

U.S.-Korea Business Council/  
American Chamber of Commerce in Korea

# U.S.-KOREA FREE TRADE AGREEMENT POSITION PAPER



AMERICAN CHAMBER  
OF COMMERCE IN KOREA





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# **ABOUT THE U.S.-KOREA BUSINESS COUNCIL**

The U.S.-Korea Business Council is the premier bilateral business organization between the United States and Korea. The Council is made up of senior U.S. executives firmly committed to the Korean market, and works to support policies promoting closer U.S.-Korea economic and political relations and embracing two-way trade and investment. The U.S. Chamber of Commerce serves as secretariat of the Council, which is well-placed in Washington to help shape the agenda on key issues impacting the bilateral relationship.

## **ABOUT THE AMERICAN CHAMBER OF COMMERCE IN KOREA**

The American Chamber of Commerce in Korea (AMCHAM Korea) was founded in 1953 with the broad mandate to encourage the development of investment and trade between Korea and the United States.

Currently, AMCHAM Korea includes around 2,300 members and over 1,100 member companies. AMCHAM Korea's mission is to contribute to the expansion of the vital trade and investment partnership between Korea and the United States through the active development and promotion of commercial, economic and cultural exchanges.

AMCHAM focuses on facilitating domestic market access of member companies and assisting in the development of sound market concepts and business practices that benefits the Korean economy.

Promoting increased opportunity for U.S. goods and investments in Korea and also improving the business climate, AMCHAM is also committed to a range of corporate social responsibility activities as contributing corporate citizens of Korea.

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# MESSAGE FROM THE PRESIDENTS OF THE COUNCIL AND THE AMERICAN CHAMBER OF COMMERCE IN KOREA

The U.S.-Korea Business Council and the American Chamber of Commerce in Korea (AMCHAM Korea) are pleased to release our position paper on the U.S.-Korea Free Trade Agreement (FTA). This report is intended to provide U.S. negotiators, government officials, and members of the U.S. Congress a concise summary of the priorities and objectives of our collective membership – which includes virtually all major U.S. companies doing business in the Korean market – in U.S.-Korea FTA talks. We hope, too, that the report will provide government officials, National Assembly members, and other stakeholders in Korea an overview of the U.S. business community's goals in these negotiations.

An FTA between the United States and Korea is a longtime aspiration of the Council, AMCHAM Korea, and our member companies. We believe the FTA talks offer an important opportunity to enhance and strengthen the economic partnership and bilateral relationship between our two countries. Under the leadership of Council Chairman William Rhodes and AMCHAM Korea Chairman Wayne Chumley, our two organizations have engaged closely with the U.S. and Korean governments and the Korean business community to encourage constructive actions to address longstanding bilateral trade issues in order to open the door for FTA negotiations. In September 2005 our two organizations jointly issued a policy paper that pointed out the significant economic benefits an FTA could bring to both countries, and called upon the Korean and U.S. governments to remove outstanding impediments to the start of FTA talks. In the following months, our two governments resolved many of these issues – including the reduction of Korea's screen quota and the partial reopening of Korea's market to U.S. beef imports – and made important progress on bilateral trade issues in the automobile and pharmaceutical sectors. These actions clearly demonstrated that the Korean government was ready to make the politically difficult decisions necessary for the successful negotiation of an FTA with the United States.

In anticipation of the initiation of FTA negotiations, the Council spearheaded efforts to organize a broad-based coalition of U.S. businesses and associations supportive of FTA talks between the United States and Korea. The U.S.-Korea FTA Business Coalition was officially launched on February 2, 2006, the same day U.S. Trade Representative Portman and Korean Trade Minister Kim announced the intention of the U.S. and Korean governments to begin FTA talks. The coalition, which is chaired by the Council, currently includes over 170 U.S. companies, business organizations, and trade associations of all sizes and representing all sectors of the U.S. economy, and it is growing. AMCHAM Korea, as a key coalition steering committee member, is leading coalition activities and outreach to the Korean government and business community in Korea. The coalition is actively engaging with U.S. and Korean trade negotiators, members of Congress and the Korean National Assembly, and the Korean business community to support the negotiation and conclusion of a comprehensive and effective agreement.

These negotiations will face challenges, including the deadline that the expiration of U.S. Trade Promotion Authority in June 2007 imposes. Nevertheless, our two organizations are committed to the successful negotiation of a far-reaching agreement that will strengthen the economic and political ties between the United States and Korea and that could contribute to trade and economic growth throughout Northeast Asia. At a time when China's rapid economic expansion continues and Japan's economy reaps the benefits of years of structural reforms, a U.S.-Korea FTA could increase Korea's economic dynamism. Moreover, a comprehensive FTA could serve as a model for liberalization in multilateral trade negotiations.

We would like to thank Council and AMCHAM Korea members for contributing their time and input to this report, which sets out their priorities for the U.S.-Korea FTA. In addition, we want to thank the broader membership of the U.S.-Korea FTA Business Coalition for contributing their insights to this paper, which we believe also captures the overarching goals and objectives of the coalition in these negotiations. The Council and AMCHAM Korea welcome opportunities to work with the U.S. and Korean governments as FTA talks move forward. Additionally, we invite the Korean business community to work with us in support of the negotiation of an agreement that will provide the greatest benefits and opportunities for businesses, investors, and consumers in both our countries.



Myron Brilliant  
President  
U.S.-Korea Business Council



Tami Overby  
President  
American Chamber of Commerce in Korea

## INTRODUCTION

*"This will be our most commercially significant free trade negotiation launched in over 15 years . . . We live in historic times economically and few countries better represent the promise of open markets, democracy and economic reform more than South Korea. Our countries have been allies for more than a half century. With this agreement, we can cement that friendship and create new opportunities for prosperity and peace for the people of both of our countries."*

Ambassador Robert Portman,  
United States Trade  
Representative,  
February 2, 2006

*"Today we'll be launching the bilateral free trade agreement between our two countries. This relationship will be taken to the next tier, to the next level. I believe this is the most important event since the signing of the (U.S.-Korea) military alliance in 1953."*

Kim Hyun-chong,  
Korean Minister for Trade,  
February 2, 2006

The U.S.-Korea Business Council and the American Chamber of Commerce in Korea (AMCHAM Korea) are pleased to present this position paper on the priorities and objectives of our members in the U.S.-Korea free trade agreement (FTA) negotiations. The Council, hosted by the U.S. Chamber of Commerce, and AMCHAM Korea are the two premier broad-based business organizations promoting the bilateral U.S.-Korea economic and commercial relationship. The launch of U.S.-Korea FTA talks has long been a top priority for our two organizations, and we have led efforts in both Washington and Seoul to promote the resolution of outstanding trade issues that have been significant barriers to moving forward with these negotiations. We applaud the U.S. and Korean governments for their leadership in addressing and successfully making progress on a number of these issues.

**Our two organizations support an FTA with Korea that is comprehensive in scope and fully consistent with the World Trade Organization's (WTO's) framework for liberalized trade. In addition, an FTA should contain specific commitments that address long-standing issues in the automobile and pharmaceuticals sectors.**

**A U.S.-Korea FTA would truly be an economic win-win for both countries.** Studies by several leading U.S. and Korean experts have indicated that a comprehensive bilateral FTA would lead to greater economic growth, net welfare gains, and job creation in both the United States and Korea through increased trade and investment. Korea is the United States' seventh-largest trading partner in terms of two-way trade, which reached nearly \$72 billion in 2005. Korea is the sixth-largest market for U.S. agricultural goods and the second-largest for U.S. services in Asia. The United States is Korea's third-largest trading partner and its largest source of foreign direct investment. U.S. small and medium-size enterprises (SME's) particularly benefit from trade with Korea. In 2003, 15,233 U.S. SME's, representing 88% of all U.S. companies exporting to Korea, accounted for \$6.7 billion (31%) of total U.S. exports to Korea.<sup>1</sup> The extent of this bilateral economic relationship will make an FTA between Korea and the United States the most commercially significant trade agreement that the United States has entered into since the North American Free Trade Agreement (NAFTA).

The bilateral U.S.-Korea trade relationship is expanding. Largely as a result of the sweeping economic reforms implemented by the Korean government after the Asian financial crisis, members of our two organizations have recently made major, long-term investments in the Korean market. Likewise, Korean companies are increasing the size and scope of their investments and operations in the United States. An FTA would spur further reforms in Korea and would generate new jobs and development through increased market access and new investment opportunities in both countries.

