KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was $16.6 billion in 2012, up $3.3 billion from 2011. U.S. goods exports in 2012 were $42.3 billion, down 2.5 percent from the previous year. Corresponding U.S. imports from Korea were $58.9 billion, up 3.9 percent. Korea is currently the 8th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Korea were $16.6 billion in 2011 (latest data available), and U.S. imports were $8.4 billion. Sales of services in Korea by majority U.S.-owned affiliates were $10.7 billion in 2010 (latest data available), while sales of services in the United States by majority Korea-owned firms were $10.0 billion.

The stock of U.S. foreign direct investment (FDI) in Korea was $31.8 billion in 2011 (latest data available), up from $27.0 billion in 2010. U.S. FDI in Korea is led by the manufacturing and finance/insurance sectors.

United States-Korea Free Trade Agreement

On March 15, 2012, the United States-Korea Free Trade Agreement (KORUS) entered into force, providing preferential access for U.S. businesses, farmers, ranchers, services providers, and workers to what is the United States' seventh largest trading partner, while helping to strengthen and expand ties with an important strategic partner in Asia.

The agreement provides for the elimination of tariffs on over 95 percent of U.S. exports of industrial and consumer goods within 5 years, and through a combination of tariff elimination and expansion of tariff rate quotas, nearly two-thirds of U.S. agricultural exports became duty-free immediately. The agreement levels the playing field and enhances market access for U.S. exporters, including those in the automotive sector. In addition, KORUS provides meaningful market access commitments across virtually all major services sectors, including improved access for telecommunications and express delivery services, and the opening up of the Korean market for foreign legal consulting services. The agreement increases access to the Korean financial services market and ensures greater transparency and fair treatment for U.S. suppliers of insurance and other financial services. KORUS also addresses nontariff barriers in a wide range of sectors and includes strong provisions on intellectual property rights, competition policy, labor, environment, and regulatory transparency.

IMPORT POLICIES

Tariffs and Taxes

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

Korea applies annual "adjustment tariffs" or a variable tariff on some agricultural, fishery, and plywood products. These adjustment tariffs do not exceed KORUS or WTO bound rates. To help offset the increasing cost of food, in 2012 Korea announced voluntary duty-free MFN TRQs on a wide range of agricultural commodities including whey for feed, manioc chips and pellets for feed, oil cakes for feed, malting barley, live swine, frozen mackerel, powdered milk, frozen cream, processed milk and cream, butter, cheese and curd, egg powder, wheat, vegetable oils, some sugars, lactose, chocolate confectionery, cocoa preparation, potato flakes, soybeans, corn for feed and processing, and frozen pork and pork belly.

Under the KORUS, Korea will eliminate tariffs on over 95 percent of originating industrial and consumer goods by 2017.

Beef

Following a 2008 bilateral agreement to fully re-open Korea's market to U.S. beef and beef products, Korean beef importers and U.S. exporters have operated according to a voluntary, commercial understanding that imports of U.S. beef and beef products will be from animals less than 30 months of age, as a transitional measure, until Korean consumer confidence improves. In 2012, the U.S. exported $582 million worth of beef (including variety meats) to Korea, making Korea the fourth-largest export market for U.S. beef. The United States will continue to urge Korea to open its market fully to U.S. beef and beef products based on science, the OIE guidelines, and the United States' risk status. This issue is discussed in greater detail in USTR's 2013 Report on Sanitary and Phytosanitary Measures.

Rice

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 10-year extension of the MMA arrangement in April 2005 with members of the World Trade Organization. The extension called for Korea to increase its total rice imports over the succeeding 10 years, from 225,575 metric tons in 2005 to 408,700 metric tons in 2014. The arrangement included country specific quota commitments to purchase minimum amounts of imports from China, Thailand, Australia, and at least 50,076 metric tons annually from the United States until 2014.

Access to the Korean rice market for U.S. exports has improved significantly under this arrangement. Under the 2012 MMA, the U.S. rice industry obtained 27 percent of Korea's total MMA imports by winning tenders for 100,901 metric tons of (milled) rice, valued at $78 million. Over 40,000 of the 100,901 metric tons will be marketed to consumers as table rice.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). Under KORUS, U.S. suppliers now have the right to bid on the procurements of more than 50 Korean central government entities, nine more than are covered under the GPA. The agreement also expands the scope of procurements to which U.S. suppliers will have access by reducing by more than one-half the threshold for eligible procurement contracts applied under the GPA, from at least $203,000 to at least $100,000. The KORUS does not cover procurement by Korean sub-central and government enterprises; however, such procurement is covered under the GPA. Under the GPA, for procurement of construction services, Korea applies a threshold of over $23 million, which is three times the threshold applied by the United States.

