announced a multi-year financial sector plan prior to its joining the OECD in December 1996. If Korea implements its OECD obligations fully, foreign access to the financial services market should be further improved. Life insurance is already fully liberalized. By April 1997, the Korean Government will remove present restrictions on foreign participation in joint venture life insurance companies, as well as in surety insurance services and life/non-life reinsurance; and, the establishment of independent branch offices. By April 1998, the Korean Government will liberalize insurance appraisal and activities ancillary to the management of insurance and pension funds. Insurance brokerage will be allowed for domestic firms by April 1997; foreigners will be allowed to enter the sector by April 1998. Guidelines effective since 1992 have permitted the issuance of non-par products and the acquisition of real estate by foreign firms, but only under highly restrictive conditions.

Despite Korean plans to deregulate premium rates by 1999, it is unclear at this time whether this will give firms full freedom to determine rates. Although Korea has simplified the approval process for insurance products already available in the Korean market, U.S. life insurers are still not permitted to sell personal accident insurance. U.S. firms continue to experience delays in receiving permission to introduce new-to-market products. Despite the many improvements, the state of liberalization in this sector remains far below what might be expected for a country at Korea's stage of economic development. The U.S. industry continues to cite a variety of major problems, including restrictive rate and form regulations, limitations on investment, and a lack of transparency and due process.

Banking: Foreign and local banks must operate amid numerous constraints in Korea. Among the most problematic constraints are the various limits based on branch versus global capital, which are related to *inter alia* limits placed on credits to an individual customer and foreign exchange trading, as well as their use in the calculation of capital adequacy and liquidity requirements. These limits can represent significant constraints on the ability of some foreign banks to do business in Korea. The foreign exchange market is heavily regulated, including tight controls on the introduction of new instruments, a niche where U.S. banks would be exceptionally competitive. Capital inflows remain restricted, yet special foreign bank provisions on funding swaps are being reduced and are expected to be eliminated altogether. Additionally, the interbank money market is underdeveloped and is not a stable source of funding for foreign bank asset activities. Foreign bank loan market shares are half what they were in the late 1980s, due both to the evolution of a more competitive local banking sector and to the many local regulatory constraints foreign banks face. All banks -- foreign and domestic alike -- are disadvantaged by a relatively non-transparent regulatory system and must seek approval before introducing new products and services, where foreign banks can be most competitive.

Foreign-based non-financial businesses that are active in Korea are subject to high-cost procedures and restrictions on their financial activities which are more reminiscent of an emerging economy than of one at Korea's level of development. For instance, virtually all intercompany transfers are subject to a foreign exchange bank's certification and the requirement to settle via documentary trade finance methods. This process is cumbersome, costly and unnecessary, particularly for transactions between subsidiaries. Excessive regulation also prevents companies from insuring effectively against exchange rate and interest rate risk. From a company's point of view and despite its claims otherwise, the Korean Government has actually accomplished comparatively little deregulation of practical importance in its controls over transactions involving foreign exchange, imports and exports. These controls create high costs and excessive risks for multinationals operating in Korea. Useful innovations would include *inter alia* allowing settlement of imports via open account; multilateral netting of payables and receivables without requiring prior approval from, or notification to, the government; and intercompany loans between operations based in Korea and those offshore, regardless of the sectors involved. Foreign banks will not be permitted to establish subsidiaries until December 1998.

Securities: Foreign securities firms also face serious market access barriers in Korea. The present 50 percent ceiling on foreign equity in a securities firm will not be lifted until December 1998, when the establishment of subsidiaries will also be liberalized. The establishment of branches has been allowed on an extremely limit basis since May 1995.

Foreign ownership of listed shares is currently restricted to a ceiling of 5 percent per individual foreign investor and 20 percent in the aggregate. These ceilings are scheduled for increases to 10 percent in 2000 and 29 percent in 1999, respectively. Foreign firms are now prohibited from participating in the domestic securities "over the counter" (OTC) market, and brokering is limited to listed stocks. Representative Offices of Securities Investment Trust Enterprises (SITES) are allowed in Korea, and foreign equity in existing domestic SITES is limited to 50 percent. Similar restrictions apply to foreign equity in domestic investment advisory firms.

