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Some Aspects of United States-Korean Trade Relations*

Tae Hee Lee**

I. Introduction

What follows is a general orientation for lawyers to the most pressing problems affecting United States-Korean trade relations. Most of these problems are not traditionally legal in the narrow sense. Instead they result from major differences in Korean and American economic and political policies, as well as the even greater cultural and economic differences between the two countries.

I have titled what follows an overview—an aerial photograph of the terrain—showing the main features of the geography. These features, however, cannot be presented all at once as in a photograph, but must be presented *ad seriatim* in writing. I have chosen to proceed in the following order: first, some general remarks on the history of the Korean economy over the past twenty years; second, a contrast of the ways Koreans and Americans do business and practice law; third, a section to describe the predominant features of governmental economic regulations and policies; fourth, a description of differences in Korean and American economic interests and policies, and the problems for United States-Korean trade which these differing interests and policies generate. The more particular problems affecting only a single industry are beyond the scope of this article.¹ The problems discussed in this article, however, are those which affect all transactions in United States-Korean trade.

II. Recent Korean Economic History

The Korean Civil War, which ended in 1953, left South Korea a devastated country. Agriculture had been destroyed. In most of the country, hardly a tree was left standing as the result of fighting and severe fuel shortages. What little industry had existed in the South

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1. Examples of some particular problems facing a given industry include reduced exportation of shoes and baseball gloves, and anti-dumping petitions brought against Korean makers of steel wire nails.

before the war had been destroyed, and the economic infrastructure, including most roads, railroads, and facilities for electrical generation, had been demolished. Millions of refugees had fled the communist regime in North Korea, leaving South Korea one of the most densely populated countries in the world. Postwar struggles persisted in the form of the residual legacy of the Japanese colonialism which had suppressed indigenous leadership. In addition, there remained the ongoing necessity of maintaining a very large defense force to protect against the threat from the North.

By the early 1960's, a combination of American aid, foreign investment and technology, and Korean entrepreneurship vastly improved Korean education, and literacy and a general devotion to recovery within Korea began to pay off. The economy grew dramatically. Despite the "oil shocks" of the 1970's and several worldwide economic recessions, from 1962 to 1980 the Korean Gross National Product (GNP) grew from 2.3 to 30.6 billion dollars in constant 1975 dollars.² This represented an increase of 8.6 percent per year in real terms, which was one of the highest growth rates of any country in the world.³ This development took place in a country of few natural resources where 40 million people live in an area the size of the State of Indiana.⁴

For such economic development to succeed, Korea needed a strong cultural base. The goals of postwar Korea were to complete the transition from a position of total isolation to one of dominance over an urbanized, industrial economy which had begun less than one hundred years earlier. Such an economy would have to overcome the trauma of thirty-five years of Japanese annexation and a savage civil war. Today, Korea has undergone the type of sweeping urbanization which, like most other developing as well as developed countries such as the United States, has forced masses of demoralized poor into vast miles of new slum areas. Korea's traditional neo-Confucian culture, however, has been strong enough to weather the storms of urbanization and industrialization. Conventional ideas of the proper relationship between the individual and society, the proper role and function of government, and a lifestyle of low individual consumption have all contributed to Korea's ability to withstand a feverish pace of development. Korean culture has employed the potentially hazardous processes of urbanization and industrialization to produce an economic miracle.

2. KOREAN ECON. Y.B. 1048 (1982).

3. Per capita GNP in current prices grew during that same period from \$87 in 1962, one of the lowest in the world, to \$1636 in 1982, exceeded in East Asia only by Taiwan, Japan, Hong Kong, and Singapore. *Id.* at 1050.

4. South Korea has an area of 98,490 square kilometers. Indiana has an area of 93,720 square kilometers.

Growth in international trade has also played a major role. From the end of the Civil War to 1972 trade grew substantially, and in the past ten years, the increase has been even more dramatic. By 1980, Korean imports from the United States rose to \$4.89 billion dollars, from only \$585 million in 1970. Korean exports to the United States underwent similar growth, from \$395 million in 1970 to \$4.6 billion in 1980.⁵ Almost without notice, Korea has become a significant trade partner of the United States. In 1980 Korea ranked eighth of all nations involved in bilateral trade with the United States. After Saudi Arabia and Mexico, Korea leads all developing nations in bilateral trade with the United States.⁶

There have been a number of developments in United States-Korean trade in addition to the spectacular growth in the volume of trade. The most important development has been a substantial shift in the kinds of goods traded in both directions. In postwar days Korea was heavily dependent upon United States food shipments.⁷ Today, however, while food remains the United States' largest export to Korea,⁸ its fraction as a function of total trade has been declining. Far more sophisticated goods increasingly dominate the trade. Korea is a major consumer of American heavy and precision machinery, which it has needed for its industrial expansion. Korea has also acquired technologically advanced American products in the fields of nuclear energy, telecommunications, and large computers. In the early days, Korean exports to the United States largely consisted of handicrafts and other light consumer goods. While this area of Korean export trade has grown, particularly in the areas of textiles and finished clothing, Korea's exports of electronics, chemicals, ships, and precision parts for a wide variety of industries are also rapidly expanding. As Korea's economy becomes more technologically advanced, the trend toward exporting increasingly sophisticated goods to and from Korea is likely to continue.

Korea is dependent upon trade to a degree found virtually nowhere else in the world. Korea has one of the highest population

5. KOREAN ECON. Y.B. 1148-49 (1981).

6. Though Korea currently has a favorable balance of trade with the U.S., the balance had been in favor of the U.S. for the past several years. KOREAN ECON. Y.B. 1160-61 (1982).

7. Initially, almost all food shipments were made under the Agricultural Trade Development and Assistance Act of 1954, 68 Stat. 454 (1954), amended by 7 Agricultural Act of 1977, Pub. L. No. 95-113, 91 Stat. 913 (1977). This Act provides for food assistance on cash or credit terms to nations in need of such assistance. There are also provisions for emergency aid for nations faced with extraordinary needs or natural disasters. See generally Note, *Public Law 480, American Agriculture & World Food Demand*, 10 CASE W. RES. J. INT'L. L. 739 (1978). Initially the shipments were almost exclusively authorized by this law.

8. Food shipments from the United States to Korea consist predominantly of rice and feed grain. See Han-Jin, *The Role of Technology in Economic Development: The Korean Case*, in BUSINESS LAWS IN KOREA: INVESTMENT, TAXATION & INDUSTRIAL PROPERTY, 693 (1982).

densities in the world. At the same time, over seventy percent of Korean land is too mountainous for agricultural purposes. Droughts in recent years have further impeded the agricultural process. Thus, Korea cannot produce enough food for its entire population, despite substantial strides in agricultural development. In addition, because the war left the country with few trees, Korea must import nearly all wood and paper products.

The situation is more bleak with respect to nonrenewable resources. Korea is not a major producer of any minerals or metals, and it produces little or none of most.⁹ Korea has little coal, essentially no natural gas, and no oil at all.¹⁰ In short, Korea must import a substantial portion of its food, and essentially all of its energy needs. To pay the bills, it must export manufactured goods. A full one third of Korea's GNP consists of exports.¹¹ There is no country the size of Korea or larger which is so dependent on foreign trade.

It cannot be emphasized enough that trade for Korea is essential to its survival. Foreign trade has enabled Korea both to create a rapidly improving standard of living for its citizens and to eliminate the need for aid from the United States. The profits from Korea's heavy foreign trade have enabled the country to hold her own as a military ally of the United States. Korea matches the United States in percentage of GNP devoted to defense, and boasts a standing military force which is substantially larger per capita than that of the United States.¹² Impediments to trade strike directly at the heart of the Republic of Korea's economic and political well-being. She must trade, that is, she must export, or she will perish.

III. Contrasts Between Korean and American Legal and Business Cultures

A. *Language*

Language represents the single greatest obstacle in United States-Korean trade relations. Koreans unfortunately carry nearly the entire burden of this problem, and Americans often do not appreciate either the extent of this burden, or the problem that it

9. In 1980, total mining production amounted to only \$400,000,000, which was less than one percent of Korea's 1980 GNP.

10. In 1981 Korea's oil imports were equal to more than 10 percent of its GNP. *KOREAN ECON. Y.B.* 116-61 (1982).

11. The total GNP in 1982 was 66.7 billion U.S. dollars. National Bureau of Statistics, Economic Planning Board, statistics cited in *Business Korea* (January, 1984). Exports for the same year were approximately 21.9 billion U.S. dollars. Office of Customs Administration, statistics cited in *Business Korea* (February, 1984).

12. All men, unless exempted because of physical disabilities or exceptionally pressing family needs, must undergo three years of compulsory military service. They remain in the reserves until they are 35 years old. The standing army is 650,000 men out of a population of 40 million.

causes.