Encryption Technology for Public Procurement of Networking Equipment

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

INDUSTRIAL SUBSIDY POLICY

Historically, the Korea Development Bank (KDB) has been one of the government's main sources of policy-directed lending to favored industries. Korea plans to privatize a wide range of state-owned enterprises, including the KDB. As a first step, Korea adopted a holding company system in 2009 and divided the Korean Development Bank (KDB) into two new companies: (1) the KDB, and (2) the Korea Finance Corporation (KFC). While still government-owned, the KDB is to operate as a commercial bank under this restructuring plan, and the KFC is to operate as a policy lending bank. The Korean government plans to list the KDB on the Seoul stock exchange and overseas stock markets. 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 PROTECTION

Korean law generally provides for strong intellectual property rights (IPR) protections. In addition, KORUS contains state-of-the-art protections for all types of intellectual property, requirements to join key multilateral IPR agreements, and strong enforcement provisions. Korea is also a signatory to the Anti-Counterfeiting Trade Agreement, which, when it enters into effect, will establish an international framework to more effectively combat the infringement of IPR, in particular the proliferation of counterfeiting and piracy.

The 2009 amendments to Korea's Copyright Law included measures to deter copyright infringement via file-sharing platforms on the Internet. In 2010, the Korean government imposed sanctions against serial infringers under the "three strikes" law. In 2011, the Korean government passed a law requiring online high-volume storage lockers ("webhards") to register with the Korea Communications Commission to address technical challenges related to online copyright enforcement; Korea also passed an amendment to the Copyright Act closing a sound recording protection gap for works produced between July 1987 and June 1994 that expanded copyright protection for these works from 20 years to 50 years, the same level of protection afforded for all other works; and it amended the Patent Act and Trademark Act in 2011 to reflect commitments under KORUS.

The United States recognizes the importance the Korean government places on IPR protection, a development that has accompanied Korea's shift toward becoming a significant creator of intellectual property. However, some concerns remain over new forms of online piracy, corporate end-user software piracy, unauthorized use of software in the public sector, book piracy in universities, and counterfeiting of consumer products. In particular, there have been concerns that the Ministry of National Defense has reportedly used substantial amounts of unlicensed software. The United States has urged the Korean government to ensure that all government agencies fully comply with the Korean Presidential Decree mandating that government agencies use only legitimate, fully licensed software.

SERVICES BARRIERS

Screen and Broadcast Quotas

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

Restrictions on Voiceovers and Local Advertisements

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

Legal Services

Under KORUS, Korea has begun to open its legal services market. The first step, implemented in 2012, created a legal status for foreign legal consultants and allowed foreign law firms to open offices in Korea. The law allows foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. The second stage, to be implemented by 2014, will allow cooperative agreements between foreign and domestic firms. The third stage, to be implemented by 2017, will address the ability of foreign-licensed lawyers and firms to establish joint ventures 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.

KORUS contains provisions to level the regulatory playing field for private insurers by requiring that certain activities of government-sanctioned insurance cooperatives be subject to regulation by the Korean Financial Services Commission, as are private insurers. Although Korea has until 2015 before it is required to implement these provisions, Korea has already begun the process and revised the National Agricultural Cooperative Federation (NACF) Act to create two holding companies: Nonghyup Economic Holding Company and Nonghyup Financial Holding Company. The Nonghyup Financial Holding Company includes two insurance subsidiaries, Nonghyup Life Insurance and Nonghyup Non-Life Insurance, which have been subject to the Insurance Business Act, and thus subject to the same regulatory regime as private insurers, since March 2012. While full implementation of relevant KORUS provisions will address many such concerns, Korea Post, the National Agricultural Cooperative Federation (NACF), and the National Federation of Fisheries Cooperatives are not yet regulated by the Korean Financial Services Commission and therefore still operate under different rules that may advantage these entities.

USTR will closely monitor the implementation relevant laws and regulations to ensure that Korea complies with KORUS financial services provisions.

Under KORUS, implementation of improvements in notice and comment periods and with respect to the issuance of "administrative guidance" is enabling financial services suppliers to play a greater role in the regulatory process and is addressing the historic lack of transparency in the adoption of financial regulations.

Korea's strict data privacy rules require financial services providers to locate their servers physically in Korea and limit the transfer of data outside Korea, thus hampering foreign suppliers' ability to take advantage of economies of scale in the region to perform data processing in their daily business activity. Korea undertook commitments under both KORUS and the Korea-European Union Free Trade Agreement to substantially reduce these restrictions and to revise its system to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow certain data processing and other functions to be performed in affiliates outside Korea. The Korean government is required to make these changes by March 15, 2014 to comply with KORUS, although any changes for U.S. suppliers will be made by July 1, 2013, when Korea will implement virtually identical obligations under its FTA with the European Union. The United States will monitor Korea's reform process closely and engage actively with Korea to ensure that these commitments are fully implemented.

