

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was \$13.3 billion in 2008, an increase of \$351 million from \$12.9 billion in 2007. U.S. goods exports in 2008 were \$ 34.8 billion, up 0.5 percent from the previous year. Corresponding U.S. imports from Korea were \$48.1 billion, up 1.1 percent. Korea is currently the eighth largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Korea were \$12.7 billion in 2007 (latest data available), and U.S. imports were \$6.6 billion. Sales of services in Korea by majority U.S.-owned affiliates were \$7.3 billion in 2006 (latest data available), while sales of services in the United States by majority Korea-owned firms were \$3.2 billion.

The stock of U.S. foreign direct investment (FDI) in Korea was \$27.2 billion in 2007 (latest data available), up from \$24.6 billion in 2006. U.S. FDI in Korea is concentrated largely in the manufacturing, banking, and finance/insurance sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The United States and the Republic of Korea signed the United States-Korea Free Trade Agreement (KORUS FTA) on June 30, 2007. If approved, the Agreement would be the United States' most commercially significant free trade agreement in over 16 years. The U.S. International Trade Commission estimates that the reduction of Korean tariffs and tariff-rate quotas on goods alone would add \$10 billion to \$12 billion to annual U.S. Gross Domestic Product and around \$10 billion to annual merchandise exports to Korea. The Administration has indicated that it will promptly, but effectively, address the issues surrounding the KORUS FTA, including concerns that have been expressed regarding automotive trade.

Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products would become duty free within three years of the date the FTA enters into force, and most remaining tariffs would be eliminated within 10 years. For agricultural products, the FTA would immediately eliminate or phase out tariffs and quotas on a broad range of products, with almost two-thirds (by value) of Korea's agriculture imports from the United States becoming duty free upon entry into force. For services, the FTA would provide meaningful market access commitments that extend across virtually all major service sectors, including greater and more secure access for international delivery services and the opening up of the Korean market for foreign legal consulting services. In the area of financial services, the FTA would increase access to the Korean market and ensure greater transparency and fair treatment for U.S. suppliers of financial services.

The FTA would address nontariff barriers in a wide range of sectors and includes strong provisions on competition policy, labor and environment, and transparency and regulatory due process. The KORUS FTA would also provide U.S. suppliers with greater access to the Korean government procurement market.

In addition to strengthening our economic partnership, the KORUS FTA would help to solidify the two countries' long-standing geostrategic alliance. As the first U.S. FTA with a North Asian partner, the KORUS FTA could be a model for trade agreements for the rest of the region, and underscore the U.S. commitment to, and engagement in, the Asia-Pacific region.

FOREIGN TRADE BARRIERS

IMPORT POLICIES

Tariffs and Taxes

According to data obtained through the WTO, Korea's average MFN applied tariff rate in 2008 was 12.6 percent for all products (53.5 percent for agricultural products and 6.5 percent for non-agricultural products) and Korea has bound 94.5 percent of its tariff lines.

Korea maintains particularly high tariffs on a number of high value agricultural and fishery products. Korea imposes tariff rates of 30 percent or higher on most fruits and nuts, many fresh vegetables, starches, peanuts, peanut butter, various vegetable oils, juices, jams, beer, and some dairy products. Many products of interest to U.S. suppliers, including apples, beef, certain cheeses, certain fish, grape juice and grape juice concentrate, herbal teas, pears, table grapes, and a variety of citrus fruits, are subject to tariff rates of 35 percent or higher. Other products of interest to U.S. industry on which Korea imposes high tariffs, in many instances despite the absence of domestic production, include cherries, certain distilled spirits, frozen corn, frozen french fries, pepperoni, and prepared or mashed potatoes.

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

Korea uses "adjustment tariffs" and compounded taxes on some agricultural, fishery, and plywood products, which increase the applied tariff rates. Most of the adjustment tariffs are imposed on agricultural and seafood products, including frozen croaker, which are products of interest to U.S. exporters. In 2008, Korea renewed adjustment tariffs on 15 items, and reduced the tariff rates for 7 of these 15 items.

