KOREA

In 1997, Korea was the United States' fifth largest export market overall, and the fourth largest for agricultural products. Merchandise trade between the United States and Korea totaled $48.3 billion, compared with $49.2 billion for 1996. U.S. exports to Korea in 1997 were $25.1 billion -- a 5.7 percent drop from the 1996 figure of $26.6 billion. U.S. imports from Korea in 1997 were $23.2 billion -- a 2.2 percent increase from the 1996 figure of $22.6 billion. In 1997, the U.S. merchandise trade surplus with Korea was $1.9 billion, down by more than 50 percent from the $4.0 billion surplus in 1996.

The stock of U.S. foreign direct investment (FDI) in Korea in 1996 was $5.5 billion, an increase of 6.6 percent from 1995. U.S. FDI is concentrated largely in the manufacturing, banking and wholesale sectors.

Overview

Korea is one of the United States' major trading partners, but it also has been described as one of the toughest markets in the world for doing business. This year, the U.S.-Korea trading relationship is operating within the context of a new and significantly different set of circumstances. In December 1997, after a dramatic depreciation in the value of the *won*, Korea reached agreement with the International Monetary Fund (IMF) on a macroeconomic stabilization package that included conditions on financial, corporate, labor, investment, and other trade-related structural reforms. In the spirit of this agreement, Korean President Kim Dae Jung has made strong public statements about the need to attract foreign investment, accept imports, and restructure the corporate conglomerates, or *chaebols*, in Korea. President Kim has commented on the need to break ties between the government, the banks, and the *chaebols*. These linkages, central to Korea's development model for over 30 years, have impeded competition and market access, both in Korea and in other markets. If implemented fully and faithfully, the stabilization-related reforms to which Korea has committed should reduce barriers to free trade, investment, and competition in Korea.

As referenced above, the Korean *won* depreciated by approximately 50 percent between November 1997 and January 1998. Economists indicate that it will be some months before the full effect of the drop in the value of the *won* is realized in trade volumes. However, most predict negative economic growth in Korea in 1998, and a shift from surplus to deficit in the U.S.-Korea bilateral merchandise trade balance.

IMPORT POLICIES

Tariffs and Taxes

Korea bound 92 percent of its tariff line items in the Uruguay Round negotiations. Korea's average tariff was 8.44 percent in 1997, and 8.47 percent in 1998. Korea's tariffs on all agricultural products, except rice (HS 1006), are bound. Between 1995 and 2004, Korea will implement its Uruguay Round commitments to lower duties on over 30 agricultural products of primary interest to U.S. exporters. These products include intermediate and high-value items such as vegetable oils and meals, processed potatoes, mixed feeds, feed corn, wheat, fruits, nuts, popcorn, frozen French fries, and breakfast cereals.

Korea

Under its Uruguay Round commitments, Korea also established tariff-rate quotas (TRQs) that will either provide for minimum access to a previously closed market or maintain pre-Uruguay Round access. (See also "Quantitative Restrictions, TRQs, and Import Licensing.") In-quota tariff rates are to be maintained at zero or low levels, but over-quota tariff rates on some products are prohibitive. Specifically, natural and artificial honey is assigned an over-quota rate of 257 percent; skim and whole milk powder, 202 percent; barley, 345 percent; barley malt, 287 percent; and popcorn, 672 percent.

Duties still remain very high on a large number of high-value agricultural and fishery products. Korea imposes tariff rates above 45 percent on most horticultural products of interest to U.S. suppliers. These include shelled walnuts, table grapes, and citrus. Products subject to a 30 percent or higher tariff rate include certain meats, most fruits and nuts, many fresh vegetables, out-of-quota flour and starches, peanuts, various vegetables oils, juices, jams, peanut butter, beer and some distilled spirits, and dairy products.

Korea is in the process of reducing tariffs to zero on most or all products in the following sectors: paper, toys, steel, semiconductors, and farm equipment. Korea is harmonizing its chemical tariffs to final rates of 0, 5.5, or 6.5 percent, depending on the product. From pre-Uruguay Round levels, tariffs on scientific equipment are being reduced by 65 percent. On textile and apparel products, Korea has harmonized and bound most of its tariffs to the following levels: 7.5 percent for man-made fibers, 15 percent for yarns, 30 percent for fabrics and made-up goods, and 35 percent for apparel.

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 to either keep imports out of the Korean market or to make their prices uncompetitive. For example, the Korean government assesses higher excise taxes on Western-style distilled spirits than on traditional, Korean-style spirits, *e.g.*, *Soju*. While Korean *Soju* is assessed a liquor tax of 35 percent plus an education tax of 10 percent, imported whisky and brandy face a liquor tax of 100 percent of the value (including the import duty) and a 30 percent education tax. Other Western-style distilled spirits are assessed a liquor tax of 80 percent plus an education tax of 30 percent. These Korean tax measures are similar to the Japanese tax measures on alcoholic beverages that were found by the WTO to be inconsistent with GATT Article III:2 (National Treatment Clause). After consultations under WTO dispute settlement procedures on Korea's liquor taxes, a single WTO dispute settlement panel was formed on October 16, 1997 to consider the U.S. and EU complaints against Korea's liquor taxes.

Another example of Korea's tariff/tax barriers is in the area of passenger vehicles. Imported vehicles are subject to an applied tariff rate of 8 percent, more than three times the U.S. tariff. (Korea's bound rate on passenger vehicles is 80 percent.) Korea then levies multiple, cumulative high taxes on top of the 8 percent applied tariff. Three of these taxes are based on engine size. For a car with a 2,000 cc or larger engine, nine taxes combine with the tariff to make the tax and tariff burden on the imported car significantly greater than the tax burden on its domestic equivalent.

Korea uses "adjustment tariffs" at the HS four-digit level to protect domestic producers against import surges. Under the IMF program, Korea reduced the number of items subject to adjustment tariffs from 62 to 38. Among the 38 remaining items, 17 are seafood (HS 03 and 16 categories), seven are textiles (HS 50 through 63 categories), six are mushrooms and bracken (HS 07 category), and four are wood products (HS 44 category). While Korea has not imposed any new adjustment tariffs since 1994, previous tariff increases have yet to be completely phased out. For example, in December 1997, Korea raised the applied tariff on processed

rice (HS 1904) from 8 to 50 percent. The bound tariff rate was set at 58.8 percent in 1996 and will decrease to 54 percent in 2001.