One source of the problem stems from the lack of overlap between the vocabularies of the Korean and English languages. The vocabulary of European languages, such as Italian and German, is often similar to English. Not so with English and Korean. Furthermore, Korean grammar and English grammar differ radically. English syntax is almost the complete opposite of Korean syntax. This total reversal of word order creates severe difficulties in listening comprehension for a Korean, even for a Korean with considerable English language skills. Thus, in face-to-face negotiations, such as those encountered typically in business ventures, the Korean often cannot comprehend precisely what the American is saying. Although all Koreans study English for six years in secondary school, this study does not include English conversation. Even those Koreans who have had private tutoring are rarely able to adequately bridge the language barrier.

Interpreters could ease the burden for Koreans. Competent interpreters familiar with legal or business technicalities, however, are not easily found. The interpreters who are available are quite costly, and the use of interpreters more than doubles the usual amount of time required for discussions and negotiations. Furthermore, interpreters often introduce a sense of formality and remoteness into situations for which informality and close personal contact are essential.

As a result of such linguistic impediments, Korean-American business negotiations too frequently waste a great deal of time, and generate as much mutual misunderstanding as understanding. For example, American businessmen will often summarize the day's discussion on a particular presentation in English and present it to the Koreans. The Koreans may then realize the extent to which what has been said is not what they wanted to say only upon review of the summary. The Koreans may then try to retract their original response at the next session, much to the anger and frustration of the Americans. Regrettably, the realization that there has not been a full meeting of the minds often comes only after the contract is signed and performance is underway.

Even when the Koreans comprehend what is being said in the discussion and negotiation stages of a business deal, they encounter difficulty in replying. To some extent this is due to cultural inhibitions (to be discussed below) against personal confrontation.¹³ To

13. "It is characteristic of Korean culture that in emotional and evaluative orientation disputes, conflicts and revolutions are conceived negatively, and harmony and equilibrium are conceived positively." Dai-Kwon Choi *Western Law in a Traditional Society Korea*, in BUSINESS LAWS IN KOREA: INVESTMENT, TAXATION & INDUSTRIAL PROPERTY 34, 61 (1982) [hereinafter cited as *Choi*]. Choi provides an excellent analysis of the five antinomies around which tensions, conflict, interactions, and interrelationships between Western formal law and social

some extent this recalcitrance is also due to the disadvantage of having to speak in a language as foreign to Koreans as is English. As a result of the inability of the Koreans to provide adequate response, the Americans often do not understand the position of the Koreans, or they misinterpret silence as assent. Thus, Koreans often find themselves helpless to negotiate their position. In order to close a deal they accept a contract that does not clearly state their intent.

Although six years of secondary school English is not sufficient to enable most Koreans to speak fluent English or to adequately understand the English language, six years of study usually provides reading comprehension. The long, complex documents that American lawyers frequently produce, however, simply cannot be read and understood "on the spot." Neither can proposals for amendments or for modification be immediately understood, especially when made during the time pressure of negotiating sessions. Korean businessmen must study such business memoranda for long hours to adequately comprehend what has been written. Worse yet, many older Koreans in high executive positions cannot read English at all. Consequently they often order their young subordinates to produce Korean translations—a task far more difficult and time-consuming than simply reading English for personal understanding.

B. Attitudes Toward Confrontation and the Sanctity of Contract

To compound the linguistic barriers described above, other cultural differences often go unnoticed by the parties themselves. Two businessmen, one Korean and one American, who wear the same Western business suits and who have the same familiarity with international industry, often assume that their business perspectives are as similar as their outward appearances.

The most significant difference between the two businessmen is in their respective attitudes toward direct personal confrontation. Americans tend to be direct and to the point, unless there are tactical reasons for being intentionally indirect or vague. Although the rudiments of the Korean language allow for direct and precise presentation, Koreans seldom use the language in this manner. Even when speaking English, Koreans tend to do so in an indirect manner. Despite the suspicions of most Americans, the subtleties of the Korean language are nothing more than a manifestation of the Korean penchant for avoiding personal confrontation.

The translation of this attitude is often styled "face." The less clearly and directly a statement is made, the less chance there is that it can be contradicted or faulted. Koreans instinctively do not want

to "lose face" by being contradicted or faulted. Thus, Koreans generally do not consider a vague or evasive statement or writing inferior to that of a clear, direct statement or writing. Beyond the personal desire to avoid losing face is the additional desire to avoid causing another to lose face. Even when he is right, therefore, a Korean hesitates to point out another's wrong. If he must do so, however, it is done, after much hesitation, in as indirect and subtle a manner as possible.

Another way to view face is as concern and respect for one's colleagues, which one expects to be reciprocated. Koreans value "good vibes" much more than Americans. Koreans wish business to be pleasant as well as profitable, so they strive for "harmony" and "good relations" with business colleagues.¹⁴ For example, in business transactions Koreans do not strive to reach a finely tuned agreement that anticipates all possible contingencies, such as termination or default. Rather, Koreans prefer a business relationship in which problems are resolved as they arise, if they arise at all. If problems do not arise, then the time and agony of trying to provide for them in advance in the contract "American style" has been avoided altogether, and rightly so, in Korean eyes.

A corollary of the Korean's reluctance to anticipate all unpleasant possibilities is his willingness to address problems as they arise, to change course accordingly, and to provide the time and effort necessary to effect a smooth transition. The American viewpoint, on the other hand, is to plan in advance and to exchange desired changes for concessions in other areas. Koreans often change course during a business venture precisely because they have not planned carefully in advance, and they assume that the other party involved will understand their requests for unilateral changes when the need for such a change becomes apparent. For Koreans, the spirit of a contract is much more important than the letter, in accord with the emphasis on harmony and good relations from the beginning.¹⁵

C. *The Role of Lawyers*

Law and lawyers do not play a major role in Korean society.¹⁶ By contrast, the legal system is an integral part of American life.

14. "In interpersonal transactions such as negotiations, mediation, and conciliation, and in formal official and legal settings, faithfulness, loyalty, 'face,' disgrace, apology, begging humbly, and repentant attitudes are extremely important." *Id.* at 53.

15. "Contract cannot be relied upon to achieve the intended results. Adherence to a contract according to its terms will last while the contract works to the benefit of both parties." Meyer, *The Legal Process in Korea*, in *CURRENT LEGAL ASPECTS OF DOING BUSINESS IN JAPAN & EAST ASIA* 342, 343 (1978) (hereinafter cited as Meyer).

16. Korea has less than two percent of the number of lawyers per capita than the United States.

American culture is largely based on national use of the English language and a complex politico-legal system. To be an American, one must be a United States citizen and profess ideals embodied in the United States Constitution.¹⁷ To be a Korean, however, is to be a member of a Confucian tribe, which has occupied its ancestral lands for centuries, and to have a daily life that is governed by family obligations and social custom.¹⁸ In Korea, litigation is a last resort, and those involved are frowned upon. Lawyers are simply not part of the Korean businessman's daily life.

The virtual absence of lawyers from Korean business negotiations exacerbates the linguistic and cultural differences previously discussed. Most documents for Korean-United States business transactions are drafted by American lawyers. The Korean party generally negotiates on the basis of the documents, encountering the burdens and limitations previously discussed. A Korean lawyer is engaged only when there is pressure from the American to do so. This is especially true when American banks are involved. Even when a Korean lawyer becomes involved, his or her role is often little more than that of a rubber stamp.

Even if the Korean businessman really wants a lawyer's advice, cultural limitations frequently inhibit effective face-to-face, detailed consultation.¹⁹ Such face-to-face consultation may be embarrassing when it reveals that the Korean business itself has not adequately defined its needs and desires, or that the Korean lawyer is generally inexperienced in the particular area of business concerned.

Furthermore, Korean lawyers are not inclined to become involved in detailed negotiations. Korean lawyers, unlike the typical American lawyer, are not comfortable with the Socratic method of problem analysis. A Korean lawyer's training follows the continental European civil law tradition. This training consists of study, lectures, and the written analyses of data.²⁰ A Korean lawyer is not trained to elicit facts from his client, but rather to rely on those facts which the client has chosen to reveal.²¹

The same hesitancy to probe that which is not immediately apparent is also encountered when a lawyer is consulted in a potential litigation matter. Korean companies often seek legal counsel when a dispute arises, even if the dispute has not yet reached the formal litigation stage. The lawyer's role, however, is still often limited to

17. See S. P. HUNTINGTON, *THE PROMISE OF DISHARMONY* (1982).

18. See generally Byoung Ho Park, *Traditional Korean Society & Law*, in *BUSINESS LAWS IN KOREA: INVESTMENT, TAXATION & INDUSTRIAL PROPERTY* 3 (1982).

19. See Meyer, *supra* note 15, at 13.

20. See generally Dainow, *The Civil Law & the Common Law: Some Points of Comparison*, 15 *AM. J. OF COMP. L.* 419 (1967) (hereinafter cited as Dainow).