As a result of its Uruguay Round commitments, Korea has eliminated tariffs on most or all products in the following sectors: paper, toys, steel, furniture, agricultural equipment, construction equipment, and information technology products (as defined by the WTO Information Technology Agreement). Korea has harmonized its chemical tariffs to final rates of zero percent, 5.5 percent, or 6.5 percent, depending on the product. However, Korea does not apply these tariff rates to soda ash, which is dutiable at 8 percent. Bound tariffs on textile and apparel products remain relatively high: 30 percent on several man-made fibers and yarns; 30 percent on many fabrics and most made-up and miscellaneous goods (*e.g.*, pillow cases and floor coverings); and 35 percent on most apparel items.

Rice

In the Uruguay Round, Korea negotiated a 10 year exception to "tariffication" of rice imports in return for establishing a Minimum Market Access (MMA) quota that was set to expire at the end of 2004. Korea subsequently negotiated a ten-year extension of the MMA arrangement that was approved by its trading partners in April 2005. The extension called for Korea to double its total rice imports over the next 10 years, increasing the MMA quota from 225,575 metric tons in 2005 to 408,698 metric tons in 2014. Along with the country-specific quota commitments to purchase minimum amounts of imports from

FOREIGN TRADE BARRIERS

China, Thailand, and Australia, Korea also agreed to purchase at least 50,076 metric tons annually from the United States until 2014. In addition, the quality of access has improved as rice marketed to consumers as table rice was for the first time included as a portion of the MMA quota. The table rice portion increases from 10 percent of the quota in 2005 to 30 percent in 2010.

Access to the Korean rice market has improved significantly under this agreement. Under the 2008 MMA, the U.S. rice industry obtained 24 percent of Korea's total MMA imports by winning tenders for 69,610 metric tons (milled), valued at a record \$82 million. This amount is 39 percent over the United States' baseline of 50,076 metric tons for the country-specific quota. In addition, more than 18,989 metric tons will be auctioned in Korea as table rice in 2009.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

Korea maintains certain standards, technical regulations, and conformity assessment procedures that are burdensome and appear to have a disproportionate effect on imports. For example, the Korean Food and Drug Administration (KFDA) defines product categories for specific food additives narrowly, making it more burdensome to obtain approval for these products. Additionally, KFDA's determination that a product is new if formula ratios are changed or if substitute ingredients are used sets its procedures apart from other OECD member countries.

Korean laws and regulations require that safety testing and certification be conducted by designated certification bodies, which must be "domestic nonprofit organizations equipped with suitable testing equipment and qualified testing personnel..." U.S. industry has argued that the inability of U.S. testing and certification bodies to perform these functions disadvantages U.S. manufacturers that must have their products retested in the Korean market, which can be inconvenient, time consuming, and costly.

The U.S. cosmetics industry has noted that Korea's approval requirements related to cosmetics are burdensome and do not appear to enhance product safety, quality, or efficiency. For example, Korea requires that all imported functional cosmetics go through an "import review" process conducted by the Korean Pharmaceutical Trade Association (KPTA) despite having already obtained marketing approval from KFDA. In response to U.S. and other countries' concern that this process may result in disclosure of commercially sensitive information, in 2008, the KFDA announced that cosmetics importers are no longer required to specify the actual quantities for each ingredient when submitting ingredient lists for functional cosmetics to KPTA as part of the import review. Korea also permits companies to self-certify their products as meeting Korean requirements if the company agrees to submit to an audit of its manufacturing facilities by KFDA inspectors. While the ability to self-certify represents progress, some firms argue that the audit process is costly and burdensome. In October 2008, Korea notified the WTO Technical Barriers to Trade Committee of its intent to ease the screening process for certain types of functional cosmetics that contain ingredients previously established as being safe.

In 2007, a U.S. manufacturer raised concerns regarding the administration of energy efficiency regulations (EER) for refrigerators in Korea, in particular that the "initiate defrost" test method detailed in Korea's existing EER resulted in inaccurate reporting of energy consumption of Korean manufactured refrigerators. In order to address this concern, Korea accelerated to November 2007 the adoption date of an internationally-recognized test procedure, ISO15502, which does not utilize the rated energy performance results provided by the "initiate defrost" test method in Korea's previous EER. Korea implemented the new test standard on April 30, 2008. As part of the implementation, Korea agreed to

FOREIGN TRADE BARRIERS

require that manufacturers attach energy efficiency rating labels based on the new standard, regardless of whether the product is an existing or new model. Korea also agreed to consult closely with stakeholders and the United States during the implementation process. The United States continues to closely monitor developments related to the adoption of the new standard to ensure that it will level the playing field for U.S. refrigerator manufacturers in Korea.