**A U.S.-Korea FTA could also bring significant benefits to both countries by promoting further trade liberalization efforts at both the regional and multilateral levels.** Korea has been a strong supporter of the United States in working to successfully conclude the WTO Doha Development Agenda (Doha Round) and has played a leadership role on non-agricultural manufactured goods issues in the Doha Round negotiations. A successful U.S.-Korea FTA would address some of the more challenging issues confronted in multilateral trade negotiations today and could provide impetus toward the resolution of these issues in these broader discussions.

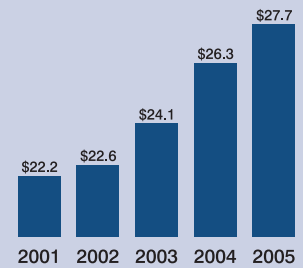
**The benefits of a U.S.-Korea FTA are not limited to the economic realm.** A successful FTA would reinforce the critical political and security partnership between the United States and Korea. Korea is a long-standing and close ally of the United States, and the Korean people share our commitment to democracy and to peace and prosperity in the Asia-Pacific region. Korea is also a good friend of the United States. For example, Korea provided \$30 million in relief assistance for the victims of Hurricane Katrina in 2005. An FTA will bring our two countries even closer as partners promoting our shared values regionally and globally.

The Council and AMCHAM Korea represent U.S. companies operating in Korea in numerous sectors. The Council is leading the U.S.-Korea FTA Business Coalition, a group of over 160 companies and trade associations of which AMCHAM Korea is a key steering committee member. Our goal, and that of the coalition, is to ensure that the interests of the U.S. business community are advanced in the upcoming FTA negotiations and to support the passage of a comprehensive and commercially viable agreement in Congress. During the FTA negotiations, the coalition will facilitate dialogue between interested U.S. companies and the U.S. FTA negotiating team. Throughout this process, our two organizations and the coalition plan to consult with U.S. negotiators to ensure that these objectives are addressed in the final agreement that emerges from these talks.

The U.S.-Korea FTA is an ambitious initiative, and one that we recognize will face many challenges. These include the current environment in the United States and Korea for trade agreements, and no doubt, the sensitivity of certain sectors in both countries will challenge negotiators in their efforts to develop a comprehensive agreement. Our two organizations fully understand these challenges and, along with the coalition, will actively work with the U.S. administration to educate policymakers and the broader public on how a U.S.-Korea FTA is in the best economic interests of both countries.

## U.S. EXPORTS TO KOREA

(in billions of current U.S. dollars)



Source: U.S. Department of Commerce

## U.S. IMPORTS FROM KOREA

(in billions of current U.S. dollars)



Source: U.S. Department of Commerce

## U.S. EXPORTS TO KOREA BY SECTOR, 2005

(in billions of current U.S. dollars)

**\$7.8**  
Computers and Electronic Products

**\$4.1**  
Chemicals

**\$4.0**  
Machinery

**\$3.1**  
Transportation Equipment

**\$1.6**  
Agriculture and Livestock

**\$1.1**  
Food Products

Source: U.S. Department of Commerce

## POTENTIAL ECONOMIC BENEFITS OF U.S.- KOREA FTA

- Net welfare gains for U.S. economy of up to \$8.9 billion (0.13% of U.S. GDP)
- Net welfare gains for Korean economy of up to \$10.9 billion (2.41% of Korean GDP)
- Increase in U.S. exports to Korea by up to 49%
- Increase in U.S. imports from Korea by up to 30%

Source: Institute for International Economics, 2004

## U.S.-KOREA FTA NEGOTIATION OBJECTIVES

The members of the U.S.-Korea Business Council and AMCHAM Korea have identified a number of specific objectives that are critical to the successful negotiation of a U.S.-Korea FTA. Our positions were prepared through consultations with our member companies, as well as with the broader membership of the U.S.-Korea FTA Business Coalition.

Key sectors and cross-sectoral issues covered in this paper include the following:

- Services
- Financial Services
- Telecommunications and Information Technology
- Agriculture
- Automobiles
- Pharmaceuticals
- Cosmetics
- Investment
- Intellectual Property Rights (IPR)
- Competition Policy
- Standards and Technical Barriers to Trade
- Government Procurement
- Customs
- Rules of Origin
- Labor and Environment

In addition, the U.S.-Korea FTA should include the following chapters – covering many of the issues addressed in the above areas – in which our two organizations expect the U.S. government to pursue the same high standards it has set in other free trade agreements:

- Dispute Settlement
- National Treatment
- Safeguards
- Sanitary/Phytosanitary

This paper also considers **U.S. visa policy** toward Korean business travelers, students, and other visitors to the United States. While U.S. visa policy is not an issue to negotiate within FTA talks, it is an important topic with significant economic impacts on U.S. businesses and on overall bilateral relations between the United States and Korea. Our two organizations welcome active engagement between the U.S. and Korean governments to address the challenges that have heretofore prevented Korea from participating in the U.S. Visa Waiver Program, and we hope that the FTA negotiations will create positive momentum for these efforts.

## KEY FTA NEGOTIATION PRIORITIES

There are three elements that our two organizations want to put forward at the outset as critical to a successful U.S.-Korea FTA:

**EARLY ELIMINATION OF TARIFFS AND NON TARIFF BARRIERS:** We urge the U.S. government to negotiate an FTA with Korea that results in the earliest possible removal of all tariffs, quotas, and other barriers to trade.

**COMPREHENSIVE FTA WITH NO EXCLUSIONS:** We want to emphasize the importance of concluding a comprehensive FTA with Korea that excludes no product, service, or sector. Some U.S. industry sectors have experienced systemic and long-term market access problems in Korea that necessitate careful and focused attention and special measures within the FTA to solve them.

**TRANSPARENCY:** We want to emphasize the critical importance of addressing regulatory transparency issues within a U.S.-Korea FTA. We strongly urge that this FTA include enhanced commitments by Korea that lead to transparent and predictable regulatory and rulemaking procedures across all sectors.

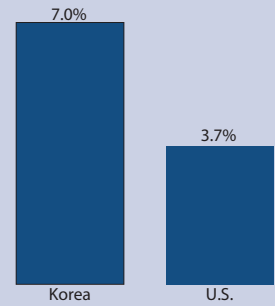
Lack of transparency in and lack of equal access to the regulatory process are probably the most significant market access barriers impacting U.S. companies in Korea. Major transparency-related concerns across a number of sectors include the following:

- Lack of or unreasonably short public comment periods for draft regulations
- Inconsistent application of regulations
- Delegation of regulatory authority to non-governmental organizations, which creates possibilities for conflicts of interest and improper access to business-proprietary information
- Lack of written guidance from regulators – despite requirements to do so – and fluctuating, oral interpretations of regulations
- Concerns that Korean regulatory agencies may target outside investors disproportionately more than Korean companies.

Greater transparency will lead to increased regulatory stability and predictability and ensure that businesses, investors, and consumers in both the United States and Korea will reap the full potential economic benefits of an agreement. Our two organizations welcome opportunities to consult with U.S. FTA negotiators on any further questions regarding regulatory transparency that arise during the negotiations process.

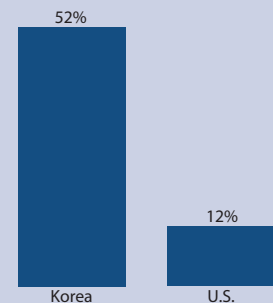
## AVERAGE U.S. AND KOREAN APPLIED MFN TARIFFS

### Non-Agricultural Tariffs



Sources: USTR, WTO

### Agricultural Tariffs



Sources: USTR, WTO

## RESTRICTED SECTORS FOR FOREIGN INVEST- MENT IN KOREA

### Completely Closed to Foreign Investment

- Radio broadcasting
- Television broadcasting

### Partially Closed to Foreign Investment

- Newspaper publishing
- Magazine and periodical publishing
- Nuclear fuel processing
- Electric power generation
- Electricity transmission
- Other electricity transmission/distribution
- Coastal water passenger transport
- Coastal water freight transport
- Scheduled air transport
- Non-scheduled air transport
- Leased line services
- Wired telephone and other telecommunications
- Mobile telephone services
- Cellular telephone services
- Other telecommunications
- Domestic commercial banking
- Investment trust companies
- Cable networks
- Cable and other program distribution
- Satellite broadcasting
- News agency activities

Source: Invest Korea, A Guide to Foreign Direct Investment in Korea, 2005

## SERVICES

### What Is the Issue?

Korea has rapidly evolved from a manufacturing-driven economy into a services-led economy, and Korea's services sector accounted for 62% of Korea's GDP in 2004. Korea is the second-largest market for U.S. services in Asia, and U.S. cross-border exports of services to Korea reached \$9.1 billion in 2004, which represented a services trade surplus of \$4.3 billion. While specific areas of Korea's services sector are more open to foreign investment than in the past, many areas remain fairly closed. A U.S.-Korea FTA holds great potential to open new opportunities for both U.S. and Korean companies by removing barriers to trade and investment and encouraging competition and efficiency gains.