Korea initiated two anti-dumping investigations against U.S. firms in 1997. The investigation of cellulose imports was terminated on the basis of insufficient evidence of dumping. In the investigation of medium-density fiberboard, the Korean Trade Commission (KTC) made a preliminary determination that imports from the United States and Malaysia had injured domestic producers. However, in January 1998, on the recommendation of the Ministry of Finance and Economy (MOFE), the KTC made a final ruling not to impose any anti-dumping duty on U.S. exporters because their market share was under 1 percent. Finally, in January 1998, a WTO dispute settlement panel was formed to consider Korea's complaints about U.S. anti-dumping action on Korean DRAMs.

Non-tariff Measures

Import Diversification Program

Korea maintains an import diversification program, which as of December 1997, barred imports of 113 items from Japan. Under the IMF stabilization package for Korea, the government agreed to eliminate this program in three tranches, the last to be effective by June 30, 1999. In the WTO, Korea had committed to eliminating the import diversification program by December 31, 1999.

Quantitative Restrictions, TRQs, and Import Licensing

Korea implements quantitative restrictions through its import licensing system. A government export-import notice lists products that 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, that is, they are subject to quotas or TRQs with prohibitive over-quota rates.

In 1990, the United States and Korea signed a bilateral agreement on beef imports. Under this agreement, the "simultaneous buy sell" (SBS) system was established. In July 1993, the United States and Korea concluded a Record of Understanding (ROU), the second of three agreements directed toward free-market conditions for the importation and distribution of beef in Korea.

The third beef agreement, negotiated in the Uruguay Round, established the operational rules for the SBS system in greater detail. The SBS system (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 commercial channel, rather than through a government corporation. New retailers and distributors will be added to the direct access system over the term of the SBS agreement, and a new SBS group will become active in 1998.

Each year, the United States and Korea meet quarterly to ensure full implementation of the beef agreement provisions. The minimum import quota for beef is to expand from the 1998 level of 187,000 tons, to 225,000 tons by the year 2000. In 1998, the portion of the quota imported for private sector sales through the SBS system is 112,200 tons; this portion will increase until January 1, 2001. The markup on such SBS-imported

beef will be 20 percent in 1998, reduced to 10 percent the following year, and eliminated in 2000. Korea has agreed to remove all non-tariff barriers, including state trading, to beef imports by January 2001.

On July 1, 1997, under the U.S.-Korea 1993 ROU and under Korea's Uruguay Round commitments, the government liberalized its quantitative restrictions on frozen pork, frozen chicken, fresh oranges, orange juice, and beef jerky and offal. This liberalization was the final tranche of Korea's elimination of balance-of-payments restrictions on agricultural and fishery products. Eight remaining items, mainly live cattle (dairy and beef) and beef products (HS 0201 and 0202) will be liberalized by January 1, 2001. Korea's quantitative restrictions on rice will be liberalized by January 1, 2004.

Korea's administration of its TRQs on certain products raises additional market access problems. Per industry input, the U.S. Government has raised concerns about Korea's process for administering its quotas on rice and its TRQs, particularly, those on fresh oranges, value-added soybean products, and value-added corn products.

On rice, a state trading organization imports the product while the government assumes immediate control upon its entry into Korea. Thus, the government maintains full control over both the distribution and end-use of rice. This process effectively restricts access to the Korean market for high-quality U.S. table rice. The Korean government has repeatedly stated that it will not allow imported table rice to be directly marketed to Korean consumers.

On oranges, as mentioned above, in 1997, the quantitative restrictions on fresh oranges were liberalized to permit out-of-quota imports, which are assessed a duty of 79.3 percent in 1998, with annual reductions that will reach 50 percent (the current in-quota rate) in 2004. The in-quota quantity for 1998 will be 28,125 metric tons and will be expanded at an annual growth rate of 12.5 percent through 2004. Korea has designated its only citrus cooperative as the sole importer of the TRQ in-quota quantity of fresh oranges. The United States has repeatedly expressed its concern that such an arrangement can present a conflict of interest.

On value-added soybean and corn products, the Korean government continues to control allocation of the in-quota quantities. By aggregating raw and value-added products into the same TRQ, the Korean government effectively restricts access to the Korean market for value-added products, such as corn grits and soyflakes, while allowing entry of only the companion raw materials under the in-quota quantity.

Import Clearance Procedures

U.S. suppliers of food and agricultural products continue to encounter trade-impeding practices in Korean ports of entry, including on products for which market access was liberalized under bilateral or multilateral trade agreements. Korea has made changes to its import clearance procedures over the last year, but clearance times still are excessively slow and clearance procedures remain arbitrary. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days, while in Korea, import clearance typically still takes two to four weeks (except for perishable fruits and vegetables, which take a maximum of five days), and sometimes up to two months.

The Korean Ministry of Health and Welfare (MHW), including its Korea Food and Drug Administration (KFDA), and the Ministry of Agriculture and Forestry (MAF), including its National Plant Quarantine Service (NPQS) and

National Animal Quarantine Service (NAQS), account for the greatest delays. These departments share responsibility for administering Korea's food-related laws and regulations, which include requirements for ingredient listing by percentage and manufacturing process information, phytosanitary rules, and standards and conformity assessment procedures (sampling, inspection, and testing) in the Korean Food and Food Additives Codes. Both MHW and MAF impose numerous requirements that prohibit access or delay import clearance while adding costs to importers.

In April 1995, the U.S. Government requested WTO dispute settlement consultations after U.S. citrus rotted at a Korean port. In response, Korea provided expedited clearance (five days) for fresh fruits and vegetables. Between April 1995 and January 1997, the United States had several rounds of WTO consultations with Korea on the additional reforms it had promised.

At the end of 1996 and in 1997, Korea made more changes to its import clearance procedures. Specifically, Korea (1) instituted a new sampling, testing, and inspection system; (2) eliminated mandatory incubation testing for California fruit; (3) used the concept of scientific risk assessment to develop quarantine pest lists for use in determining fumigation requirements; and (4) revised some of the Korean food additives standards to bring them into closer conformity with CODEX Alimentarious Commission standards.