Korea's tightly controlled financial sector and the high cost of domestic credit in Korea both have a direct and immediate impact on U.S. firms operating in other sectors. The U.S. Government continues to pursue these issues through the ongoing U.S./Korea Financial Policy discussions held between the U.S. Treasury Department and the Korean Ministry of Finance and Economy. The discussions leading up to Korea's December 1996 accession to the OECD also covered these issues.

INVESTMENT BARRIERS

As of January 1, 1997, the Korean Government determined that 97 percent of the sectors in its standard industrial classification system were open to foreign equity investment in principle (including 99 percent of all manufacturing sectors and 93 percent of all service sectors). Yet, foreign investors' effective access to the Korean market continues to be highly conditioned by law and regulation, as well as by inexplicit administrative guidance and bureaucratic fiat, which are often opaque and subject to variable interpretation.

Following a 1989 bilateral agreement on investment, Korea has revised or eliminated many of the discriminatory practices that once affected the establishment and treatment of foreign investors. As of

February 1997, foreign investors are only required to notify the government of their intentions; applications per se have been eliminated. Under present law, the government can only reject a foreign investor's notification if the activity appears on an explicit "negative list" or is somehow related to national security, the maintenance of public order or the protection of public health, morality, or safety. The Korean Government is obligated to reject the notification within 60 days of its filing, or the investment can be presumed to be legal. Effectively, foreign investors regularly proceed with investments that are not on the negative list after ample notification. Although the government has reduced the documentation required, the notification process remains burdensome and can require submission of proprietary information, including contracts.

Under a bilateral agreement signed in 1989, the Korean Government agreed to (1) eliminate all local equity participation requirements imposed by "individual laws" (apart from requirements imposed for reasons of land acquisition, exploitation of land or other resources, or for national security); and (2) refrain from imposing any "performance" requirements (e.g., technology transfer, local content or local manufacture). U.S. firms -- particularly telecommunications companies -- report, however, that the Korean Government and its public entities regularly impose a de facto "buy local" policy on their purchases and actively encourage private concerns to follow suit.

In 1994, the Korean Government revised its Alien Land Acquisition Act to permit foreign-invested firms to purchase land for business purposes, including staff housing. In 1997, the regulations were further eased to allow provision of rent-free or reduced-rent industrial premises to foreign investors willing to locate at two specific sites outside Seoul. The U.S. Government remains concerned, however, that other laws create disincentives to unfettered foreign investment by placing overly strict limits on the purchase, use and sale of land by foreigners. In the past, stringent Korean land-use laws have resulted in the assessment of substantial taxes on unused land and the forced sale of land at below-market prices if legal requirements are not met within a specified period.

The Korean Government has a "going public" policy that requires firms established for three or more years and identified by the Korean Securities and Exchange Commission to sell at least 30 percent of their stock to the public. Investments with less than 50 percent foreign ownership which are filed after January 1, 1989, are subject to the policy, while investments with more than 50 percent foreign ownership are not. The U.S. Government continues to urge Korea to abolish its "going public" policy with reference to foreign firms, many of which are privately held.

In light of these and many other less dramatic but no less significant factors, U.S. companies continue to experience difficulties in establishing investments in Korea. Korea’s investment regime is more restrictive than those of many of its Asian neighbors and falls well below the standard among OECD countries. Continuing initiatives taken by the Korean Government over the coming years -- some committed to during its accession to the OECD -- may reduce this disparity.

Korea has notified the WTO that it maintains no trade-related investment measures (TRIMs) that are prohibited under WTO rules.

ANTICOMPETITIVE PRACTICES

The Korea Free Trade Commission (KFTC) is responsible for enforcing and improving competition in the Korean Economy. In February 1996, the Chairman of the KFTC was raised to ministerial rank, and the staff was increased. In December 1996, the assembly passed a revision to the Fair Trade Act effective April 1, 1997. This revision will expand the application of the Fair Trade Act to the financial and insurance sectors, and give the KFTC more authority to demand the revision of anticompetitive elements in both draft and existing laws and regulations. Nevertheless, a major enforcement effort will be required to deter and eliminate chronic anticompetitive practices in the Korean market. Major efforts are also required to ensure that the KFTC applies the same standards and level of oversight to all firms and does not penalize foreign companies importing goods into Korea for practices ignored or tolerated in Korean firms, a problem that was also noted in the cosmetics sector in 1996.