The U.S.-Korea Business Council and AMCHAM Korea urge that an FTA eliminate market access barriers across all services sectors and remove restrictions on foreign investment in key services areas. Specific areas of interest to U.S. companies include financial services, telecommunications, legal services, accounting, computer and related services, audiovisual, media and broadcasting, management consulting, and express delivery.

### Issues to Be Addressed in the U.S.-Korea FTA

Each services sector has specific concerns and interests related to Korea that have been conveyed to the U.S. government separately. However, there are several issues common to U.S. services suppliers that should be addressed within a U.S.-Korea FTA. Specifically, these include the following:

**Market Access:** A U.S.-Korea FTA should aim to eliminate market access barriers in all services sectors that are not linked to national security concerns.

**Negative List:** An FTA should be negotiated on a negative list basis whereby all services sectors are completely open unless a specific reservation is taken. This approach will ensure that a U.S.-Korea FTA is comprehensive in scope for services.

**Transparency:** An FTA should include strong commitments to promote transparency and predictability in Korea's regulatory and rulemaking procedures in services sectors.

**Acquired Rights:** An FTA should maintain at least the level of open market access for services existing on the date the agreement is signed and should ensure that there is a level playing field for all services providers.

**Audiovisual:** An FTA should remove Korean foreign content quotas in broadcasting and restrictions on dubbing and local advertising in foreign broadcast retransmissions. Market forces should be allowed to determine content and programming allocations.

**Express Delivery:** Under an FTA, Korea should recognize express delivery as a distinct services sector, applied to any entity providing express delivery services. In addition, the definition of cross-border trade in services should extend to measures affecting the supply of express delivery services by a services supplier of either party into the territory of the other party, regardless of whether the service originates in the territory of either party.

**Anti-Corruption:** An FTA should include anti-corruption principles similar to those included in the recently concluded U.S.-Peru FTA.

## PERMITTED LEVELS OF FDI IN KOREA

Beef cattle farming	<50%
Newspaper publishing	<30%
Magazine and periodical publishing	<50%
Scheduled air transport	<50%
Non-scheduled air transport	<50%
Radio broadcasting	Not Permitted
Television broadcasting	Not Permitted
Cable networks*	≤33%
Satellite broadcasting	≤33%
News agency activities	<25%

\*FDI in businesses supplying news programs is not allowed.

Source: Invest Korea, A Guide to Foreign Direct Investment in Korea, 2005

# FINANCIAL SERVICES

## What Is the Issue?

Korea is a significant market for U.S. financial services sector companies. It is the world's seventh-largest insurance market, with total premium volume of more than \$65 billion dollars, and would be the largest insurance market ever included in an FTA with the United States. Reforms implemented by the Korean government in the wake of the 1997-1998 Asian financial crisis have promoted significant liberalization in Korea's financial services sector, attracting major long-term investments to the Korean market from overseas firms. However, it is essential that the Korean government continue to reform and to adopt international standards and practices in a number of key areas.

The U.S.-Korea Business Council and AMCHAM Korea view a U.S.-Korea FTA as an important opportunity to promote trade and investment through further liberalization in this sector. In particular, a U.S.-Korea FTA would support Korea's efforts to become a financial hub for East Asia by promoting further reform to enhance investment and competition. Korean government efforts in this regard would also serve to promote the regional and global competitiveness of Korean financial services companies.

## Issues to Be Addressed in the U.S.-Korea FTA

**Transparency:** A U.S.-Korea FTA should lead to increased transparency in Korea's regulatory and rulemaking processes in the financial services sector and promote equal access to regulatory information. Specifically, we urge the following:

**Notice and Comment Periods:** An FTA should include provisions to establish and consistently enforce a common, standardized notice and comment period to allow industry ample time to review and provide input on draft laws, regulations, and amendments.

**Dispute Resolution:** An FTA should lead to an enhanced dispute resolution adjudication process in order to guard against frivolous complaints or abuses.

**Regulatory Authority and the Role of Industry Groups:** An FTA should ensure that membership in Korean industry groups is voluntary, and that no regulatory authority is delegated to such organizations if such delegation would create a conflict of interest for any member of the group vis-à-vis other members. These kinds of self-regulatory industry organizations should also be without government influence in respect to elections officers.

**Universal Financial System:** An FTA should help facilitate the adoption of a more open, universal model in Korea's financial services sector and should remove barriers between banking, securities, and insurance. Our two organizations recognize that financial services reforms recently

launched by the Ministry of Finance and Economy (MOFE), including efforts to streamline regulations and to consolidate separate laws into a single law providing overarching regulation for the securities area, are a positive step toward this goal. We hope to see this momentum maintained in the FTA negotiations.

**Alignment With Global Best Practices:** An FTA should promote the alignment of Korean regulations in the financial services sector with global best practices. For example, the Financial Supervisory Service (FSS) should redesign its dispute resolution adjudication system to better reflect the nature and severity of problems raised. In addition, an FTA should remove restrictions on foreign nationals holding board seats, senior managerial positions, or essential personnel in Korea and should ensure that a company can conduct its operations in Korea using any language it chooses.

**Negative List Regulatory System:** Under an FTA, Korea should enact and implement a negative list regulatory system for the financial services sector. Our two organizations are encouraged by the support of MOFE and the FSS to move towards this negative list approach.

**Product and Pricing Controls:** An FTA should incorporate provisions allowing U.S. insurers in Korea to design and price policies based on a balance of market demand and prudential management. Korean government supervision should be exercised in the form of required disclosure and transparency in the sales process so that consumers can make informed decisions.

**Foreign Currency Reserves:** Under an FTA, Korea should implement the reform process under which foreign currency reserves will be exempt from limitations on investments of assets overseas.

**Data Processing:** An FTA should include provisions to allow companies to follow their global operating models for transferring customer data cross-border, provided that they have adequate existing practices to protect consumer information.

**Level Playing Field:** A U.S.-Korea FTA should include provisions to ensure fair competition and a level playing field for all entities in the Korean financial services market. In Korea, the Post Office and agricultural and other cooperatives can sell insurance products but are not subject to the same laws, regulations, and standards as private sector companies.

# TELECOMMUNICATIONS AND INFORMATION TECHNOLOGY

## What Is the Issue?

The U.S.-Korea Business Council and AMCHAM Korea urge a comprehensive approach to the telecommunications sector within a U.S.-Korea FTA that provides for full market access and national treatment. Korea is a global leader in information and communications technologies (ICT) and boasts the world's highest broadband penetration. However, despite Korean companies' global presence in the ICT market, the Korean government has continued to intervene directly and indirectly in the sector at home, particularly in selecting and mandating technology standards and in licensing and procurement procedures. As a result, U.S. firms with innovative technologies have encountered various impediments to their efforts to bring new software and information technologies to the market.

Moreover, despite the extensive coverage of the WTO Information Technology Agreement (ITA), the Korean government has increased Korean import tariffs on high-tech and ICT products and consumer electronics that often are not covered by the ITA. A U.S.-Korea FTA should include the immediate elimination of duties on all high-tech and ICT products, including those not currently covered by the WTO ITA.

While Korea has made some efforts in recent years to adopt international standards and establish a more open and competitive domestic market for technology and telecommunications products and services, it needs to do more in this sector. A U.S.-Korea FTA would offer an important means to address outstanding issues and to create new opportunities for investment and business cooperation in both countries' telecommunications and technology sectors.

## Issues to Be Addressed in the U.S.-Korea FTA

Our two organizations seek progress in several major areas that present barriers in Korea's telecommunications and information technology sectors:

**Transparency:** A U.S.-Korea FTA should ensure the highest level of transparency in telecommunications services and information technology through the publication by the Korean government of regulations, consultations, prior notice and public comment periods for new regulations and changes, and full recourse to appeal the decisions of regulatory bodies. In addition, Korea's standard-setting bodies should operate in a fair and transparent manner, in a way that does not advantage domestic firms over foreign ones.