21. *Id.* at 429.

general advice based on piecemeal documents offered by the client. Face-to-face discussions, research of facts, and strategy sessions simply do not lie within the frame of reference of most Korean lawyers or clients.

Korea's legal system has not developed at the same rapid pace as her economic status. At the recent GATT²² talks in Geneva, Switzerland, the United States proposed the removal of barriers to international trade in services, as well as those in manufactured and agricultural products.²³ Legal advice was one of those services. Thus, to respond to the American proposal, Korean lawyers would have to begin competing internationally, just as Korean manufacturers currently must compete.

The author encourages American corporations to consider employing Korean lawyers trained in the United States to represent them in Korea.²⁴ American lawyers are also encouraged to base Korean-American contract negotiations on Korean proposals. This would provide a check on negotiations conducted in English, and it would help to ensure that the contract embodies the mutual intentions of the parties. The goodwill and harmony generated by the willingness of an American company to utilize a Korean contract proposal can only enhance Korean-American business relations.

D. Korean and American Systems of Law

One must keep in mind that the notion of the law as an autonomous body of rules or standards that must be obeyed despite any conflict with moral standards or custom was introduced in Korea by the Japanese less than 100 years ago.²⁵

Two major bodies of Korean law are significant from the viewpoint of United States-Korean trade relations. The basic civil and commercial codes conceived by the French and the Germans and introduced by the Japanese are generally complete, well-integrated, and internally coherent.²⁶ Nevertheless, like all civil law codes, they consist of general principles of law with little specialty. In more mature civil law systems, legal codes are expounded on by scholarly treatises and even case law, although the latter carries much less

22. General Agreement on Tariffs & Trade, Tokyo Round of Multilateral Trade Negotiations, Geneva, Switzerland, April 1979.

23. See generally *Symposium on the Multilateral Trade Agreements II*, 12 *LAW & POLICY IN INT'L BUS.* 1 (1980).

24. In Seoul there are few Korean lawyers who have received legal training in both Korea and the United States. These lawyers are members of the Korean bar and they belong to one or more state bars in the United States. Sound policy would seem to dictate that the Korean Government increase this group of lawyers as rapidly as possible.

25. Law in the Western sense is still a stranger to Korean culture. See *INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF KOREA*, Chapter 1 (Sang Hyun Song ed. 1983).

26. See *Choi*, *supra* note 13, at 35.

weight in civil law systems than in common-law systems.²⁷

Korean courts and lawyers are faced with the dilemmas created by only thirty-five years of Korean political and legal history and little accumulation of either scholarly treatises or cases. The historical gaps create uncertainty for all parties.

Determination of the law in the area of economic regulation is far more difficult than the challenges presented by either the application of codes to actual cases, or the legal interpretation offered in case law and treatises.²⁸ Unlike the traditional codes which comprise a more or less complete picture, and one which is at the same time internally consistent, the economic regulatory laws are a hodgepodge, borrowed from all over the globe, but predominately from Japan and the United States, as well as a variety of other nations.²⁹ Thus, the economic regulations are internally inconsistent and do not form a complete, coherent whole.

A further problem for foreign companies is presented by the rough hierarchical division of the various bureaucracies of the governmental ministries. The higher echelon is often staffed with American trained personnel, able to communicate well in English, who are aware of American legal ideals. The lower levels, however, are typically staffed with Koreans with no experience abroad, and who have had only six years of secondary school English studies with emphasis primarily on reading comprehension. It is the lower level personnel, however, who develop the details of economic policy and apply them to actual cases. Unfortunately, this often takes place without any real communication with foreign companies, and consequently is done in a narrow, somewhat xenophobic manner.

At this point, the American reader may be resolving that he will never allow the interpretation of any contract he negotiates to be controlled by Korean law. Prior to such a determination, however, one should consider the American legal system from the point of view of the Korean businessman. If Korea has a paucity of law, the United States has a fecundity of law. The complex and unpredictable character of the American legal system with its fifty separate sovereign states and its federal government is unequalled in the world. It has an independent judiciary, which hands down decisions following the latest trends in social and economic theory, as well as a plethora of federal and state regulatory bodies. Another disadvan-

27. See Daninow, *supra* note 20, at 15.

28. See Lee & Callaway, *Foreign Exchange Controls in Korea & Their Impact Upon International Commercial Transactions*, in *BUSINESS LAWS IN KOREA: INVESTMENT, TAXATION & INDUSTRIAL PROPERTY* 246 (1982).

29. For example, Korean labor laws were adopted from the United States despite differences between labor conditions and the labor movement in the United States and Korea. As a result, application of these apparently similar laws differs between the two countries.

tage of the American legal system from a Korean perspective is the exorbitant cost involved in a legal proceeding. Litigation from half-way around the world is not a realistic possibility for most Koreans unless millions of dollars are involved. From a purely economic standpoint, few Korean businessmen could realistically afford to have American law control contract negotiations if they actually believed litigation were a serious possibility. This reality should be considered when American lawyers participate in negotiating a contract drafted as if its provisions were actually going to be litigated.

The author would urge Americans to realize that they are among the most aggressive and direct peoples in the world. American lawyers often negotiate as if they were preparing for an inevitable lawsuit. As previously discussed, Koreans generally prefer any alternative to the disgrace associated with litigation. Thus, the system of arbitration is fairly highly developed in Korea. Specifically, Korea acknowledged receipt of American arbitration awards in 1957 through the Friendship, Commerce and Navigation Treaty with the United States.³⁰ Korea and the United States are both signatories of the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards.³¹ In addition, since 1966 Korea has had a detailed Arbitration Act which both permits parties to a dispute to set their own terms for arbitration and provides terms not specifically agreed upon by the parties.³²

It is the author's opinion that the negotiation of any United States-Korean contract will be enhanced by agreeing at the beginning of negotiations to adopt a detailed arbitration clause. The advantages of arbitration over litigation are numerous, and include understandable, flexible, and informal procedures, confidentiality, reduced costs, and the possibility of a compromise not available in a court of law.³³ Careful consideration of an arbitration clause in a contract ensures the parties that the arbitrators will be knowledgeable individuals in whom both parties have confidence.³⁴

Zealous American lawyers invariably over-negotiate contracts with Koreans. Their enthusiasm for anticipating all contingencies would be better directed at careful drafting of the arbitration

30. Treaty of Friendship, Commerce & Navigation, Nov. 28, 1956, United States-Korea, art. V, 8 U.S.T. 2217, 2221, T.I.A.S. No. 3947.

31. Convention for the Recognition & Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 3.

32. See Song Kun Liew, *Commercial Arbitration in Korea With Special Reference to the UNCITRAL Rules*, 5 KOREAN J. COMP. L. 69 (1977).

33. See generally McLaughlin, *Arbitration & Developing Countries*, 13 INT'L LAW. 211 (1979).

34. For details in drafting, see McClelland, *International Arbitration: A Practical Guide for the Effective Use of the System for Litigation of Transnational Commercial Disputes*, 12 INT'L LAW. 83 (1978).

clause.³⁵ Provisions for partial arbitration should also be a priority. Careful attention to the use of an arbitration clause should enable lawyers to incorporate procedures into their contracts by which the parties can reconcile differences and preserve business relations despite disagreement.

E. Contrasts in the Relation of Business to Government and in the Organization of Business

Koreans and Americans have very different views of the nature and role of business in society. Business, both manufacturing and trading, lies at the heart of the American culture. Even American society is viewed as a contract. It is a contract between individuals in which each agrees to give up certain natural rights in exchange for an organized society.³⁶ The federal form of government in America is itself the result of an agreement between the various sovereign states. Furthermore, the real business of America is business. The archetypal American is the small entrepreneur. Even the American farmer regards his land as a commodity, not as the burial place of his ancestors.

Unlike in the United States, until very recently, Korean merchants were considered the lowest class of free men in society, ranking far below scholars or the aristocracy, or even peasant landholders. The Korean Government, therefore, tried to avoid entanglements with business interests to the greatest extent possible. On the other hand, there is a long tradition of governmental monopolies over such commodities as salt and silk in Korea. Government control of industrial development in Korea is further extended by Korean support for the Confucian concept of government leaders as "benevolent fathers." It is felt that the role of governmental heads is to lead the masses along the path of righteous behavior in order to ensure a strong and fruitful nation. Thus, it is not surprising to observe that in modern Korea the growth of business is viewed as a national effort requiring constant and conscious control by the State. Economic betterment in Korea is neither the happy consequence of many individuals struggling to better themselves nor the result of an invisible hand. Instead, economic betterment is viewed as an accomplishment of the entire nation, requiring sacrifices from all.

Americans and Koreans also harbor radically different attitudes toward concentrated economic power. From the Sherman Act³⁷ to

35. The notion of having the Korean contract proposal control might be one provision in a carefully drawn arbitration clause.