In WTO dispute settlement consultations in January 1997, the Korean government also indicated that it would no longer require as conditions for import clearance, (1) sorting for separation of spoiled produce; (2) manufacturing process information; and (3) ingredient listing by percentage for *all* ingredients. However, following the January 1997 consultations, Korean port inspectors continued to require manufacturing process information and ingredient listing by percentage for *all* ingredients. In addition, some of changes Korean officials *are* implementing do not adequately address U.S. concerns. For example, Korea's interpretation of the term "quarantine pest" allows arbitrary application of regulations affecting the entry of fresh produce. Also, Korea continues to require incubation testing for Florida fruit, even when shipments are accompanied by an APHIS certificate indicating that the fruit originated in a "pest-free" area.

Under the IMF stabilization package negotiated at the end of 1997, Korea agreed to bring its import certification procedures into conformance with international norms and to liberalize its import licensing procedures. At the same time, some progress was made on certain import clearance issues. At the beginning of 1998, Korea announced its intention to bring its standards on a number of agricultural chemicals into conformity with CODEX standards. This is significant for U.S. companies that have had entry problems due to restrictive standards, for example, on pesticide residue levels. Korea also has begun the process of conforming the standards in the Food Additives Code to CODEX norms, but much remains to be done in this regard.

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 are more consistent with international norms. (See also "Standards and Conformity Assessment Procedures.")

Korea

Labeling Requirements

U.S. exporters also cite Korea's nontransparent and burdensome labeling requirements, which often are arbitrarily enforced. For example, Korea recently proposed expanding its domestic price labeling law to include imported products. This regulation, to be implemented April 1, 1998, requires that labels on imported products show the import price (CIF value plus duty) in Korean *won* and be updated every three months to account for exchange rate fluctuations. This regulation covers 40 products, including distilled spirits and wine. In addition, batch codes and the date of manufacture are to be included on the Korean labels. The U.S. Government has expressed its concern about these proposed changes in labeling requirements.

Customs Procedures

U.S. firms continue to encounter border entry barriers in the form of Korean Customs Service (KCS) decisions to arbitrarily and suddenly change the customs classification and border treatment (*i.e.*, tariff level) of certain products. KCS also rejects customs clearance applications on administrative grounds (wrong print, font size, erasure marks on application, etc.), thereby delaying the official start of the customs clearance process.

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

Korea maintains standards and conformity assessment procedures (sampling, inspection, testing, and certification), *e.g.*, in the Korean Food and Food Additives Codes, that deviate from international norms, do not appear to be based on scientific risk assessment, and target imports. For example, Korea's standards and testing procedures on raw meat are not scientifically based. In addition, the Korean government continues to maintain trade-impeding import clearance requirements on proprietary information (ingredient listing by percentage and manufacturing process information), and has not fully addressed U.S. concerns about other sanitary and phytosanitary barriers to entry. (See also "Import Clearance Procedures.")

U.S. industry also cites Korea's subjective application of Korean Food Code rules to non-traditional foods as a barrier to the introduction of some U.S. products, such as ostrich, emu, alligator, and nuprine meats, to the Korean market. Under the Korea Food Code, raw materials originating from non-traditional animals, plants, etc., cannot be used for food manufacturing, processing, and cooking if such materials are deemed inappropriate for eating in Korean custom or tradition or in the view of the Korean Ministry of Health and Welfare (MHW).

Efforts to obtain market access for in-shell walnuts thus far have been stymied by Korea's insistence on the establishment of an onerous and unnecessary phytosanitary preclearance inspection program. In addition, through the pest risk analysis process, the United States is continuing efforts to overcome existing phytosanitary-based import bans on fresh apples, pears, and stone fruit.

Korea continues to maintain government-mandated shelf-life requirements for sterilized milk products such as ultra heat-treated (UHT) milk and bottled water.

Korean government agencies require pre-approval for cosmetics, food additives, pharmaceuticals, chemicals, electronics, personal communication services, and many other products. Other countries require pre-approval for

some products, but the range of products affected is exceptionally wide in Korea, and companies must submit documentation that is extraordinarily detailed. The information provided in the prior-approval/certification process is not protected and sometimes is "leaked" to the press. This incites opposition to imported products.

U.S. cosmetic producers 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. (See also “Cosmetics.”)

U.S. pharmaceutical companies report significant delays in obtaining final approval from MHW 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 1 to phase 3 clinical trials, but this still is prohibitively expensive for foreign firms. For products developed outside of Korea, MHW thus far has refused to allow phase 3 clinical trials to begin in Korea until they are completed first in a third country, and the product has received a Certificate of Free Sale (CFS) from that 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. These requirements delay the introduction of foreign-developed products into the Korean market by about two years. As MHW has no system to differentiate between U.S. prescription and non-prescription (over-the-counter) drugs, both types of pharmaceuticals are subject to the same rigorous testing and approval process. (See also “Lack of Intellectual Property Protection” and “Pharmaceuticals.”)

Korea's motor vehicle standards and certification regulations are complex and excessive. Since the implementation of the U.S.-Korea Memorandum of Understanding (MOU) in 1995, Korea has reduced documentation requirements, eliminated five safety standards, and increased the number of vehicles subject to simpler certification procedures from 100 to 1000 vehicles per model. However, Korea’s type approval system still involves redundant and costly testing procedures and a blending of international automotive standards. (See also “Motor Vehicles.”)

Under the IMF program, the Korean government has committed to accelerate harmonization of its certification procedures with WTO standards and to strengthen their implementation. To implement this commitment, the government is now soliciting input from all relevant domestic agencies and Korean and foreign business interests on which laws and administrative guidelines require revision.

As of January 5, 1998, the Korean government simplified import procedures and improved transparency by eliminating type approval for certain imports of electronic and broadcasting equipment and by providing clearer definition of imports (for re-export) eligible for waiver of type approval, among other changes. The export recommendation system under the Petroleum Business Act was eliminated and import procedures simplified. Import and inspection guidelines for wool products and cod heads were eliminated.

GOVERNMENT PROCUREMENT

Korea began implementing the WTO Agreement on Government Procurement (GPA) on January 1, 1997. As part of its GPA commitments, Korea agreed to cover procurement of goods and services over specific thresholds by Korean central government agencies, their subordinate entities, provincial and municipal governments, and some two dozen government-invested companies.