Sanitary and Phytosanitary Measures

On April 18, 2008, the United States and Korea agreed to a protocol that defines conditions for importation of U.S. beef to Korea and provides for a full reopening of the market. The protocol is fully consistent with the World Organisation for Animal Health (OIE) guidelines and will permit imports of all U.S. beef and beef products from cattle of all ages as long as the appropriate Specified Risk Materials (SRMs) are removed.

On June 20, 2008, Korean beef importers and U.S. exporters reached a commercial understanding that, as a transitional measure to improve Korean consumer confidence in U.S. beef, only U.S. beef and beef products from cattle less than 30 months of age will be shipped to Korea. At the request of U.S. exporters, the U.S. Department of Agriculture (USDA) set up a voluntary Quality System Assessment (QSA) Program to verify that beef from participating plants is from cattle less than 30 months of age. As a result of the April 18 agreement and the June 20 commercial understanding, U.S. exports began arriving as of June 26, 2008, and from June to the end of 2008 more than \$290 million worth of U.S. beef and beef products have been exported to Korea. For all of 2008, Korea was the fourth largest export market in terms of value for U.S. beef and beef products, after Mexico, Canada, and Japan. The U.S. Government will continue to work with Korea to normalize trade in beef.

In recent years, the United States has urged Korea to accept the "regionalization" concept to ensure that imports of U.S. poultry and poultry products are not banned in Korea should there be a detection of highly pathogenic avian influenza (HPAI) in U.S. domestic commercial poultry flocks in a specific U.S. location or locations. In 2008, Korea finalized its import risk assessment procedures for animal and animal products, which incorporate the concept of regionalizing to the appropriate county or region, a longstanding goal of the United States. These new procedures will now allow Korea to move forward with its HPAI risk assessment of the United States.

Korea ratified the Cartagena Protocol on Biosafety (CPB) to the Convention on Biological Diversity on October 2, 2007 and implemented the Living Modified Organisms (LMO) Act (Korea's legislation to implement the CPB) on January 1, 2008. Upon implementation of the LMO Act, environmental risk assessments became mandatory for biotechnology crops imported for all intended uses. The U.S. Government has engaged Korea to request greater transparency and clarity with respect to related documentation requirements. We have also urged Korea to ensure that requirements related to risk assessments for all biotechnology products are science based, transparent, and avoid unnecessary or duplicative data submission or review.

Functional Foods

KFDA frequently changes labeling requirements for health functional foods, raising U.S. industry concerns about the difficulty and costs of compliance. KFDA requires labels containing information about the content of the products, such as per serving information, to be set out on permanent labels and does not allow the use of nonpermanent labels such as stickers. As a result, whenever there is any change in the labeling requirements, manufacturers must replace the entire product label.

Organic Foods

KFDA only accepts copies of USDA National Organic Program (NOP) certificates issued to producers, manufacturers, or processors even though in the United States, certificates issued to handlers meet the U.S. NOP requirements. The United States has consistently requested Korea to give full recognition to the U.S. NOP and to accept handler certificates. U.S. exporters, who are often handlers or traders, have managed to work with the existing requirement, but would prefer to have handler certificates recognized.

KFDA maintains a policy of zero tolerance for the presence of biotechnology ingredients in processed food that is labeled as organic. The Codex Alimentarius and the International Federation of Organic Agriculture Movements guidelines, however, stress that organic production is a verifiable, regulated process as opposed to an end product. The United States has urged KFDA to recognize this process-based approach and to reconsider its zero tolerance policy for the presence of biotechnology ingredients in foods that are labeled as organic.

Starting in December 2009, the Ministry of Food, Agriculture, Forestry, and Fisheries (MFAFF) will require processed organic foods to be certified by a Korean certification body unless the Ministry deems the USDA NOP equivalent to Korean standards. The new regulations are unclear in many respects and processed organic product imports could face trade disruptions as a result. The United States is closely monitoring all Korean amendments and new regulations and has urged MFAFF to notify the implementing regulations to the WTO to clarify the process.