**Technology Neutrality (Technology Choice):** An FTA should include an enhanced commitment by Korea to technology neutrality for both basic and value-added telecommunications services. Under an FTA, Korea

### TOP 10 COUNTRIES BY BROADBAND PENETRATION PER 100 INHABITANTS, NOVEMBER 2005

1.	Korea	24.9
2.	Hong Kong	21.3
3.	Netherlands	19.8
4.	Denmark	18.9
5.	Iceland	18.3
6.	Switzerland	17.9
7.	Canada	17.7
8.	Taiwan	16.5
9.	Israel	16.3
10.	Belgium	15.6

Source: International Telecommunication Union

should fully implement its stated policy of supporting the development and use of international, voluntary standards, in a way that would further promote market-driven, industry-led global competitiveness. In the past, Korea has justified mandating specific domestically created standards for a number of reasons.

**Foreign Ownership Requirements:** An FTA should remove limitations on foreign investment in the Korean telecommunications services industry. Currently, Korea limits foreign investment in this sector to 49 percent for both wireless and fixed-line services. These caps represent a significant trade barrier and are far more restrictive than rules in this sector in the United States. More important, these restrictions on investment in a significant and attractive sector thwart economic growth and undermine Korea's aspirations to remain the forerunner in advanced telecommunications technology and to become a regional hub.

In addition, an FTA should remove restrictions that currently limit foreign ownership of cable television-related system operators, network operators, and non-news/comprehensive channel program providers to 49%, and to 33% for satellite broadcasters. An FTA should also remove the current ban on foreign companies investing at all in program providers of comprehensive and news channels.

**Independent Regulatory Bodies:** An FTA should ensure that Korean regulatory bodies in the telecommunications and technology sectors are separate from, and not accountable to, any supplier of public telecommunications, technology services, or government agencies. Accordingly, the Korean government should eliminate the Ministry of Information and Communication's current authority over the Korea Communications Commission, or it should establish a new, fully independent regulatory body with responsibility for all convergence issues.

**Market Access and National Treatment:** An FTA should include commitments to ensure cost-based, non discriminatory access to unbundled elements of basic telecommunications networks and services and to all communications platforms used in providing value-added services in Korea. Moreover, it should include competition safeguards on incumbent communications platform owners to prevent such carriers from abusing their dominant position in the provision of basic communications services or cross-subsidizing affiliates in downstream market segments.

**Tariffs:** An FTA should immediately eliminate tariffs on telecommunications and high-tech ICT products. In addition, our two organizations urge full participation by Korea in the WTO's Information Technology Agreement with zero tariff bindings on all products in HSC Chapters 84, 85, and 90.

**Electronic Commerce:** Previous U.S. FTAs have included an e-commerce chapter that contains nondiscrimination language for digital products, including software. A similar e-commerce chapter should be included in the U.S.-Korea FTA that guarantees national treatment and full market access.

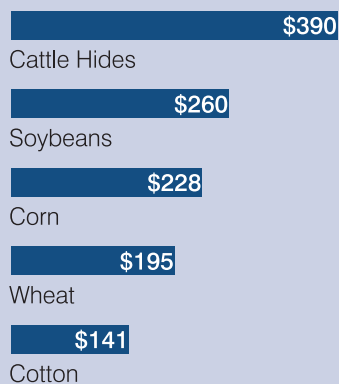
**KOREA: LIST OF SELECTIVE  
COMMODITIES WITH HIGH  
IMPORT DUTIES  
2004**

Product	Applied Tariff
Fresh Potatoes	30%
Cheeses	36%
Apples, Grapes, Pears, Cherries	45%
Fresh Tomatoes	45%
Oranges	50%
Whey	50%
Poultry meat	18% to 27%
Pork, Pork Cuts and Offals	18% to 30%
Confectionary	8% to 40%
Beef and Offals	8% to 40%
Tree Nuts (Pistachios, etc.)	8% to 45%
Fruit Juices	30% to 54%
Skim Milk	
Powder	176% over-quota tariff
Peanuts	231% over-quota tariff
Potato Flakes and Flour	304% over-quota tariff
Feed corn	328% over-quota tariff
Popcorn	630% over-quota tariff

Source: Office of the U.S. Trade Representative, February 2006

**U.S. AGRICULTURAL  
EXPORTS TO KOREA BY  
SECTOR, 2004**

(in millions of current U.S. dollars)



Source: U.S. Department of Agriculture

## AGRICULTURE

### What Is the Issue?

Korea imported \$10.6 billion in agricultural products in 2004, about 70% of its agricultural needs. Korea is the sixth-largest market for U.S. agricultural goods; in 2004, U.S. exporters shipped \$2.5 billion in agricultural products to Korea, supplying about one-fourth of Korea's agricultural imports. Major U.S. agricultural exports to Korea include corn, soybeans, processed foods, cotton, citrus, and nuts – each of which are subject to tariffs as high as 500%. Eliminating these tariffs and removing other market access barriers to U.S. agricultural goods in Korea would create important new opportunities for U.S. farmers, ranchers, and processors to compete in the Korean market.

The U.S.-Korea Business Council and AMCHAM Korea believe that a U.S.-Korea FTA should cover trade in all agricultural commodities comprehensively, with no exceptions. Significantly, studies indicate that the potential benefits of a U.S.-Korea FTA would be reduced **by half** if agriculture is not included in the agreement.<sup>2</sup> An FTA should reflect and build upon multilateral commitments made under WTO agriculture negotiations in order to provide enhanced opportunities for both U.S. and Korean companies, farmers, and ranchers. It should also follow important precedents set in other recent FTAs negotiated by the United States that ensure real market access for U.S. agricultural products and provide improved mechanisms to address sanitary and phytosanitary issues.

### Issues to Be Addressed in the U.S.-Korea FTA

**Comprehensive Agreement:** A U.S.-Korea FTA should cover trade in all agricultural commodities comprehensively, with no exclusions.

**Tariffs/Tariff Rate Quotas:** An FTA should eliminate Korean agricultural tariffs and tariff rate quotas on U.S. agricultural products as rapidly as possible.

**U.S. Beef Imports:** Korea must eliminate its ban on U.S. bone-in-beef imports and fully reopen its beef market in-line with internationally accepted, science-based principles as soon as possible.

**Market Access Barriers:** An FTA should include commitments by the Korean government to transparency and predictability in establishing and implementing food regulations, food safety measures, biotechnology policies, and inspection and custom clearing procedures and labeling requirements, which are onerous at present. All of these have presented problems for U.S. agricultural exporters. Korean product and safety standards are among the greatest barriers to U.S. exports of agricultural and food products in the Korean market, and an FTA should lead to Korean codes in-line with internationally accepted standards.

**Sanitary/Phytosanitary Measures:** An FTA should ensure that Korea's sanitary and phytosanitary measures on U.S. agricultural imports are science-based and developed in a transparent manner and are not used as barriers to trade.

# AUTOMOBILES

## What Is the Issue?

An FTA with Korea, a major auto manufacturing and exporting country, will have significant implications for the U.S. auto industry. Because Korea remains the most closed auto market in the industrialized world, and past U.S.-Korea auto agreements have been unsuccessful in opening the Korean auto market to international competition, the U.S.-Korea Business Council and AMCHAM Korea believe that – in addition to addressing in a comprehensive manner the long-standing automotive non tariff barriers that have been effective in keeping the Korean market closed to auto imports – a U.S.-Korea FTA should include special measures that will ensure real bankable improvement in import market access into Korea before preferential auto access is granted to Korea.

Long-standing barriers in Korea's automotive sector include tariff and auto-specific taxes, standards and certification processes and procedures, continued anti-import bias, inability to offer a full range of financial services, and currency manipulation. Two bilateral auto agreements were negotiated in the 1990s that addressed some of the non tariff barriers that imports face, but they did not lead to an open automotive market in Korea. The fact that sales of imported vehicles in Korea, from all sources, accounted for only 2.7% of the Korean automotive market in 2005 – the lowest import participation level of any major Organization for Economic Co-operation and Development (OECD) member country – clearly indicates that this sector needs significant attention in the FTA.