36. For an examination of individualism in the American context and its economic and political consequences, see L. HARTZ, *THE LIBERAL TRADITION IN AMERICA* (1955).

37. Sherman Antitrust Act, 26 Stat. 209 (1890) (current version at 15 U.S.C. § 1 (1982)).

the Windfall Profits Tax on oil conglomerates,³⁸ American legislatures, responsive to their electorates, have responded to interlocking trusts and large corporations as threats to the traditional American values of political and economic equality, personal freedom, and individualism.³⁹ The ideal American businessman is not the manager employed by a large corporation, but the entrepreneur. If the entrepreneur builds a mighty corporation, he becomes an object of admiration. Such admiration, however, is tempered with suspicion. Thus, when the American entrepreneur actually exercises the economic power he has created, he will be viewed at best a tycoon, at worst, a thief.

The typical Korean has no aversion to concentrated economic power nor is his self-esteem affected by the wealth and power of those other than himself. He would like to be promoted within the hierarchy to which he belongs, and he is often very ambitious in pursuing this goal. However, he does not challenge the existence of the hierarchy itself. He does not regard as a personal affront the requirement that he acknowledge the superiority of those in the upper echelon. The typical Korean unabashedly admires individuals who can benefit themselves, their families, and their descendants with the fruits of their labor.

The Korean perspective has fostered a concentration of economic power in Korea unequalled in the United States. Much of Korean industry is organized into major "groups" or loosely structured conglomerates.⁴⁰ The largest of these, Hyundai, is still largely led by the individual who started it. In 1981 the total sales of Hyundai were over seven billion dollars.⁴¹ In order for an American corporation to have the economic significance to the United States that Hyundai has to Korea, such American corporation would have to have sales in excess of 200 billion dollars.

The decision making power of the individuals in top management who lead these groups is not as restrained by the need for consensus as in a country like Japan.⁴² Korean organizations of any size, whether they are corporations, law firms, or universities, usually empower an individual similar to a chief executive officer in American

38. 26 U.S.C. § 4986 (1982).

39. "If the concerted powers of this combination are entrusted to a single man, it is a kingly prerogative, inconsistent with our form of government, and should be subject to the strong resistance of the State and national authorities." 21 CONG. REC. 2457 (1890) (statement of Sen. Sherman).

40. "(In 1983) only 8 large conglomerates accounted for half of all (South Korea's) exports." *Newsweek*, July 9, 1984 at 9.

41. Hyundai is the largest of four or five similar groups.

42. See Jun Mori, *A Practitioner's Perspective on Negotiations & Communication with Japanese Businessmen*, in CURRENT LEGAL ASPECTS OF DOING BUSINESS IN JAPAN & EAST ASIA 47, 50 (1978).

corporate structures to make quick decisions and achieve fast results.

This Korean concept of concentrating economic power has had the practical effect of preventing many commercial disputes in United States-Korean trade. Each of the nine largest Korean groups has its own trading company to market the full range of goods produced by the companies in that group. These trading companies generally employ individuals with sophisticated knowledge of international commercial matters, including the full range of potential legal difficulties likely to be encountered. The expertise of these individuals facilitates quick resolution of disputes which may arise. Indeed, the existence of these trading companies may be the single most important reason for the avoidance of many commercial disputes between the United States and Korea. However, it is also true that these large Korean conglomerates, representing a high degree of industrial concentration, both create ongoing problems in current United State-Korean trade relations as well as represent potential sources of problems in the future.⁴³

Although Americans are suspicious of concentrated economic power, they are even more wary of concentrated governmental power. Americans prefer self-regulation, whether by a governmental system of checks and balances, or through the advocacy of a free market and a self-deterministic economic system.

Unlike the United States, Korea has neither a tradition of individualism nor a deep-rooted aversion to concentrated governmental power. In the past twenty years, Koreans have seen close governmental supervision of the economy produce the economic miracle. Americans, therefore, must expect the Korean Government to be a de facto third party to any international trade agreement.⁴⁴ Korea has moved in less than one hundred years from agrarian neo-Confucian feudalism to large scale industrialization without a Renaissance, a Reformation, or an Age of Enlightenment.

43. These arise largely in the areas of dumping and antitrust. *See infra* notes 104-11 and 108-117 and accompanying text.

44. A recent report of the Korean Economic Planning Board concluded that of the 697 contracts negotiated between Korean companies and foreign companies between April 1981 and February 1983, 271 were unfavorable to the Korean company. The typical American response would be to congratulate the 271 American companies for their successful bargaining efforts. The response of the Korean Government was to order the 271 Korean contractors to correct the terms of the contracts. Restrictions on exports of commodities produced in Korea with licensed foreign technologies were specifically frowned upon. Such restrictions were out of line with Korea's commitment to increase exports. Knowledge of Korean economic and social policies is a prerequisite to successful negotiations with Korean companies. *See generally* Chan-Jin Kim, *Legal Problems of Doing Business in Korea*, in *CURRENT LEGAL ASPECTS OF DOING BUSINESS IN JAPAN & EAST ASIA* 384 (1978), in which the author analyzes the role of foreign capital in Korean economic growth in recent years, and discusses several governmental acts affecting the legal framework of doing business in Korea. *See generally* *BUSINESS LAWS IN KOREA: INVESTMENT, TAXATION & INDUSTRIAL PROPERTY* (Chan-Jin Kim ed. 1982).

IV. Supervision of Trade by the Korean Government

Before proceeding to problematic areas in United States-Korean trade, some of the key devices employed by the Korean Government to help regulate, stabilize, and expand the economy will be enumerated. Awareness of these measures will aid in understanding the specific examples to be discussed in Section V.

A. Foreign Exchange Control

Under the Korean Exchange Control Act⁴⁵ and subsidiary decrees, strict comprehensive controls are imposed on all foreign exchange transactions involving the South Korean won⁴⁶ and all import or export of foreign currency to or from Korea.⁴⁷ These restrictions apply to all international business transactions. The purpose of the restrictions is to stabilize the value of the domestic currency and to ensure the effective utilization of all foreign exchange funds.⁴⁸ As a practical matter, obtaining foreign exchange approval for any business transaction allows the Government to review and withhold approval of any commercial transaction it deems contrary to Korean business interests.

Both Korean and American business interests will be substantially enhanced when the strength of the South Korean economy makes it possible for the won to be fully convertible. In the meantime, some of the foreign exchange regulations do have the beneficial side effect of protecting foreign companies. For example, when the foreign concern makes payment in advance, the Korean company must complete deliveries within six months of receipt of payment.⁴⁹

The rationale for this rule is twofold. First, the Government does not want advance payments to become a means of circumventing its approval process for loans to Korean companies. Second, the Korean Government believes it is vital that all Korean exporters

45. Korean Foreign Exchange Control Act, Law No. 933 (Dec. 31, 1961) [hereinafter cited as Control Act].

46. For instance, article 5(1) of the Korean Foreign Exchange Control Act states that the Minister of Finance shall decide the basic exchange rate "between the domestic currency and foreign currencies . . ." Paragraph (3) of the same article allows the Minister of Finance, with the approval of the President following consideration by the State Council, to make exceptions to that practice. All of Chapter II of the Act deals with issuance of permits for foreign exchange transactions. *See generally id.* at arts. 5-13 and 17-20.

47. *E.g.*, Enforcement Decree of the Foreign Exchange Control Act, *amended* by Cabinet Decree No. 382 (Jan. 19, 1962); Foreign Exchange Control Regulations, *amended* by Ministry of Finance Notice No. 261 (Nov. 27, 1964); Foreign Exchange Deliberation Committee Regulations, Cabinet Ordinance No. 399 (Jan. 24, 1962).

48. *See Lee & Callaway, Foreign Exchange Controls in Korea and Their Impact Upon International Commercial Transactions*, in *BUSINESS LAWS IN KOREA: INVESTMENT, TAXATION & INDUSTRIAL PROPERTY* 246 (1982) [hereinafter cited as Lee & Callaway].

49. Control Act, *supra* note 46.

develop a reputation for reliability. A late delivery by one company may prejudice other Korean exporters. A violation can lead to sanctions including a ban on the right to export.⁵⁰ The threat of a ban on exports is such a powerful deterrent that Korean companies almost never violate the six month rule, which in turn protects the foreign company willing to make advance cash payments.⁵¹

B. Licensing Requirements

1. *General Licenses.*—Under the Korean Foreign Trade Act,⁵² any corporation or person intending to engage in the business of export/import must obtain a license from the Ministry of Commerce and Industry (MCI).⁵³ If a foreigner wishes to engage in trade in Korea, he must also apply to the MCI which then refers the application to the Foreign Trade Committee for “deliberation.”⁵⁴ In effect, although the Government may exclude foreigners from the export/import business in Korea, a few licenses have been issued. The decision whether or not to issue licenses is discretionary, and cannot effectively be challenged.⁵⁵

2. *Licenses for Particular Transactions.*—A manufacturer who wishes to export has two choices. He may use a licensed trading company, or he may apply for a special license himself.⁵⁶ Regardless of whether an exporter uses the first or second method, he must obtain a separate license which describes the basic trade terms such as price, quantity, and subject matter. By the same token, a business

50. See Foreign Exchange Control Act, Law No. 933, arts. 35-38; Foreign Exchange Control Regulations, amended by Ministry of Finance Notice No. 361, arts. 19-14 to 19-29.