Telecommunications Standards

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

In July 2008, the newly-formed Korea Communications Commission (KCC) initiated a regulatory review of the 2005 requirement to install the Korea-specific Wireless Internet Platform for Interoperability (WIPI) on all mobile phone handsets sold in Korea. On December 10, 2008, the KCC voted to allow Korean wireless carriers to choose, effective April 1, 2009, whether or not to install WIPI on their handsets. This decision marks a significant liberalization of Korea's telecommunications regulatory environment and opens the Korean market to a wide range of foreign handsets, including, but not limited to, smart phones that can access the Internet directly without the need for an add-on interface.

Labeling Requirements

U.S. exporters cite Korea's nontransparent and onerous labeling requirements as barriers to entry for a variety of goods. For example, the U.S. distilled spirits industry has raised concerns about the cost of complying with existing labeling requirements which change frequently. These requirements also mandate that labels provide myriad data such as the importer's address and instructions for storage.

In October 2008, KFDA proposed a revision to the Labeling Standards for Foods to require an inner package label. Products that are individually packaged inside a bag or box (*e.g.*, miniature, individually

wrapped candy bars) will now require their own label in addition to the outer label. U.S. industry has commented on this proposed revision, calling it both costly and impractical.

After expanding mandatory biotechnology labeling requirements in 2007 for products that contain biotechnology enhanced corn, soybeans, cotton, canola, and sugar beets, KFDA again proposed another expansion of mandatory biotechnology labeling for food products made of enhanced ingredients in October 2008. Under the proposal, any food products made of biotechnology ingredients, including food additives or enzymes enhanced through biotechnology, will be required to be labeled "GMO" regardless of the presence of detectable DNA or a foreign protein in the final product. The United States has expressed concerns to Korea that these labeling requirements are, in principle, unnecessary and not relevant to health and safety.

Hazardous Substances and Resource Recycling Requirements

The Act Concerning the Resource Recycling of Electrical/Electronic Products and Automobiles was implemented on July 1, 2008. The Act restricts the use of hazardous materials in, and establishes requirements regarding recycling of, certain electrical and electronic products and automobiles. The final regulations provided a three-year grace period for all covered existing electrical and electronic products and automobiles.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Korea has a threshold of approximately \$22 million, which is three times the threshold applied by the United States.

Encryption Technology for Public Procurement of VOIP Equipment

In December 2008, the Korean government announced long-term plans to switch its government wire line telephone systems from a standard circuit-switched system to an Internet protocol based system (Voice over Internet Protocol, or VoIP). To ensure that this transition does not result in diminished security, Korea also issued guidelines recommending that agencies procure and use encryption-capable systems. The Korean government's plans in this regard would place them internationally out in front in terms of large-scale government adoption of VoIP systems. However, the Korean government is considering mandating that government agencies purchase equipment that contains encryption technology based on a Korean (*i.e.*, non-international) encryption standard called "ARIA".

Korea has failed to provide a justification for using a national standard when international standards for encryption are available and widely used. As U.S. suppliers' equipment and software are built to international standards, it would take them considerable time and expense to develop ARIA-capable equipment (assuming they determine it is in their commercial interest to undertake a significant investment for a product that could only be marketed in Korea, since no other country uses ARIA for such systems). Therefore, there are strong concerns that U.S. suppliers could be effectively excluded from competing for government tenders for VoIP if Korea were to implement such a mandate.

The U.S. Government has raised these concerns with the Korean government, and the Korean government has informed us it will postpone implementation of its procurement plans while it works to address U.S. concerns.

FOREIGN TRADE BARRIERS

INDUSTRIAL SUBSIDY POLICY

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

More specifically, the U.S. Government has expressed concerns about the role played by the government-owned Korea Development Bank (KDB) in supporting certain Korean industries. Historically, the KDB, which as a government-owned entity is not necessarily bound by the same constraints as commercial institutions, has been one of the government's main sources of policy-directed lending to favored industries. U.S. industries have reported that lending and equity investments by the KDB have contributed to overcapacity in certain Korean industries and have allowed Korean companies to compete unfairly with U.S. companies. The Lee Myung-bak Administration plans to privatize a wide range of state-owned enterprises, including the KDB. The Lee government submitted a bill to the National Assembly which would put the KDB into private hands in two stages, and also create a new institution – the Korea Policy Banking Corporation, with a planned capital base of \$10 billion – to support the small and medium sized-businesses sector. If adopted, the plan is expected to take several years to fully implement. The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The importance of IPR protection has increased in recent years as the digitization of Korea's economy has significantly enhanced the ability to produce and spread unauthorized reproductions of copyrighted material. With Korea's products and trademarks enjoying global success, Korean creators of intellectual property would benefit from improvements in the domestic intellectual property regime. The United States continues to urge Korea to strengthen its legal regime to protect intellectual property with respect to issues such as technological protection measures, Internet service providers' (ISP) liability, and copyright term extension. In addition, concerns remain with respect to book piracy in universities, street vendor sales of illegally copied digital video discs (DVDs), counterfeiting of consumer products, protection of undisclosed test and other data for pharmaceutical marketing approval, and a lack of coordination between Korean health and IPR authorities to prevent the issuance of marketing approvals for patent infringing products.

