# KOREA

## TRADE SUMMARY

The U.S. goods trade deficit with Korea was $12.9 billion in 2007, a decrease of $499 million from $13.4 billion in 2006. U.S. goods exports in 2007 were $34.7 billion, up 7.0 percent from the previous year. Corresponding U.S. imports from Korea were $47.6 billion, up 3.9 percent. Korea is currently the seventh largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Korea were $11.5 billion in 2006 (latest data available), and U.S. imports were $6.4 billion. Sales of services in Korea by majority U.S. owned affiliates were $5.5 billion in 2005 (latest data available), while sales of services in the United States by majority Korea-owned firms were $420 million.

The stock of U.S. foreign direct investment (FDI) in Korea was $22.3 billion in 2006 (latest data available), up from $18.2 billion in 2005. U.S. FDI in Korea is concentrated largely in the manufacturing, banking, and finance sectors.

## FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The United States and Korea concluded the negotiation of the United States-Korea Free Trade Agreement (KORUS FTA) on April 1, 2007. On June 30, 2007, the United States and Korea signed the KORUS FTA in Washington, D.C., with the United States Trade Representative, Ambassador Susan C. Schwab, signing on behalf of the United States and Korea's Trade Minister, Kim Hyun-chong, signing on behalf of Korea.

The KORUS FTA is the most commercially significant free trade agreement the United States has concluded in the past 15 years and will provide preferential access for U.S. manufacturers, service providers, farmers, ranchers, and workers to the Korean market. Under the KORUS FTA, Korea will eliminate tariffs on a wide range of U.S. manufactured and agricultural goods, address nontariff measures restricting trade in goods and services, and resolve market access restrictions preventing U.S. businesses from entering the Korean market.

Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products will become duty free within three years of the date the KORUS FTA enters into force, and nearly two-thirds of Korea's agriculture imports from the United States will become duty free immediately. Under the KORUS FTA, Korea will also address nontariff barriers across a wide range of sectors, notably in the areas of automobiles, pharmaceuticals, financial services, and telecommunications. The KORUS FTA contains unprecedented commitments by Korea on market access for services and includes state-of-the-art protections for investors and intellectual property rights, cutting edge competition law provisions, and strong labor and environment provisions that reflect the bipartisan agreement reached with Congress on May 10, 2007. The KORUS FTA also includes commitments related to transparency and regulatory due process that are more far reaching than in any previous U.S. free trade agreement.

In addition to strengthening the two countries' economic partnership, the KORUS FTA will help to solidify the two countries' long standing geostrategic relationship and underscore the U.S. commitment to and engagement in the Asia-Pacific region.

Congressional action on legislation approving the FTA, and its entry into force will enhance the ability of U.S. manufacturers, service providers, farmers, ranchers, and workers to participate in the Korean market.

Many of the issues discussed below are addressed by provisions in the KORUS FTA. The U.S. Government will address the remaining issues through a variety of means, including through multilateral negotiations and continued bilateral engagement. After the conclusion of the FTA negotiations, the United States established a consultation mechanism with Korea to resolve issues before they become bilateral trade irritants. These meetings are held on a quarterly basis.

## IMPORT POLICIES

### Tariffs and Taxes

Korea's average Most Favored Nation applied tariff rate in 2006 was 12.1 percent for all products (47.8 percent for agricultural products and 6.6 percent for industrial products). Korea bound 94.5 percent of its tariff lines in the WTO Uruguay Round negotiations.

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, who 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 2007, Korea renewed adjustment tariffs on 16 items, and reduced the tariff rates for seven of these 16 items, including sea-bream, sea bass, saury (excluding horn fish), croaker, frozen squid, fermented soybean, and plywood.

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. Korea's bound tariffs on textile and apparel products, however, remain relatively high: 30 percent on several man-made fibers and yarns; 30 percent on many fabrics and most made-up and miscellaneous goods (for example, pillow cases and floor coverings); and 35 percent on most apparel items.

**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 ten years, increasing the MMA quota from 225,575 metric tons in 2005 to 408,698 metric tons in 2014. Along with the Country-Specific Quota commitments to purchase minimum amounts of imports from 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 the extension agreement. In 2007, the U.S. rice industry obtained 26.9 percent of Korea's total MMA imports by winning tenders for 71,719 metric tons, valued at $52 million, the highest level of U.S. rice exports since Korea assumed its WTO MMA obligations in 1995. This amount is also 43.2 percent over the United States' baseline of 50,076 metric tons for the country-specific quota. In addition, more than 16,000 metric tons of U.S. rice purchased by Korea in 2007 are set to be auctioned in Korea as table rice.