## Issues to Be Addressed in the U.S.-Korea FTA

Our two organizations seek progress in several major categories of barriers that restrict the importation and use of motor vehicles in Korea, including the following:

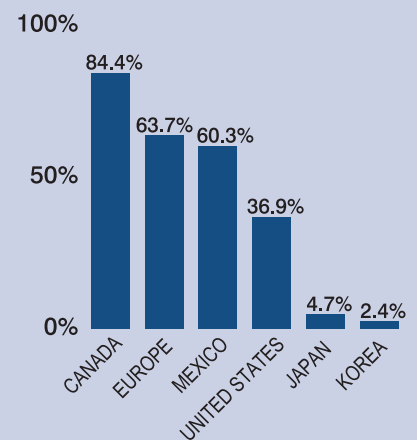
**Auto Tariffs:** A U.S.-Korea FTA should immediately eliminate Korea's tariffs on U.S.-sourced motor vehicles and motorcycles. In addition, the U.S. automotive industry believes that before any U.S. concessions are made, Korea must demonstrate that its auto market is open and that import access is sustained.

**Auto Tax Structure:** Korea has an antiquated and discriminatory tax structure for motor vehicles that is especially burdensome for importers because: (1) many taxes are based on engine size, which disproportionately affect imports, and (2) the taxes are applied on top of the 8 percent duty and in a cascading fashion that magnifies the impact of the tariff. A U.S.-Korea FTA should include a commitment for a comprehensive reform of its automotive tax structure that simplifies the tax structure and eliminates the discriminatory nature of the current system.

**Auto Standards/Certification:** Korea's continued implementation of unique standards and certification procedures in the automotive sector also continues to present a significant barrier to entry to the Korean

## AUTOMOBILE IMPORT PENETRATION RATES

2004



Source: Automotive Trade Policy Council

automotive market. A U.S.-Korea FTA should ensure that Korea ceases these practices and adopts international standards. The U.S. automotive industry believes that vehicles certified as meeting U.S. auto safety and emissions standards should be accepted as meeting Korea's standards. Further, an FTA should establish greater transparency and predictability in the regulatory development process for Korea's automotive market and provide industry with adequate opportunities to provide input when the Korean government is considering new regulations.

**Anti-Import Bias:** Anti-import bias, largely a residual impact of past practices, is a particularly important challenge in Korea that has limited market access for U.S. automakers. Our two organizations urge the U.S. government to seek additional commitments by the Korean government in an FTA to help reverse the impact of past practices.

**Financial Services:** The FTA negotiations should result in an agreement that allows automakers the ability to offer to Korean consumers the full range of auto-related financial services permitted in most other OECD member countries.

**Currency Manipulation:** An FTA should include assurances by the Korean government that it will not resort to currency manipulation to gain an unfair competitive advantage for Korean motor vehicles.

**Motorcycle Barriers:** Korea has also had several long-standing market access barriers to sales of U.S. motorcycles that should be addressed in the context of an FTA. These include a highway ban, noise standards, and the lack of procedure for title ownership for motorcycle owners that severely limits financing options for consumers.

# PHARMACEUTICALS

## What Is the Issue?

Korea is ranked in the world's top 12 pharmaceutical markets, with annual sales in the \$7.9 billion range. Korea has a national health care system, making the Korean government the primary procurer of pharmaceuticals in the country. The environment for foreign pharmaceutical companies operating in the Korean market is strongly affected by the way pharmaceuticals are priced and reimbursed in the National Health Insurance (NHI) system. The Korean domestic pharmaceutical industry is focused on producing generic drugs. While the Korean government has put a priority on developing a local innovative industry, there are not many incentives in the existing system that would encourage innovation. One reason for this is that the Korean government reimburses generic drugs at a higher rate than most other countries, which has led to the burgeoning of the domestic generic industry. All of these factors have made foreign pharmaceutical companies an easy target as Korean health care authorities have continued to devise and implement new, cost-cutting policies.

Korea's operating environment presents numerous challenges for U.S. companies in the pharmaceutical sector, which the U.S.-Korea Business Council and AMCHAM Korea believe should be removed through an FTA. Specifically, our two organizations view an FTA as an important opportunity to enhance the access of Korean patients to leading U.S. biomedical products, as well as to further improve the transparency and accountability of Korea's NHI system and secure better and lasting recognition of the value of innovative U.S. biomedical discoveries. This would also promote Korea's efforts to foster a world-class biopharmaceutical sector that could be a global leader in advanced drug discovery.

## Issues to Be Addressed in the U.S.-Korea FTA

Our two organizations seek progress in several major categories of barriers impacting U.S. companies in the pharmaceutical and medical devices industries, including the following:

### **Recognition of Innovation in Listing and Reimbursement**

**Procedures:** Under a U.S.-Korea FTA, Korea's policies and procedures for listing and reimbursing medicines need to be improved to strengthen the recognition of the value of innovative medicines. Currently, the Korean pharmaceutical reimbursement system – in which the NHI is effectively a single purchaser – lacks transparency and clear and fair criteria to determine the value of innovative medicines, and it systematically undervalues them. Korea's current pricing and reimbursement policies represent a disguised industrial policy that not only hinders foreign companies from expanding business and investment in Korea, but reduces incentives for local R&D in Korea and discourages innovation by providing high returns to those who merely imitate.

Korean patients would benefit from a more transparent and science-based system that allows patients, foreign manufacturers and researchers, doctors, and other stakeholders to provide meaningful input into reimbursement policymaking and decisions and subjects such decisions to independent review and real accountability. Korean and foreign investors looking to develop drugs in Korea would also benefit from a system that rewards and provides incentives for innovation.

**Reimbursement Guidelines:** An FTA should lead to a more objective process for establishing the guidelines and conditions under which drugs are reimbursed. It is common in Korea that even when new drugs are approved, the conditions under which doctors can prescribe them are sharply limited. Such decisions should be driven by sound science, internationally recognized good medical practice, and the best interests of Korean patients.

**Transparency:** The Korean government's decision-making processes relating to innovative medicines and drug policy should be more transparent. The lack of transparency and absence of meaningful consultation regarding major policy or rule changes have been major concerns for U.S. pharmaceutical companies. The lack of independent appeal mechanisms in Korea for foreign companies in the government pricing and reimbursement decision-making processes contributes to arbitrary decision making and limited accountability. Our two organizations hope to see measures under an FTA to address these issues.

**Ethical Business Practices:** An FTA should also address ethical business practices in the Korean market. Korea's complex distribution system, inadequate enforcement of rules, and lack of transparency in government decision making are large contributors to this problem. These unethical practices distort the delivery of efficient, transparent, and quality-driven health care to Korean patients, while creating market inefficiency and disturbing industry development. Better adherence to ethical practices would strengthen Korea's patient-centered health care system, boost doctor-patient relations, and bring Korea into accord with internationally accepted good medical practices.

**Intellectual Property Rights:** Korea at present provides only a limited de facto form of data exclusivity for purposes of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Article 39:3 and does not have a system to ensure patent linkage. A U.S.-Korea FTA should clarify and strengthen these provisions.

**Medical Devices:** An FTA should also address tariff and non tariff barriers related to medical technology products. Many of the long-standing problems in this sector are very similar to those faced by pharmaceutical companies in Korea, including the lack of transparency in Korea's pricing policies. An FTA should address this and other issues, including problematic product testing and registration requirements and the practice of reusing single-use medical devices.

# COSMETICS

## What Is the Issue?

Korea is the world's fourth largest market for cosmetics and personal care products. U.S. exports to Korea were \$158 million in 2005, accounting for only 2.6% of total U.S. exports in this sector.

Korea applies tariffs of 8% on most cosmetics and personal care products of primary interest to U.S. industry. In addition, Korea imposes a number of non tariff barriers that restrict U.S. sales in this important market. In particular, Korean testing, certification, labeling, and other regulatory requirements for cosmetics and personal care products are significantly more complex and burdensome than in the United States, Europe, and other key international markets. In 2000, Korea created a special category for functional cosmetic products (so-called cosmeceuticals, which include whitening and anti-wrinkle products) for which there are special and onerous regulations as well as obligations for firms to provide detailed proprietary information not required elsewhere around the world.

## Issues to Be Addressed in the U.S.-Korea FTA

**Tariffs:** A U.S.-Korea FTA should immediately eliminate tariffs on cosmetics and personal care products.

**Transparency:** An FTA should lead to increased transparency in Korea's regulatory regime. In particular, advertising restrictions and regulatory approvals should be brought in-line with international norms. Further, the role and obligations of the Korea Cosmetic Association (KCA), in which U.S. companies do not have full membership rights, should be fair and transparent. Any business proprietary information required to be submitted to it should be fully protected.