51. This last example also illustrates the use of foreign exchange control by the Korean Government to supervise matters having little to do with the usual goals of exchange controls, such as exporter reliability. If the American businessman or lawyer notes that Korean foreign exchange controls are a window through which the Government keeps watch over the Korean economy, the strictness and comprehensiveness of these controls become more understandable, if not easier to bear. See Lee and Callaway, *supra* note 49, at 52.

52. Foreign Trade Transactions Act, Law No. 1878 (Jan. 16, 1967).

53. *Id.* at art. 3. Another aspect of this license requirement provides for licensing of General Trading Companies (GTCs). GTCs are granted special benefits not provided most Korean trading companies, such as permission to have extra personnel in overseas offices and to use revolving letters of credit. In order to be designated a GTC, a trading company must export more than two percent of Korea's gross exports and have its shares publicly traded. Presently, there are 10 GTCs which include some of Korea's largest business contingents, such as Hyundai Corporation, Bando Sangsa (Luckey Group), Daenco Corporation, and Kukje Corporation.

The predominance and expertise of Korea's large trading companies (which accounted for about 50% of Korea's exports in 1983) has probably been a significant factor in minimizing trade disputes between individual parties.

54. Foreign Trade Transactions Act, Law No. 1878 (1967) as amended by Law No. 1781 (1975) art. 3, ¶¶1-3.

55. There is an absence of normal administrative law procedures in the Korean legal system. See *supra* notes 29-39 and accompanying text.

56. Trade licenses are granted to only those entities that export products they have produced themselves.

that wishes to import must either be a trading company, or it must acquire a special license. A license is granted only if the imported item is to be used by the company itself, such as equipment for its business. A separate license for each transaction must be obtained.⁵⁷

3. *Classification of Goods for Licensing Purposes.*—The MCI classifies export and import goods into three categories: (1) goods earmarked for export or import which are automatically approved; (2) goods which may be imported or exported subject to approval; and (3) goods which are prohibited from import or export. This classification should be made annually or biannually, with at least thirty days notice of any change.⁵⁸ If a contract has been signed but no letter of credit has been opened or approval obtained, a change in classification of the type of product in question (for example, from a good subject to approval to a prohibited good) may prevent either party to a contract from performance.⁵⁹ In contemplation of this possibility, all contracts in United States-Korean trade should have in them a *force majeure* clause.

In the case of goods which may be traded subject to approval, the MCI has delegated responsibility to the Foreign Exchange Banks for issuing the separate export or import license mentioned above.⁶⁰ The licenses may be issued upon the recommendation of either the relevant government authority⁶¹ or the relevant manufacturer's association.⁶²

4. *Export Inspection.*—Finally, in order to minimize the quantity of below par exports by Korean companies, a quality inspection of the goods is required before an export license will be issued. The types of goods requiring inspection was recently reduced by nearly a third, from 770 to 564 different types.

C. *Price Setting and Adjustments for Orderly Markets*

The MCI is given the power to set the price at which a particu-

57. If a Korean manufacturer chooses to obtain a license through a trading company, it may be difficult to determine the party liable for non-performance of a contract with the foreign buyer. A GTC with offices in the United States (e.g., Hyundai Corp. or Kukje Corp.) would be a preferred defendant because of its deep pocket and its susceptibility to United States jurisdiction.

58. The classification, however, can be changed without notice even though a letter of credit has been opened in regard to goods, or their export or import has been approved, so long as the goods remain unaffected by the change. See Foreign Trade Act, Law No. 1878 (1967) art. 9.

59. *Id.*

60. Foreign Trade Transaction Act, Enforcement Decree, art. 32, para. 1(2).

61. E.g., such as a recommendation by the Ministry of Fisheries and Agriculture for importation of farming machinery.

62. E.g., such as the Textile Manufacturer's Association in the case of the proposed importation of machinery for the manufacture of textiles.

lar good may be exported or imported.⁶³ This price setting authority is frequently used to set high export prices to prevent excessive price competition among Korean exporters. Another common practice is to set tariffs high enough to prevent the import of certain goods. Of course, contract prices may be adjusted subsequent to any change in the government mandated price. In practice, the MCI has delegated the setting of these prices to particular trading associations.

The MCI is also authorized to make "adjustments" to ensure the maintenance of order in the export and import of goods.⁶⁴ The MCI is empowered to regulate the conduct, prices, and conditions of Korean companies bidding for international contracts overseas, and to adjust the quantities of imports or exports as well as the terms of agreements relating thereto. Article 22 gives the MCI the power to intervene and partition markets in situations where, because of excessive competition among Korean exporters, prices are unprofitably low.⁶⁵ It also allows the MCI to control export of goods to particular countries in quantities that may threaten trade relations.⁶⁶

D. Summary of Government Policy

Korea is resource poor and consequently must import to survive. At the same time, the Government's policy of rapid economic growth has forced the adoption of an export promotion policy designed to increase the size of the domestic Korean market. Thus, both imports and exports are essential to Korea's economic and social health. This is true for Korea to a far greater degree than for virtually any other major nation.⁶⁷

Export concerns such as quality control, minimization of excess competition, and export incentives are of fundamental interest to the Korean Government. The Government desires to control the flow of imports to protect fledgling industries with export potential, and to ensure the financial stability of the economy by preventing uncontrolled outflow of foreign currency. Imports unnecessary to national development are a luxury that cannot be afforded. These controls evidence the central economic policy of rapid growth through export promotion. An understanding and awareness of this policy and its legal ramifications can be of immeasurable value to the foreign businessman who wishes to deal with the Korean business community.

63. See Foreign Trade Act, Law No. 1878 (1967) art. 10.

64. See Enforcement Decree of the Foreign Trade Act (1967) art. 22.

65. *Id.*

66. *Id.* Recent examples include shoes and steel exported to the United States.

67. One writer has argued that certain industrialized countries are dependent on trade to a comparable degree, but the advantages they enjoy as advanced economies, with high levels of capital formation and with trade dominated by capital and technology intensive products, as well as their position in the European Common Market effectively makes them less dependent.

V. Problem Areas in United States-Korean Trade

The earlier contrast of United States-Korean culture and economic regulation provides background for a discussion of several areas of concern for lawyers and businessmen involved with United States-Korean trade.

A. Protectionism

The first and most significant group of problems arises because Korea and the United States are members of the same world economy, and because laborers from both countries compete in the same labor pool. The current standard of living and wages in Korea are reminiscent of the United States just after the First World War. A "good job" in Korean industry pays no more than \$3.00 per hour,⁶⁸ and everyone, white collar and blue collar alike, expects to work on Saturdays. A worker earning \$3.00 per hour who works on Saturday is not impoverished. He is comfortably housed, his family eats well, he owns a television and he enjoys drinking with his friends after work. On the other hand, he does not own a car or a boat. He does not take expensive vacations. His wife does not buy expensive prepared foods. In sum, his lifestyle is comparable to that of an American worker with a "good job" sixty years ago.

In many basic industries, the low cost of Korean labor outweighs the disadvantages of lower productivity per worker and transportation costs. Competing American companies and their workers have responded with protectionist measures.

1. *Korea's Place in the United States Generalized System of Preferences.*—One of the current points of stress in United States-Korean trade relations concerns Korea's place in the United States Generalized System of Preferences (GSP).⁶⁹ The GSP was created by the United States Trade Act of 1974, and it became effective in 1976.⁷⁰ In brief, the GSP authorizes the President to exempt from import duties certain eligible products imported into the United States market from designated developing countries.⁷¹ Currently, the United States GSP program grants duty-free treatment to 3053 products from 140 different developing countries and territories.⁷²

68. \$3.00 per hour was high for even skilled workers in machine industries in 1983. Unskilled workers in small enterprises are paid far less, but they are still efficient, productive workers. See Park, *Wage Determination in the Republic of Korea*, (1980) (unpublished Ph.D. dissertation, Cornell University).

69. See Trade Act of 1974 §§501-05, 88 Stat. 2066 (codified at 19 U.S.C. §§2461-65 (1975)).

70. Office of U.S. Trade Representative Press Release at 3 (March 27, 1984).

71. See generally Note, *The Generalized System of Preference: Nations More Favored Than Most*, 8 LAW & POL'Y IN INT'L BUS. 783 (1976).