## 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 difficult to obtain approval for food additives. Additionally, KFDA's determination that a product is new if formula ratios are changed or if substitute ingredients are used sets its procedures apart from other Organization for Economic Cooperation and Development member countries. Further, in 2006, KFDA introduced a program for monitoring harmful substances found in certain food products under "recommended criteria," and used these recommended criteria to issue recalls of certain products. KFDA has indicated to the U.S. Government that it would provide information on which substances are currently monitored under the program and the process by which this program is implemented.

Korean law and regulation 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 re-tested in the Korean market, which can be inconvenient, time consuming, and costly.

The U.S. cosmetics industry has noted that Korea's prior 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). According to industry, this is an unnecessary step that delays market entry for imported products. In addition, since KPTA's membership includes competitor manufacturers, this process also raises concerns regarding the ability of KPTA to protect the sensitive information that is required to be disclosed as part of the import review process.

In 2007, U.S. industry raised concerns regarding the administration of energy efficiency regulations (EER) for refrigerators in Korea. Specifically, a U.S. manufacturer asserted that the "initiate defrost" test method provided for in Korea's existing EER resulted in inaccurate reporting of energy consumption of Korean manufactured refrigerators. In order to remedy this problem, Korea moved up the adoption date of an internationally-recognized test procedure – ISO15502 – to November 2007. This is a positive step forward, as ISO15502 does not utilize the rated energy performance results provided by the "initiate defrost" test method in Korea's previous EER. Korea will implement the new test standard by April 30, 2008. As part of its implementation, Korea has agreed through an exchange of letters with the United States to require that manufacturers attach energy efficiency rate labels based on the new standard, regardless of whether the product is an existing or new model. Korea has also agreed to consult closely with stakeholders and the United States during the implementation process. The United States continues to monitor closely 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.

**Beef**

Korea's market has been closed to imports of beef from the United States since the December 2003 detection of a cow with Bovine Spongiform Encephalopathy (BSE) in the State of Washington. Before the ban, Korea was the third-largest export market for beef and beef products from the United States, with exports valued at $815 million in 2003.

On January 13, 2006, the United States and Korea reached an agreement on a partial market opening which allowed the resumption of exports of deboned beef from cattle less than 30 months of age under certain specific conditions. However, findings of bones and bone chips, which were defined as prohibited materials according to the 2006 protocol, even though they posed no food safety risk, have led the Korean government to open and close the market several times. Since October 5, 2007, quarantine inspection of deboned beef has been suspended due to the detection of an ineligible vertebral column in a beef shipment from the United States. The United States continues to work with Korea to fully reopen its market to all beef and beef products derived from cattle of all ages, consistent with World Organization for Animal Health (OIE) guidelines and the OIE's May 2007 classification of the United States as a "controlled risk" country for BSE. The OIE guidelines provide for conditions under which trade in all beef and beef products from animals of any age can be safely traded. Congress has made it clear that this issue must be resolved to begin the legislative approval process for the KORUS FTA.

**Poultry**

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 should there be a detection of highly pathogenic avian influenza (HPAI) in U.S. domestic commercial poultry flocks. In July 2007, in a statement issued by the Ministry of Agriculture and Forestry, Korea announced that it would not impose such a ban were HPAI to be detected in wild birds. The United States continues to consult with Korea on this matter.

**Convention on Biological Diversity**

Korea ratified the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (CPB) 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 for biotechnology crops imported for all intended uses became mandatory. The U.S. Government has engaged Korea to request greater transparency and clarity with respect to documentation requirements for vessels containing LMOs. The U.S. Government also has urged Korea to ensure that

requirements related to risk assessments for all biotechnology products, including multi-gene "stacked-event" products, are science based and avoid unnecessary or duplicative data submission or review.

**Functional Foods**

KFDA frequently changes labeling requirements for health functional foods, raising 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, manufacturers must replace the entire product label with any change in labeling requirements.

**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 continuously 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 this 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.

**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 Telecommunications section).

**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 distilled spirits industry has raised concerns with the cost of complying with both existing and frequently changing labeling requirements that mandate that labels contain a myriad of data such as the importer's address and instructions for storage.

Korea has recently expanded its mandatory labeling requirements. Products that contain biotechnology enhanced corn, soybeans, cotton, canola, and sugar beets must now be labeled as containing biotechnology ingredients. The United States has expressed concerns to Korea that these labeling requirements are, in principle, unnecessary and not relevant to health and safety.

In 2007, Korea put into effect new labeling rules for apparel, requiring the name of the importer on some form of label or hangtag on every single garment. According to industry, providing such information is particularly onerous, especially when supplying thousands of individual garments to multiple importers.

**Hazardous Substances and Resource Recycling Requirements**

Korea is in the process of finalizing enforcement regulations for the Act Concerning the Resource Recycling of Electrical/Electronic Products and Automobiles. The Act restricts the use of hazardous materials in, and establishes requirements regarding recycling of, certain electrical and electronic products and automobiles. The Act went into effect on January 1, 2008, but will not be enforced until July 1, 2008. The final regulations also provide a 3 year grace period for all covered existing electrical/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.