**Cosmeceuticals:** An FTA should liberalize the Korean regulatory system for functional cosmetics, including adoption of a post market verification system similar to that in the United States, the European Union, and elsewhere. The functional cosmetics category should be limited to products that have significant claims of efficacy. In addition, the functional product registration timeframe with the Korea Food and Drug Administration (KFDA) should be shortened to bring Korea in-line with international norms.

**Import Clearance Review:** An FTA should eliminate the need for import clearance reviews, including the review of U.S. product names and products that have already complied with Korean cosmetics regulations. In addition, under an FTA the Korean government should allow the use of abbreviated terms on shipping documents in-line with other major economies.

**Quality Control Testing:** An FTA should eliminate requirements for Korea-specific quality control tests on finished products and allow for manufacturers' reliance on standard quality assurance practices that are accepted around the world. In particular, the Korean government should not allow the Korean Pharmaceutical Trade Association – a non-governmental entity – to perform inspections on imported cosmetics products such as for heavy metal content, because this can cause delays and compromise confidentiality of product formulas.

**Ingredient Labeling:** An FTA should ensure that Korea adopts internationally accepted ingredient nomenclature (INCI), rather than Korea-specific names.

# INVESTMENT

## What Is the Issue?

Korea has made significant strides in liberalizing its foreign direct investment regime, which has generated benefits for the Korean economy and has promoted Korea's goal of becoming a regional hub. Foreign direct investment, particularly from U.S.-Korea Business Council and AMCHAM Korea member companies, is increasingly welcome in Korea and will play a valuable role in promoting new growth and opportunities in the Korean market. Likewise, Korean companies are increasing the size and scope of their investments and operations in the United States.

A U.S.-Korea FTA should promote increased flows of two-way trade and investment between the United States and Korea, and spur further needed reforms in Korean regulations affecting investment, thus creating an even more positive climate for foreign investors in Korea.

Challenges impacting our member companies in Korea include excessive regulation, lack of regulatory transparency and predictability, an inflexible labor market, and corporate governance practices. Our two organizations have concerns about recent signals coming from the Korean government on tax and other regulatory matters affecting foreign investment. At a time when Korea is working to establish itself as a regional financial hub, it should not be sending chilling messages to investors. Positive measures and commitments within an FTA to resolve these issues will further facilitate bilateral investment flows, generating new jobs and development through increased market access and new investment opportunities in both countries.

## Issues to Be Addressed in the U.S.-Korea FTA

A U.S.-Korea FTA should define investment broadly as including portfolio investment along with cross-border, long-term investments and should follow precedents set in previous U.S. FTAs. Specific provisions should include the following:

**Investor Protections:** A U.S.-Korea FTA should incorporate rules to protect investors in both countries, including provisions on the guarantee of fair and equitable treatment, protection against unlawful expropriation, and high standards for what constitutes fair and equitable treatment under the law.

**Dispute Settlement:** An FTA should include an effective and binding investor-state dispute settlement procedure that ensures high levels of transparency in dispute settlement proceedings, including open hearings, public release of legal submissions by parties, special rosters of experts for disputes in complex areas, and rights for interested third parties to submit views.

## U.S. DIRECT INVESTMENT IN KOREA

(in billions of current U.S. dollars)



On a historical-cost basis  
Source: U.S. Bureau of Economic Analysis

## KOREAN DIRECT INVESTMENT IN THE U.S.

(in billions of current U.S. dollars)



On a historical-cost basis  
Source: U.S. Bureau of Economic Analysis

**Performance Requirements:** An FTA should reaffirm Korea's efforts to eliminate any unfair performance requirements, such as a requirement that an investor export a given level of goods and services as a condition for investment.

**Transparency:** An FTA should include increased transparency in Korean regulatory processes, particularly in regard to the selling of Korean businesses in open bidding situations, and sufficient time provided for public notice and comment on proposed policy changes.

**Foreign Ownership and National Treatment:** An FTA should contain rules reducing or eliminating barriers to U.S. investment in Korea and providing national treatment for investors in both countries. In particular, restrictions on foreign ownership of telecommunications companies and cable television-related system operators, network operators, and non-news/comprehensive channel program providers to 49% and for satellite broadcasters to 33% should be lifted, along with the prohibition on foreign investment in program providers offering comprehensive and news channels.

# INTELLECTUAL PROPERTY RIGHTS

## What Is the Issue?

Strong intellectual property rights (IPR) protections and enforcement are critically important for protecting the innovation and creativity key for sustaining economic development and growth in today's information age. Copyright infringement and online piracy in the Korean market have presented major challenges for both U.S. and Korean companies. The International Intellectual Property Alliance (IIPA) estimates losses to U.S. companies as a result of copyright piracy in Korea at \$715.2 million in 2005, with losses of \$415 million in entertainment software and \$256 million in business software.<sup>3</sup>

The U.S.-Korea Business Council and AMCHAM Korea commend the Korean government for its efforts to improve IPR protection and strengthen enforcement in recent years. However, given the increasing sophistication of the Korean marketplace as well as the fact that Korea boasts the highest broadband penetration in the world, Korea needs to ensure that its laws and policies related to IPR protection and enforcement are up to date and fully in-line with global standards and trends. It is critical that a U.S.-Korea FTA include strong IPR provisions that address long-standing deficiencies in Korean law and that effectively address the continuing challenges of IPR violations in the Korean market, which present a significant trade barrier to U.S. companies.

## Issues to Be Addressed in the U.S.-Korea FTA

- World Intellectual Property Organization (WIPO) Internet Treaties should be enacted no later than the entry into force of a U.S.-Korea FTA.
- Current copyright protection should be extended from the minimum standard of 50 years to 95 years for all copyright works, including films and sound recordings, in-line with international trends. An FTA should include provisions restoring protection to these works for the full extended term of protection they would have enjoyed had Korea earlier complied with relevant international provisions.
- Rampant Internet piracy – particularly related to the movie and music industries – should be halted.
- Sound recording producers should be given control over the digital dissemination of their works.
- Korea should be brought into full compliance with the WIPO treaty requirement related to temporary protection measures.
- Liability of Internet service providers should be clarified, and effective notice and takedown procedures should be implemented.
- Protection for temporary copies should be enacted.

## ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY IN KOREA, 2005 *(in millions of U.S. dollars)*

<b>Total</b>	<b>\$715.2</b>
Entertainment Software	\$415.1
Business Software	\$255.8
Books	\$43
Records & Music	\$1.3

Source: International Intellectual Property Protection Alliance

- Illegal photocopying and printing of published materials should be halted.
- Korean government enforcement efforts against end-user piracy of business software should be maintained.
- Clear governmental authorization should be given for the seizure, forfeit, and destruction of pirated products and the equipment used to produce them.
- Korea should increase criminal and civil penalties against IPR violations. In addition, an FTA should lead to strengthened enforcement against pirated goods in transit to deter violators from using ports or free trade zones to traffic in pirated projects.
- Korea provides only a limited de facto form of data exclusivity for purposes of TRIPS Article 39:3 and does not have a system to ensure patent linkage. These provisions should be clarified and strengthened under an FTA in order to protect intellectual property in the pharmaceutical sector.

# COMPETITION POLICY

## What Is the Issue?

For several years, U.S. industry has expressed concern that U.S. companies were being foreclosed from segments of the Korean market due to inaction by the Korean Fair Trade Commission (KFTC) against anti-competitive practices by Korean firms, including Korean chaebol. While the U.S.-Korea Business Council and AMCHAM Korea recognize that Korea has taken steps recently to improve the KFTC's ability to enforce Korean competition law, U.S. companies continue to experience barriers at times to the Korean market due to anti-competitive practices by Korean firms and conglomerates.