Copyright

In a major government reorganization in early 2008, the renamed and expanded Ministry of Culture, Sports and Tourism (MCST) not only retained its responsibilities under the Copyright Act (CA) but also inherited responsibility for the Computer Program Protection Act (CPPA) from MIC, which was dissolved. All copyright responsibilities, including computer program rights and enforcement, now fall to a single Director General at MCST, thereby bringing all copyright issues under one roof.

The CA was revised on December 28, 2006, effective June 30, 2007, to strengthen efforts to prevent Internet piracy and increase enforcement mechanisms. For example, the revised CA introduced an obligation requiring peer-to-peer network operators to apply measures against the distribution of infringing copies on their networks when requested by the rights holder. However, the revised Copyright Act does not appear to include provisions on technological protection measures (TPMs) that control who can access a work; it only prohibits the creation or distribution of circumvention tools. While certain

FOREIGN TRADE BARRIERS

provisions of the CA that define ISP liability were harmonized with the Computer Program Protection Act (CPPA) in 2003, further clarification is required. In addition, amendments to the CA in 2006 still leave unclear the scope of the underlying liability of service providers and the limitations on, and exceptions from, liability. U.S. industry has lingering concerns that the documentation requirements for the rights holders to request a "takedown" are too burdensome. The U.S. Government has urged the Korean government to reexamine other aspects of the CA in light of the growth of digital technologies and the potential harm that exists in the Internet environment.

IPR Enforcement

Korean President Lee Myung-Bak stated that IPR enforcement is one of the core policy goals of his administration and declared "war against illegal piracy." In August 2008, MCST created the Copyright Protection Team (CPT) and provided the CPT with judicial enforcement authority over CA and CPPA related enforcement, empowering MCST for the first time to act on its own initiative to enforce IPR laws. In June 2008, the "Act on the Persons to Conduct Duties of Judicial Policy Authority" was amended to give judicial authority to MCST officials and local agencies to take enforcement actions against copyright infringement.

As the amended Copyright Act requires installation of filtering devices for certain online service providers, CPT is also expected to continue to work with other relevant agencies within the Korean government to monitor and enforce this requirement. The amended Copyright Act also gives officials discretion to pursue prosecution over the objections of the rights holder when infringements are committed with a commercial purpose.

In 2008, prosecutors strengthened enforcement actions and prosecution against heavy uploaders of infringing content, infringing "webhard" storage site operators, and producers of pirated films. There were several high profile crackdowns, including against ISPs, which drew wide media attention. The U.S. Government has been urging Korean authorities to pay special attention to "topsite" operators that hold enormous quantities of pre-release movies and music and are the original source of much of the infringing material that is distributed on the Internet. Korean prosecutors have welcomed U.S. Government views on these issues and expressed a strong desire to work closely with foreign and domestic industry to address Internet piracy.

In addition to on-line piracy, pirated DVDs sold on the street by unlicensed vendors continue to be a challenge for enforcement officials. To address this challenge, MCST has announced plans to crack down more aggressively against vendors selling pirated goods.

The Publication and Printing Business Promotion Act allows private sector involvement in enforcement measures against book piracy. Since MCST was given judicial authority in September 2008, book piracy enforcement actions are being conducted jointly by MCST and the Copyright Protection Center, an industry supported monitoring group, which is expected to result in closer coordination and increased enforcement.

Data Protection

KFDA decided on March 31, 2005, that slightly altered versions (such as using a different salt) of original drugs undergoing post-marketing surveillance (PMS) in Korea are subject to Korea's data protection regulations. This interpretation of the law, however, is not clearly delineated in Korea's laws and U.S. industry continues to express concern about KFDA adopting a different interpretation in the future.