The GPA prohibits the use of offsets as a condition for awarding contracts on covered procurement. (Military offsets are not covered procurement and therefore are excluded.) In addition, the GPA enables suppliers to pursue alleged

violations of the Agreement through bid challenge procedures. Accordingly, the Korean Ministry of Finance & Economy (MOFE) has established an international contract dispute settlement committee to deal with any foreign supplier allegations that Korean procuring entities have not complied with GPA provisions. MOFE has not received any bid challenges under these procedures since the GPA took effect.

The annexes to Korea's GPA accession document specify the thresholds for coverage of procurement contracts under the Agreement. The threshold for Annex 1 (central government entities) for supplies and services is 130,000 SDRs (151 million *won* in 1997), and for construction services, 5 million SDRs (5.83 billion *won* in 1997). The Annex 2 (sub-central government entities) threshold for supplies/services is 200,000 SDRs (233 million *won* in 1997), and for construction services, 15 million SDRs (17.49 billion *won* for 1997). For Annex 3 (government-invested corporations), the threshold for supplies/services is 450,000 SDRs (524 million *won* for 1997), and for construction services, 15 million SDRs (17.49 billion *won* for 1997).

Korea's coverage under the GPA does not extend to procurement related to national security and defense, Korea Telecom's purchases of telecommunications commodity products and network equipment, and procurement of satellites (for five years from entry into force of the GPA for Korea). Purchases by the Korea Electric Power Corporation (KEPCO) are covered, with the exception of certain equipment.

The U.S. and Korean governments are currently discussing the question of GPA coverage of the Korean Airport Construction Authority (KOACA). The United States maintains that KOACA procurement is subject to the requirements of the Agreement.

The Supply Administration of the Republic of Korea (SAROK), formerly the Office of Supply or OSROK) is responsible for the purchase of goods and incidental services required by central and sub-central government entities. SAROK also handles government construction contracts and related services, and the stockpiling of raw materials.

SAROK estimates that its total procurement of goods and services -- both GPA-covered and non-GPA-covered -- will reach $2.5 billion in 1998, a decrease from its total purchases of $3.4 billion in 1997. Of the total projected purchases for 1998, approximately $1.2 billion will be subject to international tendering procedures in accordance with GPA rules. SAROK has identified the following categories of products and equipment as open to international competitive bidding in 1998: medical, educational, and sewage treatment equipment; scientific testing instruments; and helicopters. In addition to purchases of goods and services, SAROK estimates that it will handle construction contracts valued at $5.5 billion in 1998.

In making estimates for 1998, SAROK assumed an exchange rate of about 1,700 *won* per dollar. The estimates for 1998 procurement will be affected by Korea's economic crisis. The *won*'s continuing instability, and the need for the Korean government to cut spending to stay within IMF targets, make both *won*- and dollar-denominated estimates subject to revision.

Not all GPA-covered procurement is handled by SAROK. In the case of Korean government-owned commercial enterprises (listed in Annex 3 of Korea's accession agreement), procurement is handled in-house, with these entities following the same GPA rules. Thus, tendering under open, formal procedures is required.

U.S. suppliers are required to register in advance with SAROK (or any other procuring entity). SAROK maintains lists of pre-qualified suppliers for given materials, equipment, and services. Invitations to bid are announced 40 calendar days in advance of the bid deadlines. As required by the GPA, the procuring entity must publish information on bid opportunities in at least two sources: the daily newspaper *Seoul Shinmun* and the Korean Government Gazette. While these sources are published in the Korean language, any given tender announcement must be accompanied by a summary in English, including the subject matter of the contract, the deadline for submission of tenders, and the address and contact point from which full documents relating to the contracts may be obtained. The tender announcement must contain a statement that the bid is covered by the GPA.

It appears that Korea has met the requirements described above. However, U.S. firms have noted that they may need more than 40 calendar days for translation of the extensive documentation for a project bid, home-office consideration, and drafting of bid documents in Korean.

Prior to Korea's accession to the GPA, a U.S.-Korea 1992 agreement on telecommunications provided U.S. firms with access to procurement contracts of Korea Telecom, a government-invested corporation. The United States annually reviews Korea's compliance with this bilateral agreement, as required under Section 1377 of the 1988 Omnibus Trade and Competitiveness Act. Korea was designated in July 1996 as a Priority Foreign Country under Section 1374 of the 1988 Trade Act. Bilateral negotiations in 1997 resulted in an agreement that clarified the Korean government's policy and guaranteed non-interference in the telecommunications procurement process. (See also "Telecommunications.")

EXPORT SUBSIDIES

In the past, Korea has aggressively promoted exports through a variety of policy tools. However, in the WTO, Korea committed to phasing out those programs not permitted under the WTO Agreement on Subsidies and Countervailing Measures.

Under its IMF stabilization package, Korea committed to an accelerated time line on the elimination of three trade-related WTO-prohibited subsidies. Specifically, the Korean government committed to legislating the elimination of the following provisions in the "tax exemption and reduction control law" by March 1998: (1) reserves for export loss; (2) reserves for overseas market development; and (3) tax incentives for the encouragement of investment. In the WTO, Korea had committed to eliminating these measures by December 31, 1998. Also under the IMF package, in January 1998, Korea eliminated, through administrative decree, the Ministry of Information and Communication's program to promote the use of mini-computers.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Korea has made significant efforts to strengthen its intellectual property rights (IPR) laws and the enforcement of those laws. Korean officials have placed priority on prosecution and increased penalties, and continue to sponsor public awareness seminars. In recognition of the commitments made by the Korean government to improve its IPR protection regime, Korea's Special 301 status was downgraded from "priority watch list" to "watch list" in April 1997.

Pursuant to 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. In 1997, the trademark law was amended to afford protection to three-dimensional trademarks (registered in Korea only). A revised trademark law is expected to become effective on March 1, 1998, and the establishment of a patent court is scheduled for the same time. Korea is implementing developed-country IPR standards in many areas, but still claims developing country status with respect to its TRIPS obligations overall.

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. Also, the copyright law provides protection only for cartoon characters that possess artistry and creativity. The trademark law does not protect some famous U.S. cartoon characters because they have not been registered as trademarks with the Korean Industrial Property Office (KIPO). Korean courts, in recent decisions, have declined to extend protection to textile designs and famous U.S. cartoon characters -- Mickey Mouse, Tom and Jerry -- for use in certain product categories in which a Korean firm has filed a preemptive registration. In a major setback, the Korean Supreme Court in 1997 overturned a KIPO decision in favor of a U.S. claimant in a dispute over the “James Dean” trademark.