At the same time, there are indications that the KFTC is becoming more aggressive in its enforcement efforts against U.S. companies, including by targeting conduct that can be justified as promoting consumer welfare or generating efficiency gains. Such an interventionist approach – particularly if targeted primarily against non-Korean firms – is at odds with evolving international norms on competition policy and has the potential to create barriers to U.S. access to the Korean market. Our two organizations would note, in this regard, USTR's observation in its 2006 National Trade Estimate Report that "the U.S. government is monitoring KFTC activities closely and has encouraged it to develop a balanced approach to address its antitrust policy concerns without imposing unnecessary restrictions on commercial activity."<sup>4</sup>

## Issues to Be Addressed in the U.S.-Korea FTA

**Competition Chapter:** A U.S.-Korea FTA should include a competition chapter with the same high standards and commitments that have been included in other recent FTAs. This chapter should include robust provisions on national treatment, procedural rights and safeguards, and a commitment to enforce competition law in a manner that promotes consumer welfare and economic efficiency.

**Transparency:** The KFTC has provided little guidance on how it intends to apply Korean competition law in various circumstances. Such guidance would be extremely useful for U.S. companies, particularly in "new economy" industries such as biotechnology, telecommunications, IT, and e-commerce, where case law is less developed and markets are more dynamic and fluid. We would urge the U.S. government to push for greater transparency in competition policy and enforcement, both as to the application of Korean competition law to particular sectors and in the investigation of specific transactions or conduct, including the basis for any remedies imposed.

# STANDARDS AND TECHNICAL BARRIERS TO TRADE

## What Is the Issue?

Korean standards-setting, testing, and certification procedures are often overly burdensome and favor domestic producers, which have an adverse impact on U.S. imports. Korea continues to pick, and in some cases mandate, standards unique to Korea even when international standards exist and there is no scientific rationale justifying a "Korea standard." This has proved to be a significant barrier to U.S. companies in accessing the Korean market in a number of sectors including automobiles, telecommunications, cosmetics, and health supplements. Korea's sampling, inspection, testing, and certification procedures are also frequently outside of international norms and are problematic for U.S. companies. Further, these procedures often require detailed documentation and information without proper procedures put into place to ensure that trade secrets are fully protected. The lack of transparency and predictability with which these Korean procedures are implemented also present challenges for U.S. businesses in the Korean market.

The U.S.-Korea Business Council and AMCHAM Korea urge the U.S. government to ensure that a U.S.-Korea FTA eliminate these unique and discriminatory standards and procedures, and promote greater transparency in the Korean system. By doing so, an FTA would facilitate new opportunities for U.S. exports to the Korean market and choices for Korean consumers.

## Issues to Be Addressed in the U.S.-Korea FTA

**Standards-Setting, Testing, and Certification Procedures:** A U.S.-Korea FTA should include commitments from the Korean government to eliminate unique, redundant, and excessively burdensome approval tests and certification procedures across all market sectors. It should also ensure that the Korean government not use standards-setting powers or conformity testing procedures to discriminate against U.S. companies in any sector. Korea should adopt and fully adhere to the concept of technology neutrality and should commit to adopting international standards except in rare cases that are clearly limited in scope and defined in Korea laws and regulations.

**Transparency:** An FTA should establish more transparency and predictability in Korean regulations for standards-setting and testing and certification procedures and should lead to commitments to create, publish, and implement transparent guidelines in areas where this is not already the case. In addition, an FTA should ensure that commitments to adequate public consultation procedures for new regulations are upheld.

**"Generally Recognized as Safe" Standard:** Korea should adopt the "generally recognized as safe" standard to ensure that U.S. imports of corresponding foodstuffs are permitted. At present, U.S. food exports are frequently detained in Korea because of confusion on this point.

**Prior Approval:** Under an FTA, Korea should bring its prior approval requirements for nonagricultural products in-line with less burdensome international systems.

**Adequate IPR Protection:** Korea should ensure adequate protections for proprietary information provided by importers in connection with Korean standards-setting, testing, certification, and other conformity assessment procedures.

# GOVERNMENT PROCUREMENT

## What Is the Issue?

Korea joined the WTO Agreement on Government Procurement (GPA) on January 1, 1997, and agreed to cover procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments, and some two dozen government-invested companies. Korea's government procurement market is about 12% of GDP.

U.S. companies historically have faced a number of problems in this area, including instances where technical specifications were written to favor domestic companies. At present, issues of concern focus largely on restrictive language contained in government procurement contracts. Specifically, standard Korean Government provisions on unlimited liability, IPR ownership, and confidentiality are overly broad and out of line with international norms. They discourage U.S. firms from bidding on government contracts and pose significant market access barriers in this area. The U.S.-Korea Business Council and AMCHAM Korea believe that a U.S.-Korea FTA should include commitments by Korea to government procurement policies that are transparent and nondiscriminatory and that base procurement decisions on the merits and overall value of the products or services. Further, an FTA should seek to address problems related to overly broad procurement contract provisions.

## Issues to Be Addressed in the U.S.-Korea FTA

**Government Contracts:** There are several areas in which standard Korean government contracts are out of line with international norms, especially related to terms covering unlimited liability, confidentiality, and IPR ownership. The procurement terms described below discourage vendors from participating in procurement projects and should be addressed in a U.S.-Korea FTA.

**"Unlimited liability":** Typical Korean public procurement contracts are overly broad, including conditions such as "the contractor shall compensate for any damage inflicted on the object of technical service and/or a third party during the process of performing the agreement," and "the contractor shall be civilly and criminally liable for any damages inflicted by the contract."

**"Confidentiality" and "IPR Ownership":** Certain clauses in Korean government contracts regarding IPR ownership are also of concern. For example, a number of government contracts clearly state that "in relation to the contract, all rights including the ownership rights for the materials submitted to the Ordering Party shall be vested to the Ordering Party." Typical Korean government contracts lack a clear definition of confidential information and a specified time frame for the term of confidentiality. These issues should also be addressed. Further, there is no recognition

of, or protection for, confidential information provided by contractors to the government as part of their contracts (such as software source codes, technical information, marketing information, etc.).

**Technical Specifications:** Technical specifications should be identified in terms of performance and functional requirements. Moreover, procuring entities should not impose technical specifications – including design or product descriptions or standards that discriminate against another party's products, services, or suppliers – that create direct or disguised barriers to the ability of foreign products or services to compete in the area of government procurement.

**IT Source Codes:** The Korean government requires vendors to submit source codes of IT security products to the government when vendors apply for certification. This situation has led to no applications by foreign vendors for certification. Under an FTA, this requirement – which directly impacts business with the Korean government and quasi-government entities – should be eliminated.

# CUSTOMS

## What Is the Issue?

Korea's customs procedures present significant barriers to U.S. companies in the Korean market. Import clearance in Korea can take much longer than in other Asian markets due to onerous Korean inspection requirements, particularly on agricultural goods. The lack of transparency and predictability in Korean customs classifications – which often include post-entry reclassifications of U.S. imports in Korea – presents disincentives for U.S. exporters to the Korean market. The express delivery industry in particular is crucial to fast-cycle logistics, e-commerce, and rapid global transactions, and expedited customs clearance is crucial to the success of express delivery services businesses. Addressing these issues and removing these impediments in a U.S.-Korea FTA would promote increased trade and sales for U.S. and Korean businesses.

## Issues to Be Addressed in the U.S.-Korea FTA

**Customs Procedures:** A U.S.-Korea FTA should include customs provisions that will expedite Korea's customs and import clearance process and reduce impediments to trade. These include the following:

- Increase the de minimis level under which goods are imported duty free from US\$100 to US\$200.
- Provide customs service, including quarantine inspection services, 24 hours per day, 365 days per year.
- Enhance preclearance capabilities at its airports by allowing for the submission of only manifest data prior to flight arrival and allowing 30 days for import declaration and duty/tax payment (i.e., separating fiscal and physical clearance).
- Develop and implement procedures for 100% paperless clearance.
- Eliminate physical inspection of low-value export shipments by customs officers, provided that 100% of low-value cargo is subject to X-ray inspection.
- Bring Korean customs requirements for aircraft parts in-line with international standards and practice, which allow for reporting after parts are in use.
- Require that the country of origin be stipulated on the commercial invoices for the shipments but ensure that the original Certificate of Origin will not need to be produced at time of importation.

**Transparency:** U.S. companies across many sectors have raised concerns about the transparency of Korea's customs procedures, particularly in regard to customs revaluation. These procedures and revaluation decisions can be arbitrary and lack predictability, thus creating an unpredictable business climate for U.S. companies doing business in Korea.

An FTA should increase transparency and predictability in this process, including written customs decisions in order to allow for formal responses from the affected companies and dialogue sessions with businesses on new customs initiatives and regulations to evaluate their impact on businesses prior to implementation.