FOREIGN TRADE BARRIERS

Patent and Trademark Acts, and Trade Secrets

The Korean Intellectual Property Office (KIPO) has amended relevant laws regarding restrictions on patent term extension for certain pharmaceutical, agrochemical, and animal health products that are subject to lengthy clinical trials and domestic testing requirements. An issue of continuing concern, however, has been the lack of coordination between the KFDA and KIPO and related issues that have resulted in the granting of marketing approval for unauthorized copies of pharmaceutical products.

Korea's Trademark Act has been amended to strengthen provisions that prohibit the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject any registrations made in "bad faith." Despite this change, the complex legal procedures that U.S. companies must follow to seek cancellation have discouraged U.S. companies from pursuing legal remedies. In particular, problems still arise with respect to "sleeper" trademark registrations filed and registered in Korea without authorization in the late 1980s and early 1990s, when KIPO was still developing a more effective and accurate trademark examination and screening process.

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

SERVICES BARRIERS

Screen and Broadcast Quotas

Korea maintains a screen quota for films requiring that any movie screen show domestic films at least 73 days per year – a 50 percent cut from the quota of 146 days that existed until July 2006. Korea also maintains a variety of foreign content quotas for terrestrial, cable and satellite television, radio broadcasting, and Internet Protocol television. Overall, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time on a quarterly basis. Within those overall quotas, annual broadcast time quotas further limit foreign films to 75 percent of all films for terrestrial, cable, and satellite broadcasters; foreign animation to 55 percent for terrestrial and 65 percent for cable and satellite broadcasters; and foreign popular music to 40 percent. Another quota, on a quarterly basis, limits content from any one country to 60 percent of the quota available to foreign films, animation, or popular music.

Restrictions on Voice-overs and Local Advertisements

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

FOREIGN TRADE BARRIERS

Legal Services

At present, only Korean-licensed lawyers may provide any form of legal advice in Korea, including advice on foreign law. Foreign-licensed lawyers therefore may not establish an office or provide advice on the law of the jurisdiction in which they are licensed, nor may they associate with, partner with, or hire Korean-licensed lawyers.

The Korean government plans to open its legal services market in stages. The first step would create a legal status for foreign legal consultants and allow foreign law firms to open offices in Korea. Subsequent liberalization stages would address the ability of foreign-licensed lawyers and firms to associate with, partner with, and hire Korean-licensed lawyers.

Insurance and Banking

Korea is the second largest insurance market in Asia and the seventh largest in the world. Korea's laws and regulations permit foreign financial service providers to establish subsidiaries or branches in Korea. Financial services providers see Korea's restrictions on cross-border financial services and unwillingness to liberalize this sector as hindering Korea's progress toward becoming a regional financial hub.

Insurance suppliers remain concerned that Korea Post (a government agency), the National Agricultural Cooperative Federation, and the National Federation of Fisheries Cooperative continue to operate at an advantage in the Korean insurance market because they are not regulated by the Korean Financial Supervisory Commission or the Financial Supervisory Service as are private insurers. In industry's view, this provides these entities with a competitive advantage over private insurers.

U.S. financial services providers seek a mechanism to raise their concerns regarding regulatory and market access issues. Although an office specifically set up within Korea's financial regulatory structure exists, foreign companies have not found it adequate to address their concerns. Other regulatory entities, including Korea's insurance consumer complaint mechanism, reportedly hinder foreign insurance providers' position in the market. U.S. service providers assert that reports generated under this system bias consumers toward purchasing insurance from large domestic firms.

Lack of transparency in the financial regulatory system is a widespread problem and continues to affect financial services providers. Improvement in notice and comment periods is necessary for foreign providers to have input into the regulations that will be imposed upon them. Financial services providers also remain concerned about vague administrative guidance. While some changes in issuing administrative guidance were made in 2007, financial services providers seek additional transparency in the process. The National Assembly adopted the Capital Market and Investment Services Act in June 2007, and most provisions of the Act entered into force on February 4, 2009. The Korean government responded to U.S. concerns and delayed implementation of some portions of the Act while launching a process intended to address potential barriers to cross-border financial transactions. The Act allows financial services companies to introduce new products unless explicitly prohibited by law and establishes a clear legal basis for newcomers to apply for commercial licenses.