Industry associations are delegated substantial regulatory authority in Korea through both formal and informal means. In a number of instances, industry associations have abused their powers by discriminating against non-members and potential competitors, including American firms. In 1994, the KFTC investigated 68 industry associations and ordered 48 of them to revise 73 anticompetitive by-laws or articles. In 1995, the KFTC investigated 218 industry associations, and ordered them to revise 369 anticompetitive or unfair measures or practices. In 1996, the KFTC decided also to regulate not only collusion between rival firms, but also trade associations that induce their members to engage in anticompetitive practices. However, other associations that are likely engaged in similar kinds of competitive practices have not yet been reviewed. Of particular concern to the United States is the anticompetitive behavior of the Korean insurance and cosmetic industry associations.

The government-affiliated KOBACO has a monopoly over the allocation of television and radio advertising time. Although changes have improved the situation for U.S. firms and products, KOBACO rules continue to prevent market forces from operating normally in this area.

OTHER BARRIERS

Protection of the Telecommunications Sector

As explained in relevant sections of this report, U.S. equipment and services companies encounter a significant number and range of impediments in the Korean telecommunications sector. The Korean Government has targeted the telecom sector for industrial promotion, which explains the chronic nature of U.S. market access problems in this sector. While the Korean Government has allowed limited foreign penetration of the services market, U.S. interests are not accorded treatment reciprocal to that extended to Korean interests in the United States. Only a few U.S. firms operate in the Korean telecom service market as minority investors, and although Korea Telecom (KT) is no longer the monopoly service provider, the government maintains an unwritten “buy local” requirement for equipment procurement by service providers. The government’s intervention in private sector procurement and other concerns raised by U.S. telecommunications products and service providers are not covered by the existing agreements with Korea.

Korea

Despite intensive efforts in 1996 to achieve an understanding with Korea to address the range of barriers which deny U.S. companies mutually advantageous market opportunities in Korea, the Korean Government has refused to cooperate in a meaningful manner. Therefore, on July 26, 1996, USTR designated Korea a “priority foreign country” under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act. Under the statute, the United States has a maximum one-year negotiating period in which to resolve the dispute, after which trade action may be taken.

General Anti-Import Bias

Austerity campaigns ostensibly directed at individual consumption, but effectively targeting imported goods, are another barrier that U.S. firms face in Korea. In 1996, as Korea’s trade deficit rose, newspapers and government officials regularly pointed out the negative current account impact of rising imports of cars, furs, golf equipment, cosmetics, food and agricultural products, whisky, clothing, furniture, travel and education among others. In addition, there has been traffic police harassment of drivers of foreign autos and tax audits have been threatened for person leasing foreign autos or otherwise indulging in “conspicuous consumption.” Also, U.S. industry has experienced suddenly occurring import clearance complications in the form of arbitrary product standards, labeling or documentation and testing requirements, and customs reclassifications into trade restricted categories. Coinciding with these activities have been a series of media stories on high-priced imported products and their supposed high profit margins. While the Korean Government denies at times any involvement in these frugality campaigns or that these efforts are aimed at imports, the media reports are often followed by actions that protect domestic manufacturers or erect non-tariff barriers to imports.

Motor Vehicles

Korea’s auto industry moved from being the ninth largest motor vehicle manufacturer in the world in 1991 to fifth place in 1995. Korea is the world’s third largest auto exporter after Japan and the European Union. In 1996, Korean vehicle exports of 1.4 million units accounted for 46 percent of total Korean motor vehicle manufacturing. Korea's home market is also the fastest growing market in Asia, with domestic sales rising six percent to 1.6 million units in 1996. Yet no other major auto-producing country imports fewer cars than Korea. In 1996, total import sales accounted for about one percent of the market.