**Classification:** Under an FTA, Korean classification practices should be brought in-line with international norms in order to reduce instances of incorrect classifications of U.S. imports that often result in higher tariff assessments than if the product had been classified correctly.

# RULES OF ORIGIN

## What Is the Issue?

Rules of origin are the criteria used to determine where a product was made. Free trade agreements include rules of origin to ensure that only goods "originating" in a country party to the agreement benefit from its preferential tariffs or duty-free access. This can be a challenging issue to address in an FTA, given the need to address concerns about preventing third-country goods from gaining duty-free access under an agreement by being reexported with enough processing to meet rules of origin requirements. In negotiating a U.S.-Korea FTA, the U.S. government should rely on well-established principles used in prior FTAs as the basis for its rules of origin proposal.

## Issues to Be Addressed in the U.S.-Korea FTA

**Rules of Origin:** An FTA should contain effective rules of origin provisions that discourage transshipments and other potential abuses of the benefits of the FTA, and that provide for partial FTA treatment on finished goods not qualified or entitled wholly to FTA duty-free treatment. Under this provision, the value of originating content contained in goods traded between the parties would be subject to duty-free treatment.

# LABOR AND ENVIRONMENT

## What Is the Issue?

The U.S.-Korea Business Council and AMCHAM Korea prefer that the U.S. government negotiate an FTA that does not include labor and environmental provisions. Guaranteeing adequate labor conditions and environmental protection is important; however, our two organizations advocate that discussions on how to address these concerns be done in multilateral forums.

Having said this, our two organizations encourage the Korean government to independently take positive actions to promote an open, flexible labor market where wages, benefits, and work rules are based on the supply and demand for local skills, subject to the minimum standards under the law. Progress in improving labor market flexibility and in realigning labor-management relations to meet Korea's long-term economic needs will enhance Korea's global competitiveness and will enable Korea to realize its great potential as a regional economic leader.

On a separate issue, our two organizations call upon the U.S. government to ask the Korean government to eliminate jail sentences for noncriminal infractions of economic regulations and other penalties that are out of proportion to the violation.

## U.S. VISA POLICY

Although U.S. visa policy falls outside the scope of a bilateral FTA negotiation, our two organizations want to highlight this issue because of its critical importance to our bilateral economic and political relationship.

Korea was among the top five origin countries for visitors to the United States in 2004, and the U.S. Embassy in Seoul is the largest non-immigrant U.S. visa issuance post in the world. Korea plays an important role in sending visitors to the United States for business, tourism, and academic study. In fact, Korea is the largest source of foreign students studying in the United States. However, Korea has not yet qualified for the U.S. Visa Waiver Program (VWP), and nearly all Korean applicants for U.S. visas must go to the U.S. Embassy in Seoul for a personal interview. This requirement often presents logistical challenges and waits for visa applicants. Along with the relative ease of travel for Koreans to more than 100 other countries that do not require visas for Korean travelers, the necessity of obtaining U.S. visas has had a significant and adverse impact on the U.S. tourism and hospitality industry, and other U.S. businesses.

A long-term priority of our two organizations is the addition of Korea to the VWP when it meets the qualifications for inclusion in it. This issue has significant economic implications for the bilateral U.S.-Korea relationship. In addition, Koreans see Korea's inclusion in the VWP as an affirmation of the strong bilateral bonds between the U.S. and Korea. Inclusion of Korea in the VWP would help ensure that U.S. companies doing business in Korea do not lose out on commercial opportunities because of the time it takes for their customers and others to get a visa.

We are pleased that the U.S. Embassy has added staff and taken other steps during the past 18 months to ease the burden for Koreans in obtaining a U.S. visa. We are encouraged by President Bush's commitment, made at his summit meeting with Korean President Roh in November 2005, that the U.S. government would work with the Korean government to develop a VWP road map to assist Korea in meeting the requirements for membership in the program. We also note positive actions that the Korean government is taking to meet the criteria for VWP participation, including its recent announcement that it plans to introduce biometric passports in 2007. The rejection rate for nonimmigrant U.S. visa applicants in Korea, which is the core requirement of the VWP, is very close to the 3% threshold required under U.S. statutes. We are confident that this number will continue to decrease through education and informational outreach efforts.

Our two organizations urge the U.S. government to continue its dialogue with the Korean government to facilitate the development and implementation of a VWP road map for Korea as FTA negotiations move forward.

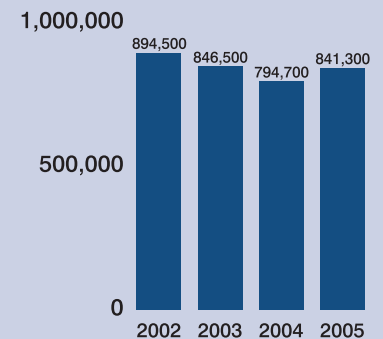
## FOREIGN NATIONALS STUDENTS IN THE U.S. BY COUNTRY OF CITIZENSHIP, JUNE 2005

Rank	Country	Number of Students	Percent of All Students
1.	South Korea	75,813	13.13%
2.	India	68,976	11.95%
3.	China	54,192	9.39%
4.	Japan	50,620	8.77%
5.	Taiwan	30,917	5.36%
6.	Canada	28,402	4.92%
7.	Mexico	13,191	2.28%
8.	Turkey	11,627	2.01%
9.	Thailand	10,495	1.82%
10.	Indonesia	8,360	1.45%

Source: U.S. Department of Homeland Security

## SOUTH KOREAN VISITORS TO THE UNITED STATES\*

2002 - 2005



\* includes Guam

Source: Korean Ministry of Justice

## BENEFITS OF KOREAN VISITORS TO THE UNITED STATES

- South Korean tourists and travelers spent nearly \$2.2 billion during their stay in the United States in 2004, an average of \$3,500 per visitor.

Source: U.S. Department of Commerce Office of Travel & Tourism Industries

## CONCLUSION

*"An FTA with Korea will provide important economic, political, and strategic benefits to both countries and build on America's engagement in Asia."*

United States President  
George W. Bush  
February 2006

*"It is essential that we conclude an FTA with the United States for the future of our economy."*

Korean President  
Roh Moo-hyun  
January 2006

The U.S.-Korea Business Council and the American Chamber of Commerce in Korea strongly support the conclusion of a commercially viable U.S.-Korea FTA. Our members have a long-term commitment to doing business in Korea, and we are excited by the new potential commercial and investment opportunities that an FTA with Korea would generate. Moreover, an FTA between our two countries makes important economic sense and would further strengthen our bilateral partnership in promoting peace and prosperity on the Korean Peninsula and in the broader Asia-Pacific region.

Having said this, we would also reiterate that these negotiations must be comprehensive, with no exclusions, and must lead to increased market access and greater regulatory transparency across all sectors in order to be successful. Our two organizations look forward to working with the U.S. and Korean governments to ensure that the priorities of our members, and the interests of U.S. and Korean businesses, investors, and consumers, are addressed and advanced in these negotiations.

# NOTES

- 1 U.S. Census Bureau, U.S. Department of Commerce. "Profile of U.S. Exporting Companies, 2002-2003." Posted at:  
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- 2 Choi, Inbom, and Jeffrey J. Schott. Free Trade Between Korea and the United States? Washington, D.C.: Institute for International Economics, 2001. pp. 55-56.
- 3 International Intellectual Property Alliance. "2006 Special 301 Report. South Korea." p. 386 Posted at:  
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[http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2006/2006\\_NTE\\_Report/asset\\_upload\\_file682\\_9188.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_NTE_Report/asset_upload_file682_9188.pdf).

**The views contained in this report are solely those of the U.S.-Korea Business Council and the American Chamber of Commerce in Korea, and do not necessarily reflect the views of the Korea-U.S. Business Council, our counterpart organization in Korea.**

Report prepared by Sean Connell, Executive Director, U.S.-Korea Business Council.

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U.S.-Korea Business Council  
c/o U.S. Chamber of Commerce  
1615 H Street, N.W.  
Washington, D.C. 20062-2000  
202-463-5461  
[www.uskoreacouncil.org](http://www.uskoreacouncil.org)



AMERICAN CHAMBER  
OF COMMERCE IN KOREA

American Chamber of Commerce in Korea  
#4501 Trade Tower  
159-1 Samsung-dong  
Kangnam-gu, Seoul 135-729  
Republic of Korea  
82-2-564-2040  
[www.amchamkorea.org](http://www.amchamkorea.org)