Korea's strict data privacy rules require financial services providers to locate their servers physically in Korea, thus hampering foreign providers' ability to take advantage of economies of scale in the region to perform data processing in their daily business activity.

Telecommunications

Korea currently prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end users without going through a company established in Korea. Given investment restrictions in place (see below), and the fact that establishing a local presence may not make economic sense, this prohibition significantly restricts the ability of foreign satellite service providers to compete in the Korean market. In addition, Korea affords non-facilities-based telecommunications carriers limited rights regarding access to, and use of, the telecommunications network (*e.g.*, with respect to interconnection), as compared to facilities-based competitors.

The National Assembly passed legislation in December 2007 to regulate the convergence technology Internet Protocol television (IPTV). In 2008, the newly-formed Korea Communications Commission (KCC) began issuing implementing regulations. The U.S. Government is closely monitoring this process with regard to transparency and due process. U.S. companies view some of the licensing requirements under discussion as market restricting, (*e.g.*, applying content quotas to real-time IPTV).

INVESTMENT BARRIERS

During his fall 2007 presidential election campaign, one of the key planks of President Lee Myung-bak's economic platform was to take steps to attract more foreign investment to Korea. Since President Lee assumed office in February 2008, foreign investors have noted a greater interest in addressing issues of concern and in removing barriers or disincentives to investment in Korea. The Korean government has maintained this policy despite the increasing global financial and economic turmoil in the second half of 2008.

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

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. Foreign investment is not permitted in terrestrial broadcast television operations, and the Korean government also restricts foreign ownership of cable television-related system operators, network operators, and program providers to 49 percent. For satellite broadcasts, foreign participation is limited to 33 percent. In addition, foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels.

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

The Lee Myung-bak Administration announced plans during 2008 to privatize several state-run companies, including the Korea Development Bank (KDB). The government submitted a bill in

FOREIGN TRADE BARRIERS

December 2008 for the privatization of KDB to the National Assembly for approval, although the global financial crisis could affect the bill's prospects for passage. The government also sold a 6 percent stake in Woori Financial Holdings (reducing the Korean government's share to 73 percent) earlier in 2008.

The Korean government also has opened Free Economic Zones (FEZs) and has provided a range of investment incentives including tax breaks, tariff-free importation, relaxed labor rules, and improved living conditions for expatriates in areas such as housing, education, and medical services. The Korean government has promoted these zones as an important step in making Korea's business environment more open, liberal, and responsive to economic needs.

ANTICOMPETITIVE PRACTICES

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

A number of U.S. companies have expressed concerns that respondents in KFTC investigations have not been afforded a sufficient opportunity to review and respond to the evidence against them, including an opportunity to cross-examine those who testify in KFTC investigatory hearings. Concerns have also been raised that procedural rules for KFTC hearings have not been sufficiently transparent, and that the KFTC lacks authority to enter into settlement agreements with respondents by mutual agreement.

OTHER BARRIERS

Regulatory Reform and Transparency

Korea has made some improvements to its rulemaking and regulatory system over the past few years. However there remains a lack of transparency that cuts across various issues affecting U.S. firms in many different sectors. This continues to be one of the principal problems cited by U.S. businesses seeking to compete in the Korean market.

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

Motor Vehicles

Increased access to Korea's automotive market for U.S. suppliers remains a key priority for the U.S. Government. Korea maintains an 8 percent tariff and a range of nontariff barriers, such as discriminatory taxes based on engine size, standards, inadequate regulatory transparency, and inadequate ability of stakeholders to provide input at an early stage into the development of regulations and standards.

On July 30, 2008, the Korean government implemented amendments to its system for certifying compliance with automotive emissions requirement. The amended regulation allows foreign automakers to certify that they meet Korean emissions requirements via submission of manufacturers' own test data, eliminating the requirement for in-country testing or overseas tests witnessed by Korean regulators. The new certification process also applies to imports of off-road equipment.

FOREIGN TRADE BARRIERS

Motorcycles

Although progress has been made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, several market access issues remain, including a highway ban, tariff and tax levels, and the inability of motorcycle owners to obtain ownership titles and obtain financing for a motorcycle purchase that uses the motorcycle as collateral. The Korean National Police have commissioned a study on the safety of motorcycles on highways. The U.S. Government will continue to urge Korea to complete the study expeditiously and objectively.