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 the current investment restrictions in place (see below) and the fact that establishing a local presence may not be economically justified, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market.

Internet and Cloud Computing Services

Restrictions on storing customer information outside of Korea have posed barriers to the provision of some Internet-based services, in particular online vending and payment processing. Under the Regulation on Supervision of Credit-Specialized Financial Business, electronic commerce firms selling goods in Korean Won are prohibited from storing Korean customers' credit card numbers in company information systems (U.S. electronic commerce firms continue to legally sell into the Korean market from abroad, setting prices in dollars, but are being prevented from accepting Korean branded credit cards). As a result, U.S. electronic commerce firms that are unwilling to develop Korea-specific payment systems have been prevented from entering the Korean market. The United States has raised the issue with Korea on multiple occasions, urging it to lift what appear to be unreasonable and unnecessary restrictions.

Prohibitions against storing high resolution imagery and related mapping data outside Korea – which Korea justifies on security grounds – have led to a competitive disadvantage for international online map services, since their locally-based competitors are able to provide several services (such as turn-by-turn driving/walking instructions, live traffic updates, interior building maps) that international service providers cannot. Since map data supplied by such competitors is visible outside of Korea, it is unclear how a prohibition on foreign storage furthers security goals. This type of local storage requirement may be considered a localization barrier to trade which disadvantages U.S. market access. The United States is highly sensitive to Korea's national security concerns and is working with Korea to explore possible ways to update its mapping data-related system in a manner that reflects the globalized nature of the Internet.

The United States and U.S. industry have also raised concerns with a legislative proposal by the Korea Communications Commission (KCC) to provide a jurisdictional basis for regulating cloud computing services. Following engagement by the United States and extensive comments from U.S. and other foreign industry groups, the KCC has announced its intention to significantly revise the draft to try to address stakeholder concerns, and seek further stakeholder comments on the revision. The United States will continue to monitor this issue closely.

INVESTMENT BARRIERS

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

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. This restriction will be lifted in March 2014 when, under KORUS, Korea will permit U.S. companies to own up to 100 percent of a telecommunications operator in Korea. 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. In 2011, foreign equity restrictions on previously closed areas were relaxed to 20 percent for program providers of channels that carry a range of programs and 10 percent for specialized news channels. For satellite broadcasts, foreign participation is limited to 33 percent. Foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels. For multi-genre or news-focused Internet multimedia content operators and signal transmission network business operators, foreign investment is limited to 20 percent.

In addition to the investment restrictions in telecommunications and key services sectors described above, Korea maintains other important restrictions on foreign investment. Specifically, Korea prohibits foreign investment in rice and barley farming and imposes a 50 percent foreign equity limitation on meat wholesaling. Moreover, Korea limits foreign investment in electric power generation, distribution, and sales to 50 percent. It also 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 Korean government also operates several Free Economic Zones (FEZs) and has provided a range of investment incentives including tax breaks, tariff-free importation, relaxed labor rules (primarily exemptions from workforce quotas for disabled and older workers, and mandatory paid leave), 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 played an increasingly active role in enforcing Korea's competition law and in advocating for regulatory reform and corporate restructuring. The KFTC has a broad mandate that includes promoting competition, strengthening consumers' rights, creating a competitive environment for small and medium-sized enterprises, and restraining the concentration of economic power. In addition to its authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring and patent right abuses, the KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigators. In April 2012, the KFTC began monitoring and publicizing the prices of select imports from the United States to ensure pricing structures reflected the tariff reductions under KORUS. The United States has raised concerns over this practice, noting that market mechanisms will lead to reductions in consumer prices in the wake of tariff reductions under the FTA, but that individual pricing practices are subject to numerous factors.

Under an amendment to the Monopoly Regulation and Fair Trade Act passed in December 2011 to implement provisions of the KORUS FTA, the KFTC has been given authority to enter into settlement agreements with respondents as of March 15, 2012 (KORUS entry into force). In an attempt to curb illegal abuse of investigative power, the KFTC also created an ombudsman to respond to problems experienced by businesses during investigations. Furthermore, the examiner's recommended sanction is now provided in most cases to the respondent along with the examiner's report. The KFTC also amended regulations to increase its operational transparency, requiring examiners to inform claimants promptly of its conclusions and the grounds for those conclusions.

OTHER BARRIERS

Regulatory Reform and Transparency

Reflecting the strong concerns of U.S. stakeholders, KORUS includes a wide range of provisions across all chapters to improve regulatory transparency in Korea. Implementing a key KORUS commitment, Korea's Administrative Procedures Act (APA) was revised in October 2012 to increase the public comment period for draft regulations subject to the APA from a minimum of 20 days to a minimum of 40 days. In addition, Korea enacted other legal reforms pursuant to KORUS increasing notice and comment periods related to pharmaceuticals, medical devices, as well as measures in other sectors. The United States will monitor compliance with transparency-related KORUS commitments, including the obligation to address significant, substantive comments received and to explain substantive revisions made in any final regulation.