In 2007, in response to concerns expressed by U.S. industry, the Korean National Intelligence Service (NIS) eliminated its policy requiring disclosure of source code and submission of certain Evaluation Test Reports as a precondition for a sale of information technology security products.

## INDUSTRIAL SUBSIDY POLICY

The U.S. Government has been concerned with Korean government assistance to targeted industries through its industrial policies and will continue to consult closely with U.S. industry to determine if these policies raise competitiveness concerns. Korea's past promotion and support for its semiconductor industry that 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 U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The importance of IPR protection has increased in recent years as the digitization of Korea's economy has significantly increased the opportunity for unauthorized reproductions of copyrighted material. With Korea's products and trademarks enjoying global success, Korean creators of intellectual property would benefit from improvements in Korea's 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 the following: protection of temporary copies, technological protection measures, Internet service providers' (ISP) liability, and copyright term extension. In addition, concerns remain on book piracy in universities, street vendor sales of illegally copied digital video discs (DVDs), counterfeiting of consumer products,

protection of pharmaceutical test data, and a lack of coordination between Korean health and IPR authorities to prevent the issuance of marketing approvals for patent-infringing products.

**Copyright**

The Copyright Act was revised on Dec. 28, 2006, effective June 30, 2007, to strengthen efforts to prevent Internet piracy and increase enforcement mechanisms. For example, the revised Act introduces an obligation requiring peer-to-peer network operators to apply measures against the distribution of infringing copies on their networks when requested by the right holder. The revised Copyright Act, however, does not appear to include technological protection measures (TPMs) that control who can access a work, nor does it prohibit the act of circumventing TPMs; it only prohibits the creation or distribution of circumvention tools. While certain provisions of the Copyright Act that define ISP liability were harmonized with the Computer Program Protection Act (CPPA) in 2003, further clarification is required. In addition, the Copyright Act 2006 amendments still leave unclear the scope of the underlying liability of service providers and the limitations on and exceptions from liability. Industry has remaining concerns that the documentation requirements for the right holders in a "takedown" request are too burdensome.

Over the past few years, the U.S. Government has urged the Korean government to re-examine the private copy exceptions in Article 30 of the Copyright Act in light of the growth of digital technologies. These exceptions generally should not be applicable to the Internet environment, which by its very nature extends far beyond private home use. In the digital environment, the market harm threatened by the unauthorized creation of easily transmittable perfect digital copies far exceeds the harm threatened by analog personal copying.

Other concerns raised with regard to the current Act are that it does not address previous shortcomings in sound recording protections and private copying exceptions; that producers' rights for digital sound transmission are limited to remuneration rights, rather than exclusive rights; and that the current Act provides for broad copying exceptions at the university level.

**Protection of Computer Programs**

The CPPA was amended on October 4, 2006, effective April 5, 2007, to meet current challenges, as well as to comply with new global norms. The amended CPPA increases the power of the Program Deliberation and Mediation Committee (PDMC) and increases penalties for assorted violations of Korean IPR related laws. However, the U.S. Government believes it is important that the dispute mediation function of the PDMC be performed only when all parties to the dispute have voluntarily agreed to subject themselves to the judgment of the PDMC. Moreover, it is important that mediation by the PDMC not be a prerequisite for any civil, administrative, or criminal adjudication of rights.

The U.S. Government continues to urge the Ministry of Information and Communications to further amend the CPPA to provide for protection of temporary copies and improved protection for technological protection measures. The U.S. Government also believes that the amendments should include minimum penalties for offenses under the CPPA. The United States has also recommended that the Korean government clarify the availability of injunctive relief in civil enforcement actions under the CPPA, as required under the TRIPS Agreement.

**IPR Enforcement**

In 2007, the Copyright Division of the Ministry of Culture and Tourism (MCT) was divided into the Copyright Policy Division and Copyright Industry Division. The Copyright Industry Division was

created to increase the emphasis on enforcement. As the amended Copyright Act requires installation of filtering devices for certain online service providers, MCT stepped up enforcement activities for online piracy by coordinating with the Copyright Protection Center, an industry supported monitoring group. MCT is also seeking to get judicial authority so that it can conduct enforcement measures on its own initiative. The amended Copyright Act also gives officials discretion to pursue prosecution over the objections of the right holder when infringements are perpetrated for commercial purposes.

**Data Protection**

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

**Book and Video-DVD Piracy**

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

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

**Patent and Trademark Acts, and Trade Secrets**

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

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

Korean laws on unfair competition and trade secrets provide a basic level of trade secret protection in Korea, but are insufficient in some instances. For example, some U.S. firms, particularly certain manufacturers of chemicals, pet food, 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 by Korea's law, in some instances, government officials do not sufficiently protect this proprietary information and that the trade secrets were made available to Korean competitors or to their trade associations.