72. Since implementation of the program in 1976, the value of imports receiving GSP

As a practical matter, the GSP has been a particularly advantageous program for the five countries which have received seventy percent of the total benefit of the program from 1976 to the current year, 1984.⁷³ Those countries are South Korea, Taiwan, Hong Kong, Brazil, and Mexico. These five nations have profited because their industrial development in the late seventies enabled them to benefit significantly from such a duty-elimination program.

The Reagan Administration is theoretically committed to encouraging free trade and free market competition. The Administration is also unusually responsive to pressures from American businessmen vulnerable to foreign competition. By Executive Order, the Reagan Administration instituted a policy of discretionary removal or "graduation" of a country from the benefits of the GSP, product-by-product.⁷⁴

Under the original GSP program, a country automatically lost its preference if over fifty percent of a particular item imported into the United States came from that country.⁷⁵ A country also lost its preference if its total exports to the United States of that particular item exceeded a certain amount tied to the United States' GNP.⁷⁶

The new system of discretionary graduation by the President has been added to the older, more certain criteria. The accelerated pace at which South Korea's exports to the United States are being graduated from the GSP by executive decree can be regarded as indicative of the view of the United States Congress and the Administration that the GSP program has been aiding countries that really do not need help. In the words of Trade Ambassador William Brock, "These changes (discretionary graduation of countries and items from the GSP) reflect the Administration's recognition of the achievements of the more advanced developing countries in attaining a higher level of competitiveness in certain products in the interna-

treatment has risen from \$3.2 billion to \$10.8 billion in 1983. GSP imports account for 4% of total imports into the United States. Office of U.S. Trade Representative Press Release at 3 (Mar. 27, 1984).

73. *Id.*

74. Exec. Order No. 12,354, 47 Fed. Reg. 13,477 (1982). For the year beginning on March 30, 1984, South Korea lost duty-free treatment on goods constituting almost \$32,000,000 of exports to the United States in 1983-84. This is in addition to even bigger losses from earlier years. See Office of U.S. Trade Representative Press Release (Mar. 27, 1984).

75. Trade Act of 1974 §504(c), 88 Stat. 2066 (codified at 19 U.S.C. §2464(c) (1975)). The President is required to withhold or withdraw preferential treatment if he determines that a participating country has, during the previous calendar year, exported to the U.S. more than \$25 million worth of an otherwise eligible article or has exported to the U.S. a quantity of an eligible article equal to or exceeding 50% of the total U.S. imports of that article. A de minimus provision added in 1979 allows the President to waive the fifty percent limit if total U.S. imports of an item do not exceed a certain monetary amount. For 1981, that amount was \$1,371,017.00

76. In 1983 the ceiling on any particular item from any single country was set at \$7.7 million.

tional marketplace.”⁷⁷

The procedures for determining whether countervailing or anti-dumping duties may be imposed are of an almost adjudicatory nature, but securing relief from duties under the GSP or having such relief denied is a much more informal matter.⁷⁸ The costs associated with this informal procedure are numerous. The proposition that the process of graduation is politically oriented is supported by concessions of the Office of the United States Trade Representative to the effect that graduation of products is done primarily in response to petitions filed by American producers or labor unions.⁷⁹ The grant of the petitions is extremely advantageous to the American union or producers involved in the relevant industry. One must keep in mind that the advantage of limiting the President's discretion in this area and having nations lose their duty preferences only when exports to the United States from any one country exceed a specified percentage of all United States imports of that item is that free trade is enhanced.

The second major problem of the present informal system of graduation from GSP benefits is the uncertainty it promotes within the infant industries of the developing nations. Under the clear criteria of dollar volume or percentage of total imports, a company or a government could calculate fairly closely when it would lose its duty-free treatment on a certain item, and it could then decide whether the increased business would make increased production and export worthwhile. Under the current framework, however, scenarios such as the following can easily occur: A nation exceeds the statutory limit and cuts back its exports to within the limit. The President then refuses to redesignate the item for GSP treatment, as is within his discretion.

Because preferential treatment depends on indefinite criteria and review by the Office of the United States Trade Representative, developing countries such as Korea cannot plan business expansion or make intelligent decisions regarding the allocation of scarce manufacturing resources. Regardless of one's views as to the issue of the duty-free treatment for South Korean products, the criteria for duty-free treatment should be as certain as possible, with guidelines flexible enough to allow application to a variety of situations. Additionally, such certainty may deter corruption and encourage national business planning in both Korea and United States.

77. This achievement appears to be one measure of the GSP program's success. See Office of U.S. Trade Representative Press Release at 1 (Mar. 19, 1982) (hereinafter cited as Press Release).

78. See 15 C.F.R. § 2077 (1981)(regulations concerning GSP review).

79. See Press Release, *supra* note 78, at 4.

Korea and several other major beneficiaries of the GSP have profited because they are healthier than many of the other beneficiaries.⁸⁰ Is the philosophy underlying the United States' GSP that a country no longer deserves preferential treatment when such treatment injures United States industry? Perhaps the philosophy is instead that any underdeveloped country may sell in American markets so long as it is able to overcome the impediments of distance and cultural disparity?⁸¹

Or perhaps the reason Korea is being graduated from the GSP is because it is not as impoverished as other countries receiving preferential treatment. The author suggests that this will not withstand scrutiny on moral or economic grounds.

One sophisticated argument to justify graduation of nations benefiting from the GSP is based on the idea that the United States should take such decisive action to prevent nations of comparable economically advantaged positions, such as South Korea, from succeeding in the American market at the expense of even poorer nations.⁸² Such an argument, however, departs from the free trade philosophy that is the best defense of the GSP. The GSP should not be regarded as a subsidy extended by America to poorer nations.⁸³ Instead, the perspective should be that the world economy, including all American consumers, benefits anytime Korea and other developing nations are allowed to sell in America whichever items they can produce more inexpensively than can the Americans. The best way for the United States to help nations more impoverished than Korea is by insisting that Korea and the other relatively wealthy developing nations open their own markets to the products of the less wealthy developing nations. No solution will result from barring Korea from the American markets.⁸⁴

Perhaps the answer to the question of when a nation is suffi-

80. Those countries are becoming so wealthy and productive that their exports are beginning to have an impact on United States industries and workers.

81. The per capita GNP in Korea is still less than 20% that of the United States.

82. A form of that argument appears in the President's report: *First Five Years' Operation of the GSP* (1980).

83. Industrialization is a prerequisite to economic development because it creates jobs in the agricultural sector and raises income per capita in developing countries. This, in turn, increases demand for goods, which raises the level of imports. See DeBoutier, *Tariff Preferences Revisited*, 11 J. INT'L LAW & ECON. 353 (1976).

84. For example, if Indonesia, China, or India can sell textiles in Korea more cheaply than Korean manufacturers, the United States should insist, as the price of completely opening the American market to Korea, that poorer nations be admitted into the Korean market. The per capita GNP of Korea, while less than 20% of the United States per capita GNP, is also more than 300% of the per capita GNP of Indonesia. The same arguments of distributive justice and worldwide economic efficiency which should lead the United States to extend duty-free treatment to Korean exports will also require Korea to extend duty-free treatment to exports from Indonesia. But it is for the United States, the richest, largest and most powerful trading nation, to set the example in extending duty-free treatment to the exports of poorer nations.

ciently developed to lose duty-free treatment can be given in relative terms; it depends upon who is asking whom for duty-free treatment. The author would like to suggest what could be entitled the Rule of Three: *Any nation A should extend duty-free treatment to all of the exports of any nation B, if the per capita gross national product of A is more than three times that of nation B.*

General acceptance of such a rule would go a long way toward solving the "North-South" division and would encourage the Third World to help itself.⁸⁵ It would not impact on trade between the major developed nations, because none has a per capita income three times greater than any of the others. As a developing nation would become richer, it would gradually lose its advantage under the Rule of Three to all but the very advanced nations. The Rule has the dual virtues of being so general as to apply to all countries, and so adaptable as to apply to the economic position of any two trading nations. It provides a definite answer in every case that can be strongly supported by arguments of distributive justice and economic efficiency.

If the Rule of Three can determine when a nation no longer needs duty-free treatment for its exports, can it ascertain whether the advanced nations should be free to export to the developing nations? The argument usually goes as follows: If the United States lowers tariff barriers to Korean goods and thereby injures American domestic industry, do considerations of fairness and economic efficiency also dictate that duty-free treatment be given in Korea for products which the United States can make and sell in Korea more inexpensively than Korean manufacturers? Or, at the least, should not the United States be freely admitted to Korean markets so long as it pays duty?

The answer to this question is necessarily *no*. Protection of both the social fabric and the infant industries of Korea is necessary to its continued industrial development. Even a developing nation as wealthy as Korea could not open itself to the full temptations of the consumer economies of Japan and the United States without disastrous results.