Korean patent law is fairly comprehensive, offering protection to most products and technologies. In July 1997, the Patent Act and Utility Model Act were amended to streamline the examination and appellate process, and to boost monetary penalties for cases of patent infringement from 20 million *won* to 50 million *won*. U.S. industry believes that deficiencies remain in the interpretation of claims and in the treatment of dominant and subservient patents. Additionally, Korea’s recognition of international ownership of foreign patents has been inconsistent, and approved patents of foreign patent holders have been vulnerable to infringement in practice. For example, the U.S. Government continues to urge Korea Telecom to procure products and equipment from legal patent holders only, and not from local firms that infringe on those patent rights.

U.S. industry continues to be concerned about restrictions on patent term extension for certain pharmaceutical and agrochemical products that are subject to lengthy clinical trials and domestic testing requirements. In the case of pharmaceuticals, patent term protection for the clinical trial period is lost if that process takes less than two years. The industry average for clinical trials of imported products is generally just short of two years. During the 1997 Special 301 process, the Korean government expressed a willingness to seek a resolution of this issue. However, there has been no movement on this problem since that time.

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 selling 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 Korean government reports that from January to November 1997, 14,919 individuals were subject to punishment (919 detentions) for infringement of IPR, up 11.6 percent from the same period in 1996. 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. However, piracy for home use and by educational institutions reportedly continues to be a problem, and U.S. firms report that they still have difficulties bringing law enforcement action against “small-scale” infringers.

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 -- so-called “sleepers” -- were still a problem in 1997. "Sleepers" are marks filed and registered by Koreans without authorization in the late 1980s and early 1990s, when

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. The new trademark law, which is expected to become effective March 1, 1998, will contain provisions for prohibiting the registration of trademarks without the authorization of foreign trademark holders. However, additional progress needs to be made on the protection of famous marks (See third paragraph in this section.)

Until 1998, trade dress had been only partially protected under both the prevention of unfair competition law and the design law. The design law grants protection only after registration is completed. However, the amended trademark law will allow the registration of three-dimensional marks and trade dress. 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 have not been fully protected, some Korean companies pirated U.S.-copyrighted textile designs and exported them to third countries, competing with genuine U.S.-produced goods. Some progress has been made in improving customs procedures and expanding cooperation with Korean enforcement authorities. However, the U.S. Government continues to urge Korean government officials to increase their efforts toward stopping exports and imports of counterfeit goods to and from third countries.

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 continuing problems with government regulations requiring submission of very detailed product information (*i.e.*, formulae 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, submitted information has not been given sufficient protection by government officials and, in some cases, has been made available to Korean competitors or to their trade associations.

Recent amendments to the Design Act are scheduled to become effective on March 1, 1998. Under the new amendments, KIPO is making industrial designs more competitive by extending the duration of the design right and simplifying the design application procedures. A new design registration system will be introduced to enable applications for certain goods to be registered without examination.

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. (See also “Investment Barriers.”)

Construction

The construction and engineering markets in Korea have been open to foreign competition since January 1, 1996. On January 1, 1997, foreign companies became eligible to bid on public projects including the massive social overhead capital (SOC) projects designed to improve basic infrastructure in Korea. Most foreign construction and engineering companies report that the difficulties encountered so far have been largely cultural, rather than legal, and that important issues, such as the manner in which companies are pre-qualified and ranked for projects, are now being

addressed by the Korean government. However, the firms also report problems with licensing procedures and bonding procedures, and attempts to renegotiate accepted bid prices.

Three separate licenses are available to foreign companies: construction, construction supervision, and design. The requirements associated with these licenses are burdensome in that they involve hundreds of pages of documentation. Additionally, few of the laws and regulations on licensing or the application forms have been translated into English. Also, prior to obtaining a license, an applicant must consult with a number of agencies, each of which has a different interpretation of the licensing rules. The Korean government has said that it will (1) prepare English language versions of its license application procedures; and (2) streamline and relax some licensing qualification procedures and requirements.

Foreign companies are required to deposit $800,000 as a bond with the Korean Construction Mutual Aid Association in order to obtain a construction license. This requirement significantly increases the start-up costs of foreign companies interested in applying for a construction license in Korea. The government has stated that the cash bond will be reduced annually and will be abolished by 2000.

Advertising

The government-affiliated Korean Broadcasting Advertising Corporation (KOBACO) has a monopoly over the allocation of television and radio advertising time. Foreign firms report that KOBACO established a constructive and open dialogue with local and foreign advertisers to discuss future plans and further opportunities for improvement. Despite this development, Korean advertising remains more regulated than most markets. American firms report that the selling of air time in packages of only three to six months has been modified so that more time is available in packages of one to two months. But, it has been difficult to purchase the best quality spots for shorter periods; this has been a problem for seasonal or new-product advertisers, who generally use short bursts of media. During the current economic downturn, airtime supply exceeds demand, and KOBACO is demonstrating considerable flexibility.

All advertising is aired between programs during lengthy commercial breaks. Korea's five-year plan for advanced broadcasting indicated that advertising would be permitted during programs and during the weekday-daytime period. This would significantly improve advertising quality. Until 1996, over 90 percent of airtime was only available in 15-20 second lengths. This resulted in a crowded and confusing clutter of advertising. Short time lengths also made it difficult to establish new products and to utilize global advertising campaigns.

The Korean Broadcasting Commission (KBC) controls advertising censorship procedures, which are non-transparent. The laws and regulations laying out these procedures are very broad and therefore allow considerable subjectivity in interpretation. All television and radio advertising has to be first submitted in its final, fully-produced form for censorship by the KBC, rather than at the "storyboard" stage. Given the unpredictability of the censorship process, this adds considerably to the risk and costs of developing new advertising campaigns and of introducing new products. A new bill abolishing pre-broadcast censorship and instituting a self-regulation system is under consideration.

Audiovisual

Screen Quota

By requiring that domestic films be shown in each cinema a minimum number of days per year (currently 146 days, with reductions to 106 days possible if certain criteria are met), Korea effectively imposes a screen quota on imported motion pictures. The quota acts as a deterrent to cinema construction and the expansion of 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 (not to exceed 20 percent) that may be devoted to imported programs.