## SERVICES BARRIERS

### Screen and Broadcast Quotas

On July 1, 2006, the Korean government reduced its screen quota requirement for domestic films to 73 days of the year. Korea had previously required that domestic films be shown on each cinema screen for a minimum of 146 days of the year.

Korea maintains a variety of foreign content quotas for terrestrial, cable and satellite television, and radio broadcasting. 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. Yet 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. For example, a cable operator may not devote more than 22.5 percent of its total programming to U.S. movies.

### Restrictions on Voice-overs and Local Advertisements

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

### Legal Services

Presently, 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 be to 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 insurance and banking financial service providers to establish as a subsidiary or a branch. 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 as 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.

Overall, financial services providers seek a mechanism in which 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 problematic for all financial services providers. Improvement in notice and comment periods is necessary for foreign suppliers to have input into the regulations that will be imposed upon them. Financial services suppliers remain concerned about the systemic problem of administrative guidance. While some changes in issuing administrative guidance were made in 2007, financial services providers seek additional transparency in the process. In July 2007, Korea's National Assembly adopted the Capital Market and Investment Services Act, which enters into effect in January 2009. This 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 suppliers to locate their servers physically in 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.

**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 nonfacilities 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.

## INVESTMENT BARRIERS

The Korean government has continued its support for the establishment of an investment climate favorable to facilitating foreign investment in Korea. The positive attitude toward foreign investment on the part of the Korean government, many in private industry, and by a growing number of Koreans is helping to open the Korean economy.

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 re-transmission 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.

Aside from the sale of a 6 percent stake in Woori Financial Holdings (reducing the Korean government's share to 73 percent), the Korean Government in 2007 continued to postpone privatization of remaining state-run or partially state owned enterprises. The transition team of incoming President Lee Myung-bak has signaled that privatization of Korean government corporations, including of the Korea Development Bank, will be one of its priorities.

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, KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigations.

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

## OTHER BARRIERS

### Regulatory Reform and Transparency

A general lack of transparency in Korea's rule-making and regulatory system is a cross-cutting issue affecting U.S. firms in many different sectors, and 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.

### Motor Vehicles

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

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

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

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

### 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 inability for motorcycle owners to obtain ownership titles.

### Pharmaceuticals

The United States continues to have concerns regarding Korea's new system for pricing and reimbursement of drugs. The lack of transparency in listing and reimbursement decisions for these products and limited opportunity for the industry to comment on these decisions has restricted U.S. industry's access to the Korean market. In addition, U.S. industry has raised concerns that the lack of clarity in the criteria Korea uses for product evaluation for pricing and reimbursement decisions has had an adverse impact on the number of new products being listed and priced, and has made it difficult for companies to make investment decisions for the introduction of these products.

On December 29, 2006, the Korean Ministry of Health and Welfare put into effect regulations to implement its Drug Expenditure Rationalization Plan (DERP). The main elements of the DERP include a shift from a negative to a positive list system for drug reimbursement (pharmaceuticals with marketing approval had previously qualified automatically for reimbursement unless specifically disallowed; under the "positive list" system, pharmaceuticals will only be reimbursed if specifically authorized) and the introduction of a negotiation procedure for setting the amount of reimbursement for 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. KFTC announced the results for the first group of pharmaceutical companies in November 2007. Four domestic and one multinational company were cited. The KFTC plans to announce results for the second group of companies later this year. 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 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 achieving fair access to the Korean market. In addition, Korea's use of arbitrary pricing methods, requirement for local product testing, and country of manufacture registration requirements continue to impact market access for medical technology products.

Korea employs the so-called "90 percent rule" for pricing medical devices that caps reimbursement for a new medical technology product at 90 percent of the current market price of the most similar product on the market in Korea. U.S. industry has raised concerns that this rule tends to undervalue new technologies, and also serves to discourage introduction of new products into the Korean market.

Korea's requirement that a local Korean laboratory test each product runs counter 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 requirements for a new product and also runs counter to the internationally accepted practice of requiring notification of a change in origin but not full re-registration. Korea's Good Manufacturing Practices program, adopted in 2007, fails to address this requirement. The U.S. Government supports expanding existing registration to cover multiple sites and permit notification of the change without the need for re-registration.

**Distilled Spirits**

On December 28, 2007, the Korean National Assembly adopted a bill to amend Korea's Liquor Tax Law to provide a 50 percent tax reduction for certain "traditional liquors." Expected to enter into force on July

1, 2008, this amendment has raised concerns within the distilled spirits industry because of its potential impact on trade by disadvantaging imported liquors that may not fall under the category of “traditional liquors.”