One major advantage of being a developing nation is that a developing nation can learn from mistakes made by developed nations. For instance, consideration of the deteriorated national transportation system of the United States leads many Koreans to conclude that Korea should not emulate the American "love affair" with the automobile. Some Americans contend that it was a mistake to allow such a development even in a country as geographically large as the

85. See generally W. BRANDT, *THE BRANDT COMMISSION* (1979) for a discussion of the North-South division.

United States.⁸⁶ America's major cities underwent extensive social disintegration: the rich migrated to the suburbs while the poor remained in the impoverished city core. The use of automobiles enables American laborers to work long distances from their homes. Public transportation has deteriorated to the point that the automobile has become a necessity of life in the United States, and the poor are left stranded.

Koreans want to avoid such a predicament. Furthermore, Korea does not have sufficient land for the roads, shopping malls, fast food restaurants, and all of the other industrial by-products of the automotive way of life. Additionally, Korea cannot afford the cost of oil associated with heavy reliance of a country on automobiles.⁸⁷ If Korea opened her markets to foreign automakers, she would shortly be paying hundreds of millions of dollars and billions of yen in exchange for serious social problems.

Korea vigorously protects her infant industries' production of socially desirable products. As a general rule, if Korea is able to produce a product domestically, the product will not be imported.⁸⁸ As previously discussed, the author does not believe this policy is justified with respect to nations much poorer than Korea. But what about nations that are much richer than Korea, such as the United States? At this juncture, it would seem that considerations of distributive justice and economic efficiency part company. Economic efficiency dictates that Korea not make what the United States can make and sell in Korea more cheaply. Distributive justice, however, would have Koreans produce such a product so that Korean workers, not wealthier American workers, can profit from such production.

Infant Korean industries must also be protected. Perhaps a Rule of Four or Five should govern the right of the poorer nation to erect tariff barriers to the cheaper products of a richer one. Such a rule would permit only a nation four or five times poorer than another to levy tariffs on the wealthier nation's goods to encourage industrial growth. In such a case, Korea would be justified in imposing tariffs on products of the United States.⁸⁹

86. "Paved roads and streets have been added to the American landscape at the incredible rate of more than 200 miles per day, every single day for at least the last twenty years . . . passenger miles traveled within the U.S. have been increasing at a rate six times faster than the population for at least 25 years." A. TOFFLER, *FUTURE SHOCK* 76 (1970).

87. *But cf.* Owen, *Immobility: Barrier to Development*, in *BROOKINGS PAPERS ON PUBLIC POLICY* 30 (1965) (author suggests that closing the gap between immobile and mobile nations would require, for example, Latin America, Africa and Asia to pave some 40,000,000 miles of road to reach the same ratio of road mileage to area that now prevails in the European Economic Community).

88. The necessity of gaining approval by MCI for all imported goods serves, as a practical matter, as an automatic restriction on the nature of goods that may be imported. *See supra* notes 63-67 and accompanying text.

89. *See* Press Release, *supra* note 78, at 4.

Historically, the United States has generally had a favorable balance of trade with Korea. In the last two years, however, that balance has shifted. It may in the future shift again in favor of the United States. Exports from the United States to Korea are much greater in volume than those from Korea to the United States, even with the benefits of the GSP. The author, however, does not advocate that the balance of trade should be a critical factor in determining tariff relief between two nations. Since world trade is measured on an international scale, nation *A* may have a negative balance of trade with nation *B*, nation *B* may have a negative balance of trade with nation *C*, and nation *C* may have a negative balance of trade with nation *A*. If nation *A* penalizes *B*, *B* penalizes *C*, and *C* penalizes nation *A*, all suffer. Therefore, per capita GNP for a similar measure of a nation's wealth should be the basis for determining duty-free treatment between two nations.

The author has made speculations about international trade and has created the Rule of Three in protest to Ambassador Brock's comments that Korean industry has advanced to the stage where it will be "graduated" from duty-free treatment.⁹⁰ The author wants to stress that although Korea may be among the richest of the poor nations, and as such may itself owe a duty to even poorer nations, Korea is very poor when compared to the United States. Korea has done a great deal to help itself, and the United States has aided Korea more than perhaps any other one nation has ever aided another. What happened to the vision that motivated this assistance?

Denial of GSP preference for a Korean export item such as caulking guns or steel strand woven rope is reported on the back pages of the *Wall Street Journal*. Such news makes the front page of every daily newspaper in Korea, because such denial substantially impacts the particular industry. The dollar amount of direct economic aid given by the United States to Korea makes the money at stake in these tariff disputes seem miniscule. Such tariff disputes consequently make the United States seem to many Koreans to be like the host who lays out a magnificent dinner then tries to save a few pennies at the end with a cheap dessert.

It is feared such a "cheap dessert" is indicative of future American international economic policy. Korea is in the vanguard of nations sufficiently strong enough to adversely impact segments of United States industry, but it is still in need of assistance. Perhaps the United States decision to terminate Korea from duty-free treatment is indicative of a future pattern of the United States responses

90. See generally Barringer & Dunn, *Antidumping and Countervailing Duties Investigations Under the Trade Agreements Act of 1979*, 14 J. INT'L L. & ECON. 1 (1979) (overview of antidumping investigation procedures).

to the economic advance of other developing nations. The United States could either use her economic prowess to create an international economic order in which rich nations aid less wealthy nations even at some expense to the richer nations, or it could react in a protective manner. Adoption of the latter attitude by countries as wealthy as the United States is shortsighted in that living and labor standards around the world will eventually equalize. Free markets and worldwide distributive justice will enable international economic standards to equalize at a much higher level than under any other conceivable alternative. The United States must choose its role in the future international economic order.

2. *Anti-dumping and Countervailing Duties.*—Another source of stress in United States-Korea trade relations is the problem of dumping. Dumping occurs when imports are sold in the United States market at “less than fair value” (LTFV). The President of the United States may impose an additional duty to prevent dumping only if the International Trade Commission (ITC), an independent federal agency, determines that the alleged dumping is a substantial cause of material injury to domestic industry, and the Commerce Department makes an independent determination that dumping has occurred.⁹¹ A key factor in determining whether dumping has occurred is the price for which that product sells in the developing nation. If the price is higher than the export price to the United States, then, according to United States law,⁹² a dumping violation has occurred.

The problems surrounding dumping are more complex than those related to the relief from duties under the United States GSP. In the latter case, Korea simply wants to compete freely in the American market without the burden of a duty, even though United States industry may be damaged by such competition. In other words, Korean manufacturers simply desire to compete on par with United States businessmen. The argument is that if Koreans can make a product cheaper, then United States consumers should get the economic benefit of the lower price, and similarly that United States workers should produce a commodity which a foreign competitor does not offer at a less expensive price. Segments of United States industry may suffer, but worldwide economic efficiency will be served with benefits to all United States consumers.

In contrast, the ban against dumping is viewed by Americans as

91. See Antidumping Act of 1921, 19 U.S.C. §160-71 (1976); Trade Agreements Act of 1979, 93 Stat. 144 (1979).

92. See generally Takacs, *Impediments to International Trade*, in HANDBOOK OF INTERNATIONAL BUSINESS 9, 10-11 (1982).

a prohibition of an unfair trade practice. The United States views dumping prohibitions as being necessary to hold foreign businessmen to American standards of fairness, not as penalizing foreigners for being foreign. Dumping is deemed akin to predatory pricing, a weapon used to unfairly drive competitors out of business, so that prices may be increased.⁹³ Why else, say American businessmen, would a Korean company sell its products at a lower cost overseas than at home?

It must not be forgotten that Korea has gambled her future on an economic strategy in which exports play the pre-eminent role. A factory is built in Korea with the idea in mind that most of its output will be designated for the export market. For this reason, it makes sense to price such output lower in foreign markets than in domestic markets.⁹⁴ Prices may be set higher by the Korean government to discourage domestic consumption and to make more of the product available for export. Prices may also be set higher domestically to reflect domestic consumers' willingness to pay for what they recognize as a quality brand name and to offset the costs of exporting and selling abroad. These measures are regarded as dumping under American law.

The best economic argument against dumping is that although there may be a temporary benefit to the consumer, that benefit cannot continue since the dumped goods are being sold at prices which cannot yield the manufacturer a profit over time. United States manufacturers and workers are consequently injured and perhaps even driven out of business, and then prices are later raised.⁹⁵ The evil of predatory pricing or dumping, as seen through American eyes, is that it really does not represent a lower price, but only a *temporarily lower* price designed to drive out competition.