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. Additionally, cable TV programming must be translated into Korean, which effectively prevents direct rebroadcasting of satellite transmission by Korean cable TV companies. These restrictions severely limit the market for foreign programming.

Satellite Re-transmission

Korean cable TV companies reportedly are re-broadcasting satellite transmissions of foreign programming (including U.S.) without paying user fees/royalties to the foreign broadcasters. Presently, the Korean government and Korean firms are operating under the assumption that fees for such re-transmissions need not be paid.

Financial

Insurance

After Japan, Korea is the second largest insurance market in Asia and the sixth largest in the world, with $57.6 billion in premiums paid in 1996. The environment for foreign insurance companies has improved considerably since Korea first opened its market in 1986. Korea has implemented a series of regulatory changes since its 1996 accession to the OECD. Korea has pledged to reflect these and other OECD financial services commitments in a revised WTO financial services offer before the final agreement goes into effect in 1999.

Entry into the life and non-life insurance markets has been gradually liberalized, consistent with Korea's OECD commitments. Some restrictions remain with respect to partnering with local Korean insurance companies and the hiring of Korean insurance professionals. By April 1998, Korea will liberalize insurance appraisal and activities ancillary to the management of insurance and pension funds. Korea has begun to allow brokers to operate, and the brokerage market is scheduled to be opened to foreign firms in April 1998. (For example, life insurers now are permitted to sell personal accident insurance.) Several foreign reinsurance firms now have entered the market.

Despite Korean plans to deregulate insurance premium rates by 1999, it is unclear whether this will give firms full freedom to determine rates. U.S. industry, while noting the improved market access and regulatory environment that exist today, still has major concerns about restrictive rate and form regulations, limitations on investments, and lack

of transparency and due process. Industry also has expressed concern about a growing solvency problem among domestic life insurers and has offered to work closely with the Korean government on solutions that protect policyholders without damaging healthy companies in the sector.

Banking

The Korean banking sector is in the process of undergoing thorough and far-reaching structural reform as part of an agreed program between the government of Korea and the IMF. The objective of this reform is to ensure that the banking sector operates on a fully commercial, rather than industrial policy basis. The Korean government has committed to refrain from interfering in bank lending and management decisions, except with regard to prudential supervision. The government also has pledged, and is in the process of implementing, a major opening of the capital markets to foreign participation. Foreign financial institutions will be allowed to participate in non-hostile mergers and acquisitions of domestic financial institutions. Foreign banks will be allowed to establish subsidiaries in March 1998. The new government is seeking legislation to allow hostile mergers and acquisitions, including in the banking sector.

Korea continues to place various limits on the scope of bank operations based on local capital *versus* global capital reserves. These limits affect (1) loans to individual customers; (2) foreign exchange trading; and (3) foreign banks' capital adequacy and liquidity requirements. For non-top-five Korean companies and small and medium enterprises, foreign banks' operations are subject to lending ratios.

All banks in Korea continue to suffer from a relatively non-transparent regulatory system and must seek approval before introducing new products and services, an area where foreign banks are most competitive. The foreign exchange market continues to be heavily regulated, with tight controls on the introduction of new instruments, a niche where again U.S. banks would be especially competitive. According to the Bank of Korea (the Korean Central Bank), some restrictions on capital inflow have been removed. The government recently allowed foreign banks to increase their swap lines as a way to generate additional foreign exchange, but it remains unclear if these increased lines will be allowed once the current crisis is over. For the present, the government has indicated that the existing lines will not be decreased for the foreseeable future and may even be increased. The interbank money market is still underdeveloped and is not a stable source of funding for foreign bank activities.

Foreign-based, non-financial businesses in Korea are subject to high-cost procedures and restrictions on their financial activities. Such restrictions are inappropriate for Korea's level of development and financial sophistication. 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.

Despite a long-standing government commitment to deregulation, there have been few changes of practical importance in controls over transactions involving foreign exchange, imports, and exports. These controls create high costs and excessive risks for multinationals operating in Korea and are a disincentive to additional foreign investment.

Securities

While there has been considerable liberalization of the securities market in Korea, foreign securities firms continue to face market access barriers. The present 50 percent ceiling on foreign equity in a securities firm is scheduled to be lifted in 1998. The establishment of brokerage subsidiaries will be allowed as of March 31, 1998.

Foreign investment ceilings in Korean stocks have been considerably liberalized. The aggregate ceiling was lifted to 55 percent as of December 30, 1997, and the government has committed to lift this ceiling entirely by the end of 1998. The individual ceiling for portfolio investment was raised to 50 percent on December 12, 1997. The government has eliminated, effective December 30, 1997, all foreign investment ceilings for government, special, and corporate bonds, and has committed to permitting unlimited foreign investment in domestic money market instruments. As of December 16, 1997, the government lifted restrictions on foreign borrowing by Korean corporations for maturities greater than three years and has committed to consult with the IMF about remaining restrictions.

Foreign firms can now participate in the domestic securities "over-the-counter" market. Foreign investment restrictions, while currently in force, are scheduled to be removed in 1998. Likewise, the existing 50 percent ceiling on foreign ownership of investment advisory companies is scheduled to be eliminated in 1998.

Korea's tightly controlled financial sector and the high cost of domestic credit in Korea directly affect U.S. firms operating in other sectors. However, Korea has committed to major liberalization of its financial and capital markets as part of its IMF program, and the new Korean administration has made improving the climate for foreign companies operating in Korea a top priority.

INVESTMENT BARRIERS

Korea has removed most of its formal barriers to foreign investment, but remains relatively unattractive to foreign investors. Access to the Korean market for foreign investors 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. 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. Also, Korea's investment climate may change with the new President's focus on bringing foreign investment into the economy in an effort to ensure economic stability.

As of February 1997, foreign investors are only required to notify the government of their intentions; actual applications 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 50 days of its filing, or the investment can be presumed to be legal. Although the government has reduced the documentation required to invest, 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 national security); and (2) refrain from imposing any performance requirements (*e.g.*, on technology transfer, local content, or local manufacture). However, U.S. firms --

particularly telecommunications companies -- report that the Korean government and its public entities regularly impose a *de facto* "buy local" policy on their purchases and actively encourage private entities 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 eased further to allow provision of rent-free or reduced-rent industrial premises to foreign investors willing to locate at two specific sites outside of Seoul. However, the U.S. Government remains concerned 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 containing time-sensitive conditions have resulted in the assessment of substantial taxes on unused land and the forced sale of land at below-market prices.