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the U.S. Government. Upon entry into force of KORUS on March 15, 2012, Korea immediately reduced the tariff on passenger vehicles from 8 percent to 4 percent and eliminated the 10 percent tariff on commercial vehicles. In addition, KORUS contains provisions designed to address nontariff barriers, including Korean acceptance of U.S. automotive safety standards for motor vehicles built in the United States and regulatory transparency provisions, which are contributing to leveling the playing field for U.S. automobiles in the Korean market. U.S. exports of passenger cars and trucks to Korea in 2012 increased by 50 percent compared to 2011, with the bulk of the increase occurring after the entry into force of KORUS.

Korea enacted regulations for motor vehicle average fuel economy standards and greenhouse gas emission standards in 2011. These regulations contain small-volume manufacture provisions that permit standards 19 percent more lenient than the regular standard for the period from 2012 to 2015 for manufacturers with sales of no more than 4,500 units in 2009. Korea also allows emissions credit sharing between passenger cars and SUVs, credit carryover, and offset purchases.

In 2012, the Ministry of Environment proposed establishing an incentive/penalty ("bonus/malus") system based on automotive greenhouse gas emissions, under which a consumer of a new car would receive either a subsidy or a surcharge to the price of the car, at the point of sale, depending on that car's emission profile. U.S. automakers have raised concerns with the proposed system. Although Korea has announced its intention to implement this system in January 2015, the authorizing legislation has yet to be passed by the National Assembly. Additionally, the Ministry of Environment must issue implementing regulations in order to put such a system in place. The United States has urged the Korean government to consult fully with the U.S. automobile industry and with the U.S. Government on its plans in this area. The United States will engage with Korea to ensure that its automotive emissions policies are implemented consistent with the KORUS.

A separate report issued in conjunction with the National Trade Estimate Report, the Report on Technical Barriers to Trade, contains further information on Korean measures affecting U.S. automotive exports.

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 on motorcycles, high tax levels, and the inability of motorcycle owners to obtain ownership titles and financing for a motorcycle purchase that uses the motorcycle as collateral. A 2011 study on the safety of motorcycles on highways commissioned by the Korean National Police highlighted inadequacies in Korea's regulatory and safety practices surrounding the licensing of motorcycle drivers and the proliferation of young, untrained motorcycle riders driving dangerously on city streets. The United States maintains that heavy motorcycles riding on highways do not pose the same safety concerns as do riders of smaller, lighter motorcycles, and continues to urge Korea to eliminate the ban on riding large motorcycles on highways.

Pharmaceuticals and Medical Devices

Under KORUS, any new Korean regulations affecting general pricing and reimbursement of pharmaceuticals and medical devices will be published in advance for notice and comment, and the Korean government will be required to respond to public comments in writing and explain any substantive revisions made to proposed regulations. KORUS also contains provisions designed to appropriately recognize the value of patented pharmaceuticals and medical devices. The United States continues to urge Korea to refrain from implementing reimbursement policies that not only discourage companies from introducing advanced medical products to the Korean market, but that also serve as a disincentive to innovation and investment in research and development.

In April 2012, Korea's Ministry of Health and Welfare (MOHW) began implementing a new drug pricing reduction plan that mandated significant price cuts on off-patent and generic drugs. The Ministry had also announced plans to develop a new system for pricing innovative drugs. The United States has urged Korea to seriously consider stakeholders' concerns and ensure that pharmaceutical pricing is conducted in a fair, transparent, and non-discriminatory manner that recognizes the value of innovation, as set forth in KORUS. The United States will continue to monitor the situation closely in 2013.

U.S. companies have continued to express concern that a legacy of insufficient transparency in the regulation of pricing and reimbursements has impeded efficient introduction of medical devices to the Korean market. In February 2011, MOHW published a pricing plan for medical devices based on import price (for imported products) or manufacturing cost (for domestic products) and began phasing in its implementation in May. In October 2012, MOHW notified medical device companies of possible cuts across five categories that would adversely affect over half of the U.S. medical device industry's sales in Korea, valued at approximately $90 million to $100 million. U.S. industry has raised concerns regarding this new pricing plan, in particular the concern that an import price is not an accurate reflection of the value of a product. Industry also raised concerns that MOHW does not appropriately recognize the value of innovation. The United States has expressed its concern that the pricing of medical devices should be determined in a fair, non-discriminatory, and transparent manner and urged MOHW to engage directly with concerned stakeholders to address their concerns.