Pharmaceuticals

Imported innovative pharmaceuticals continue to be subject to multiple price-cutting mechanisms under the Drug Expenditure Rationalization Plan's (DERP) cost containment measures, which were enacted in December 2006. This affects not only drugs that have entered the market since DERP was adopted, but increasingly also impacts products that were approved for reimbursement prior to DERP's adoption.

Over the past year, the Korean government increased efforts to discuss pending pharmaceutical pricing and reimbursement changes with stakeholders by convening stakeholder fora, extending comment periods, and occasionally providing limited explanations of the methodology it had applied in reaching regulatory decisions. The United States continues to have concerns regarding the regulatory due process and transparency for Korea's pricing and reimbursement of drugs. The U.S. Government continues to urge Korea to improve the transparency of its decision making process related to pharmaceutical reimbursement and to refrain from policies that hinder the development and introduction of innovative pharmaceuticals.

Business Practices in the Healthcare System

U.S. companies continue to express concern over unethical business practices in the Korean healthcare system. In an effort to address these concerns, the KFTC launched an investigation of such practices by both domestic and foreign companies in September 2006. The KFTC announced the results for the first group of pharmaceutical companies in November 2007. Four domestic companies and one multinational company were cited. In January 2009, the KFTC announced the results for the second group. Two domestic companies and five multinational companies were cited. The U.S. Government will continue to work with the Korean government to ensure that Korea's evaluation of the issues and problems in this area is conducted in a fair, transparent, and nondiscriminatory manner, in order to ensure the elimination of improper practices by wholesalers and distributors, and to provide predictability for U.S. companies in pharmaceutical pricing, reimbursement guideline setting, and regulatory affairs in the Korean market.

Medical Devices

Lack of transparency in the pricing and reimbursement decision making and regulatory processes involving medical devices has been a major impediment to medical device companies' achievement of fair access to the Korean market. In addition, Korea's requirements for local product testing, and country of manufacture registration requirements continue to impact market access for medical technology products.

Korea currently caps reimbursement for a new medical technology product at 90 percent of the present market price of the most similar product already in the domestic market. According to U.S. industry reports, the Ministry of Health, Welfare and Family (MHWF) plans to implement a "single price" system in 2009 that will reimburse all products in each "functional category" at a single price. The U.S.

Government has urged that MHWF implement the new system transparently, after full consultation with affected stakeholders, with adequate time for analysis and adjustment based on stakeholder comments.

Korea's requirement that a local Korean laboratory test each product is contrary to the internationally accepted process-based quality management systems approach and imposes unnecessary costs and delays. In addition, the requirement to work with local laboratories to develop a testing standard based on manufacturers' internal test specifications has raised concerns about the confidentiality of sensitive proprietary information.

The KFDA's re-registration requirement for all products transferred to a manufacturing site outside their country of origin is equivalent to the registration requirement for new products and also is contrary to the internationally accepted practice of only requiring notification of a change in origin. The U.S. Government supports expanding existing registration to cover multiple sites and permit notification of the change without the need for re-registration.

In July 2008 Korea adopted a healthcare technology assessment system for determining reimbursement eligibility for new medical devices. U.S. industry has raised concerns regarding inadequate transparency regarding the criteria and methodology of the system and limited opportunities for stakeholder participation in developing and refining the system.

Distilled Spirits

On July 1, 2008, Korea's Liquor Tax Law was revised to provide a 50 percent tax reduction for certain "traditional liquors" including some forms of distilled and diluted spirits. This amendment has raised concerns with U.S. industry because of its potential impact on trade by disadvantaging imported competing liquors that do not fall under the narrow category of "traditional liquors." In 1997, the United States had initiated WTO dispute settlement proceedings regarding discriminatory alcoholic beverage taxes in Korea. Following findings by a WTO panel and later the Appellate Body in favor of the United States, Korea subsequently amended its discriminatory tax regime. Given this past history, the United States expressed concerns regarding adoption of any regulations that appear to reinstitute reduced tax rates for domestic producers of specific categories of spirits. The Korean government had provided assurances that the tax reductions apply only to small-volume producers of designated traditional liquors, that the total of potentially qualifying liquors amounts to less than 2 percent of Korea's beverage alcohol market, and that there are no intentions or plans to expand the categories of beverage alcohol that would qualify for such tax reductions. The U.S. Government will continue to monitor Korean actions in this area.