The Korean government 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. The U.S. Government continues to urge Korea to abolish this "going public" policy for foreign firms, many of which are privately held.

Korea has not notified the WTO of any measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs).

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) is responsible for enforcing the Fair Trade Act and improving competition policy in the Korean economy. Due to recent reform measures, the KFTC has been elevated to a ministerial-level agency and the agency's staffing has been increased. From the U.S. Government's point of view, these were necessary and welcome changes.

The Korean National Assembly passed a revision to the Fair Trade Act. Effective on April 1, 1997, this revision expanded the application of the Fair Trade Act to the financial and insurance sectors. The KFTC also was given more authority to demand changes in anticompetitive provisions in both draft and existing laws and regulations. The KFTC has investigated and sanctioned Korean firms in response to a U.S. firm's complaint that the Korean companies had engaged in anticompetitive practices.

The corporate restructuring, labor, financial sector, and foreign investment reforms to which Korea has committed under the IMF package should spur the KFTC's efforts to deter and eliminate chronic anticompetitive practices in the Korean market. If restructured in response to commercial, rather than industrial policy cues, the Korean *chaebols* in sectors such as autos, steel, semiconductors, and shipbuilding should depart from past practices of overproduction and aggressive exporting.

With respect to products such as pharmaceuticals and cosmetics, industry associations are delegated substantial regulatory authority in Korea through both formal and informal means. These associations often have abused their powers by discriminating against non-members and potential competitors, including American firms.

In 1996, the KFTC decided to regulate not only collusion between rival firms, but also trade associations that induce their members to engage in anticompetitive practices. In 1996, the KFTC ordered 60 trade associations to revise 134 anticompetitive or unfair articles or by-laws. In 1997, the KFTC investigated the internal rules and practices of 57 associations and identified 79 items needing improvement. The KFTC deregulation task force also moved to reduce

the authority delegated to industry associations. In 1997, the KFTC gave orders to discourage 40 to 50 associations from abusing authority delegated by the government. (See also "Cosmetics" and "Pharmaceuticals.")

Despite the above-mentioned improvements in competition law enforcement and policy, the United States believes that more improvements are necessary to ensure unfettered market access for foreign firms.

OTHER BARRIERS

Lack of Transparency

Many Korean trade-related laws and regulations lack specificity. Their implementation is directed by internal guidance, which is developed by the relevant ministries and often is not published. Despite this guidance, Korean port officials exercise a great deal of discretion in applying the broad rules in the laws and regulations. This leads to inconsistency of application and sometimes the most trade restrictive application, as well as uncertainty among business interests.

In the past, the Korean government has failed to produce advance or timely notice of changes to laws and regulations, either in domestic official publications or in the WTO. This has precluded interested parties from commenting on the effect of the proposed changes and made it difficult or impossible for foreign companies to adjust to the new rules when they are implemented.

Some progress has been made on such transparency issues, but additional improvement still is necessary to ensure that lack of transparency no longer impedes trade.

Frugality Campaigns and Anti-import Bias

Frugality campaigns ostensibly directed at individual consumption, but effectively targeting imported goods, are another barrier that U.S. firms face in Korea. As Korea's trade deficit rose in 1996 and the first few months of 1997, newspapers and government officials regularly pointed out the negative current account impact of rising imports of finished consumer goods, food and agricultural products, clothing, furniture, travel, and education. While the Korean government denied involvement in the anti-import aspect of the frugality campaign, complaints from U.S. firms rose rapidly as Korean officials took arbitrary actions that impeded imports. (See also "Import Clearance Procedures," "Standards and Conformity Assessment Procedures," and "Motor Vehicles.")

A more market-oriented team of economic ministers was appointed in March 1997. The Korean government publicly announced in May 1997 that imports were not the cause of Korea's economic problems, and handed down a set of guidelines warning Korean officials against actions that could be interpreted as anti-import.

The IMF program's high interest rates, strict standards for Korean banks, and reforms of the financial sector are expected to lead to low or negative economic growth, numerous corporate bankruptcies, and significantly higher unemployment in 1998. The Korean *won* lost 50 percent of its value from November 1997 to January 1998, causing prices of imported raw, intermediate, and finished goods to increase. Koreans reacted strongly to the financial crisis, turning in their gold for *won*, and embracing renewed calls from civic groups and the media to reduce consumption, especially of imports.

Korea

Partially government-owned TV stations have run public service messages in which entertainment celebrities urged people to use small, domestic cars rather than large, imported cars. Some gas stations have posted signs stating that they will not service imported cars, and dealers report an upsurge in vandalism against imported cars.
In a live, televised town meeting in December, then President-elect Kim Dae Jung called on Koreans to engage in "healthy consumption," and to base purchasing decisions on price and quality, rather than country of origin. Unfortunately, the anti-import bias remains a problem.

Internal Supports

Under the Uruguay Round, Korea agreed to reduce, in ten equal installments, its domestic support (AMS) for agricultural products from 2.182 trillion *won* in 1995, to 1.49 trillion *won* in 2004. If the Korean government does not reduce its large domestic rice and beef purchases, it will have difficulty meeting its AMS commitments in coming years.

Motor Vehicles

Korea is the fifth largest auto manufacturer in the world but imports fewer cars than any other major auto-producing country. In 1996, the foreign share in the Korean auto market was less than 1 percent, compared to 6 percent for Japan and over 25 percent for France, Germany, and the United States. In addition, Korean auto companies' expansion of production outside of Korea and exports to third-country markets have caused concern among U.S. auto producers.

Domestic production in Korea remained at 2.8 million vehicles in 1997. As the Korean economy declined over the course of 1997, Korea's sales of domestic passenger cars dropped seven percent to 1.15 million units, while sales of imported passenger cars by official dealers fell 21 percent. The market share of imported passenger vehicles had been only 0.8 percent of the total market in Korea in 1996, and fell even further in 1997 to 0.7 percent. At the same time, exports of Korean vehicles rose 9.1 percent in 1997 to 1.3 million units. Fifty-seven percent of total Korean passenger cars manufactured in 1997 were exported, an increase of 6.3 percent over 1996.