Korea has maintained a severely closed "sanctuary" market with an array of trade barriers, including an import ban on Japanese cars. Of major concern to U.S. companies is the prohibitively high, "cascading" system of taxes, which are calculated on top of an eight percent tariff. This tariff is unbound in the WTO and more than three times that of the United States. In the past, pervasive anti-import sentiments have limited marketing opportunities and intimidated potential customers. While the government has recently made attempts to mitigate this sentiment, in December 1996, the tax office engaged in broad action directed at all leasers of imported autos, thus raising the anti-import bias once again. Restrictions on wholesale and dealer financing also adversely affect foreign automakers.

In September 1995, as a result of bilateral consultations held under Super 301, Korea and the United States signed the Memorandum of Understanding (MOU) to Increase Market Access for Foreign Passenger Vehicles in Korea. This MOU reduced the overall tax burden on cars with larger engines, liberalized many

Korean standards and certification procedures, lifted some restrictions on advertising and retail financing, and obtained the Korean Government's assurances that it would no longer promote an anti-import bias among consumers.

To date, Korea has implemented most of the commitments it made in the MOU. However, recent actions taken by the Korean Government call into question Korea's commitment to open the domestic passenger car market to foreign competition and threatens to nullify some of the progress achieved under the MOU. Specifically, these actions include tacit government approval of renewed anti-import efforts and an increase in the annual tax on sport-utility vehicles. By the end of 1996, the number of foreign vehicles sold in the Korean market still represented less than 1.5 percent of the total market -- the lowest market penetration of any major auto producing nation. The United States views the 1995 MOU as a first step in liberalizing one of the most protected auto markets in the world and will continue to monitor the implementation of the agreement and seek further market opening measures from Korea in 1997.

Audiovisual (see also "Services Barriers")

Cable TV Law: Korea's Cable TV law went into effect in 1992, and Korea's first cable systems became operational in 1995. The restrictive nature of the regulations creates a cable system different from that found in virtually every other country. The regulations effectively eliminate retransmission of regional satellite channels, which is how U.S. companies often distribute programming for pay TV services. Market access is further restricted by the inadequate supply of local programming. The estimated cost to the U.S. industry of these barriers is $10 million.

Disincentives to Trade and Investment: U.S. firms continue to report that Korea remains one of the most difficult markets in the world in which to trade and invest. A number of factors are cited to support this conclusion. Excessive government regulation, broad administrative discretion and lack of transparency on the part of government officials results in costly additional bureaucratic processes and arbitrary treatment of individual firms, both foreign and domestic. Also of concern is Korean harassment of U.S. companies which seek U.S. Government assistance in addressing even normal "doing business" issues.

Some U.S. companies reported that one ministry in particular advised them against raising concerns with the U.S. Government. A state-owned enterprise also reportedly requested a U.S. company to include a provision in its contract that would have effectively precluded such contact with U.S. officials. Agents for U.S. companies in government procurement tenders have reported threats by the Korean Government procurement agency that their business would be negatively effected if they sought U.S. Government assistance on a particular contract which was being awarded in a non-transparent manner. Even experienced U.S. exporters report that they do not want their company name or products mentioned in U.S. Government representations to Korean officials for fear of retribution by Korean functionaries or negative, "scare" reports by some in the Korean media.

Steel

In July 1995, pursuant to a Section 301 petition filed by the Committee on Pipe and Tube Imports (CPTI) which was thereafter withdrawn, the United States and Korea entered into a Steel Consultative Mechanism in which the Korean government commits, among other things, to a policy of non-interference with hot-rolled steel producers' pricing decisions and agrees to provide information regarding any intent to introduce formal or informal government measures affecting the steel sector. This agreement is due to expire in July of this year.

The two governments have consulted regularly under this consultation mechanism. The United States has continually expressed concern that a major Korean hot-rolled steel producer follows a flat pricing policy for domestic sales which does not appear to be driven primarily by commercial considerations. More recently, U.S. producers have also raised concerns that the Korean Government may be providing subsidies, inconsistent with its obligations under the WTO and under the bilateral agreement, to a hot-rolled steel producer in Korea which recently declared bankruptcy. These issues continue to be under discussion between the two governments.