In September 1995, under a Super 301 review, the United States and Korea negotiated a Memorandum of Understanding (MOU) on market access for foreign passenger vehicles. Korea agreed to liberalize standards and certification procedures, reduce taxes that discriminate against imported vehicles, permit foreign advertisers equal access to television advertising time, allow foreign majority ownership of auto retail financing entities, and improve consumer perception of auto imports in Korea. Korea also committed to refrain from introducing any new measures that would adversely affect market access.

In bilateral negotiations between August and September 1997, the U.S. Government sought to address continuing problems in obtaining access to the Korean auto market. However, these talks failed to produce satisfactory market-opening results. Consequently, on October 1, 1997, the U.S. Government identified Korea's barriers to auto imports as a Priority Foreign Country Practice under Super 301 procedures, followed by initiation of a section 301 investigation on October 20. Specific Korean practices of concern include tariff and cumulative tax disincentives that disproportionately affect imports, onerous and costly auto standards and certification procedures, auto financing restrictions, and a pervasive climate of bias against imported vehicles.

Korea's applied 8 percent tariff is over three times the U.S. passenger vehicle tariff of 2.5 percent. Korea's bound rate under the WTO remains at 80 percent. At the purchase and retention stages, Korea imposes nine different taxes on passenger vehicles. These taxes are applied cumulatively on top of the 8 percent tariff rate. Three of the nine taxes are based on engine displacement, and are applied in a way that disproportionately burdens vehicles with larger engines (over 2,000 cc), a category in which most of the American Big-Three and other foreign products are most competitive. The compounding effect of these taxes, as they are applied on top of the tariff, significantly increases the final price of the average car exported to Korea.

On October 28, 1997, Korea equalized the subway bond tax applied to imported and domestic minivans, eliminating the discriminatory application of the tax. However, since signing the 1995 MOU, the Korean government has proposed a reclassification of minivans which would result in increased taxes on minivans. Korea also has increased taxes incrementally since April 1996 on sport utility vehicles.

Burdensome standards and certification procedures make it difficult and costly to introduce new car models into the Korean market. Significant obstacles to importation include redundant vehicle testing beyond the initial type approval certification process. Such duplicative procedures impose further cost on foreign manufacturers. Korea also blends international certification standards which makes it virtually impossible for importers to homologate vehicles without incurring considerable extra cost to modify and test vehicles for export from the United States to Korea.

Korea recently introduced legislative reforms to reduce wholesale and dealer financing restrictions that had adversely affected foreign automakers. However, financing firms are still not allowed to hold a mortgage on cars sold on an installment payment basis, rendering repossession impossible and recovery difficult and expensive. The inability to extend credit on a commercially viable basis has impeded the sales of imported vehicles in Korea.

Pervasive anti-import sentiments have limited marketing opportunities and intimidated potential customers of foreign vehicles in Korea. A perception is widely held by Korean consumers that purchasing an imported passenger vehicle could invite Korean government scrutiny and public "backlash." This perception stems from the Korean government's past association with campaigns and programs that discouraged the purchase of imported products. There have been numerous national anti-import campaigns since 1989, which have had a measurable adverse impact on the sales of imported vehicles. In addition, in December 1996 and early 1997, the National Tax Office (NTO) engaged in broad action directed at lessees of imported autos. Though withdrawn after complaints by foreign governments, the threat of tax audits for lessees of imported cars had a chilling effect on import sales. Recent frugality campaigns launched by civic organizations, ostensibly to reduce conspicuous consumption and to ameliorate Korea's trade deficit, also have contributed to an anti-import bias among consumers of motor vehicles. (See also "Frugality Campaigns and Anti-import Bias" and "Standards and Conformity Assessment Procedures.")

Pharmaceuticals

Korea's national health insurance system does not provide imported drugs with national treatment with respect to drug reimbursement and discourages hospitals and other large end-users from buying imported drugs. Under the Korean 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 also must comply with additional administrative procedures for

reimbursement. Recently, Korean hospitals have engaged in “buy national” behavior by delisting foreign pharmaceuticals from formularies and inventories. In addition, U.S. pharmaceutical producers face other market access barriers in Korea including requirements for duplicative testing, limitations on manufacturing, and lack of patent term extension. (See also “Standards and Conformity Assessment Procedures” and “Lack of Intellectual Property Protection.”)

Cosmetics

Impediments to entry and distribution of foreign cosmetic products in Korea include (1) restrictions on sales promotions (premiums), including on the method for valuing premium products; (2) the Korean government’s delegation of authority to the domestic industry association to screen advertising and information brochures prior to use; (3) mandatory provision of proprietary information on imports to Korean competitors; (4) redundant testing; (5) unreasonable prior-approval requirements on cosmetic tester labels; and (6) burdensome import authorization and tracking requirements. The U.S. Government cited Korea’s cosmetics-related measures as a bilateral priority in the 1997 Super 301 report. (See also “Standards and Conformity Assessment Procedures” and “Anticompetitive Practices.”)

Telecommunications

In the past, U.S. equipment and services companies encountered a significant number and range of impediments in the Korean telecommunications sector. The Korean government has targeted the telecommunications sector for industrial promotion, which explains the chronic nature of U.S. market access problems in this sector. Only a few U.S. firms operate in the Korean telecommunications service market as minority investors. Although Korea Telecom is no longer the monopoly service provider, there still are indications that it continues to pursue an unwritten "buy local" requirement for equipment procurement by service providers.

On July 26, 1996, USTR designated Korea as a Priority Foreign Country under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act. Bilateral negotiations in 1997 resulted in an agreement that considerably clarified government policy and guarantees of non-interference in the procurement process. On July 14, 1997, Korea announced in a policy statement that (1) the government did not require use of local products when making decisions on licensing or spectrum allocation; (2) the licensing process would be transparent and non-discriminatory; (3) within the scope of Korea’s commitments and in accordance with its obligations under the WTO, foreign firms would receive national treatment; and (4) private sector firms would be free to make their procurement decisions independently. The U.S. Government continues to bring any instances of non-compliance by Korea Telecom to the attention of the Korean government.

Korea’s commitments under the WTO Basic Telecommunications Agreement enhance opportunities for partial foreign ownership of Korean telecommunications operators. Due to the need for foreign investment in Korea, the new government may accelerate the schedule for market opening measures agreed under this Agreement. (See also “Government Procurement.”)