Suppose, however, that Korea is willing to continue to export steel wire rope at the same low price for a number of years, or that there is other foreign competition that will keep the price down? Suppose the people of Korea are willing to finance the low dumping price by themselves paying a higher price. What is the objection to dumping, except a desire to protect American workers from severe competition? Rather than basing the decision to impose dumping duties by considering domestic prices in the Korean market, it might

93. See Ehrenhaft, *Multinational Enterprises & the Antidumping Law*, 20 HARV. INT'L L.J. 277, 279-80 (1979).

94. See Ehrenhaft, *Protection Against International Price Discrimination: United States Countervailing & Antidumping Duties*, 58 COLUM. L. REV. 44, 47 (1958) in which Viner's categorization of this type of dumping as "persistent" is compared to "intermittent," which involves the more or less frequent and planned sale of goods abroad at prices below those charged to domestic buyers, and "sporadic," which is occasional and unforeseen.

95. *Id.* at 47.

make more sense to ask whether the low prices are temporary only, or whether they represent long term delivery of the product at the same low or negative profit margin.

The salient issue is whether the low dumping price (that is, a lower export price than the domestic price in Korea) is a permanent benefit or a temporary expediency. If other foreign competition or easy re-entry into the market by American companies will prevent a subsequent price rise, or if the Korean Government or Korean company is willing to guarantee the dumping price for a reasonable time, the purpose of any objection to dumping can only be to protect the American market.⁹⁶ This argument can be similarly applied to countervailing duty cases where the triggering factor is subsidization of the foreign competitor by its government.

B. United States Laws Benefiting Consumers

1. *American Products Liability Law.*—The modern American products liability lawsuit in the years ahead will come as a major shock to Korean companies, especially as smaller companies not associated with the big trading houses export more and more to the United States.

American products liability law is unique in several respects. First, it is essentially law made not by government bureaucrats or by legislatures, but by judges and juries. It may be one of the last major areas of development of the common law.⁹⁷ Second, products liability awards seem premised on an almost Protestant sense of responsibility. Some American courts and legal scholars see products liability law as essentially a departure from notions of individual fault.⁹⁸ Moreover, one of the major criticisms of products liability law is that it often assumes that fault is not the main issue.⁹⁹ American plaintiffs attorneys claim that unless the jury *blames* the corporate defendant, in other words, unless they think the corporation did something it should not have done, there is no chance of a damages award of any considerable size.¹⁰⁰ The notion, however, of a powerful company paying millions of dollars to an unfortunate individual dam-

96. *Id.* at 47-48.

97. "In the 1970's, strict liability theories have become the paramount basis of liability for manufacturers of products. Moreover, the development of the strict liability basis has produced the largest caselaw explosion in the history of the law of torts." W. PROSSER, J. WADE, V. SCHWARTZ, *CASES & MATERIALS ON TORTS* 737 (1982).

98. For the view that products liability judgments are essentially risk-spreading devices that operate without regard to questions of fault, see the classic opinion of Justice Traynor in *Greenman v. Yuba Power Products, Inc.*, 59 Cal. 2d 57, 377 P.2d 897 (1963). Attacks on products liability law also often assume that fault is not the main issue.

99. See, e.g., Epstein, *Products Liability: The Search for the Middle Ground*, 56 N.C.L. REV. 643 (1978).

100. For a thorough discussion of punitive awards, see Owen, *Punitive Damages in Liability Litigation*, 74 MICH. L. REV. 1257 (1976).

aged by one of its products, and having the amount of damages determined by twelve laypersons, is as incomprehensible to a Korean as is the attitude that a lawsuit is a shameful way to settle a dispute to an American.

Americans view themselves as bearers of legal rights, and consequently they use law to order society. Korean society, on the other hand, is ordered by custom and tradition. Legal measure is used only to remedy disorders that can be handled in no other manner. Koreans would not blame the corporation in the same way an American jury would. An accident is viewed in Korea as an incident of bad luck or ill fortune, something Koreans accept more readily than Americans. There is no Captain Ahab in Korean literature, and no deep seated need in Koreans to strike out at a corporate Moby Dick when a consumer loses his leg or has half his body burned by a flammable nightgown. For Koreans accidents and ill-fortune are not something that God or General Motors must justify to the victim; they are simply part of the natural order of things.

Third, under American law, trading companies and dealers are frequently as liable as the manufacturer.¹⁰¹ It therefore behooves a Korean company exporting products to America to routinely include in any contract a clause requiring the American importer or retailer to defend any products liability claim against the Korean company, and to indemnify it for any judgment it is forced to pay.¹⁰² Korean exporters should not rely on the inability of an American court to secure jurisdiction over the Korean defendant. The long arm statutes of most of the American states and current interpretations of the Due Process Clause of the Fourteenth Amendment of the United States Constitution normally allow jurisdiction over any Korean company involved in exporting to the United States.¹⁰³ Even if the Korean company itself worked through independent agents in the United States, that independence may be discounted by United States courts and the actions of the agent deemed those of the manufacturer.¹⁰⁴

101. See RESTATEMENT (SECOND) OF TORTS §402A (1977). See also, *Vandermark v. Ford Motor Co.*, 61 Cal. 2d 256, 37 Cal. Rptr. 896, 391 P.2d 168 (1964), in which the court notes that retailers may be the only member of an enterprise available to suit by the injured plaintiff. The court also suggests that retailers may play a substantial role in insuring a product's safety by pressuring manufacturers to produce safer products.

102. See generally Coccia, *Getting Others to Assume or Share the Loss: A Discussion of Indemnity and Contribution*, 17 TRIAL LAWYERS GUIDE 179, 180-83 (1973) (discussion of express indemnity clauses in product liability context).

103. "Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, (1945). See generally Sutterfield, *In Personam Jurisdiction — How long is the "Long Arm" in Products Liability*, 1980 INS. L.J. 447 (1980).

104. See *Coons v. Honda Motor Co., Ltd.*, 176 N.J. Super 575, 424 A.2d 446 (1980), in

With regard to enforcement of a judgment in the United States, an American court's willingness to seize assets will surprise Korean businessmen.¹⁰⁵ In Korea, a respectable company would proceed to actual litigation only with the utmost reluctance. If it lost in court, the company would almost certainly pay voluntarily if it possibly could. Attachment is thus not a customary procedure in Korea. This is not true in the United States, where the American courts seize broad classes of assets at a moment's notice.

The enforcement of United States judgments in Korean courts is virgin territory. There are no cases on record. An American litigant should consider litigating in Korean courts as a last resort, especially in an area as novel to Korean law as American products liability law. The pitfalls are numerous. For example, under Korean law a final judgment of a foreign court is valid only if, "the judgment of the foreign court is not incompatible with public order or good morals in Korea."¹⁰⁶ Given the inconsistency between American products liability law and the Korean legal mind, the Korean ideals of public order and good morals might be deemed by a Korean court to be incompatible with a million dollar judgment for damage to one person by a defective product, however grave the damage.¹⁰⁷

2. *American Antitrust Law.*—American antitrust law is premised on the theory that free and open competition most efficiently allocates economic resources and maximizes consumer benefit. Antitrust law seeks to prevent anticompetitive behavior and excessive concentrations of economic power.¹⁰⁸

In contrast, the Korean Government, in addition to supporting the heavily concentrated structure of Korean industry described above, often takes action aimed at reducing what it considers to be excessive competition in both the domestic and overseas markets. This action has consisted of both jawboning,¹⁰⁹ and concrete directives which, for example, limit the number of companies which may compete in any one field, such as automobiles.¹¹⁰ The rationale for

which jurisdiction was based on the active relationship between a foreign motorcycle manufacturer and its exclusive distributor which ensured sale of the foreign corporation's products. See generally L. FRUMER & M. FRIEDMAN, 3A PRODUCTS LIABILITY §45.01-03 (1983).

105. "There are some jurisdictions, notably the northeastern states, where practically all collection actions are commenced by attachment." R. NEEDHAM & L. POLLACK, COLLECTING CLAIMS & ENFORCING JUDGMENTS 135 (1969).

106. See Art. 203 of the Korean Code of Civil Procedure. See also, Arts. 476 & 477; Kong-Woong Choe, *Jurisdiction in Korean Conflict of Laws*, in BUSINESS LAWS IN KOREA: INVESTMENT, TAXATION & INDUSTRIAL PROPERTY 108 (1982).

107. See Kwang Ha Ko, *The Enforcement of Foreign Money Judgments in Korea* (unpublished paper on file at the firm of Lee & Ko, Seoul, Korea).

108. See generally J. VAN CISE & W. LIFLAND, UNDERSTANDING THE ANTITRUST LAWS (8th ed. 1980).

109. See Korea Times, July 25, 1982.

110. It is a common practice, though not one specifically authorized by statute, for the

this government intervention is that in some domestic industries the relatively small size of the market precludes more than a limited number of competing companies. In overseas markets, excessive competition is discouraged because of its chilling effect on profits and the potential for dumping that such competition produces. Contrary to the attitude in the United States, fierce, unbridled competition is not considered a positive notion by the Korean Government, by Korean businesses, or by Koreans in general.

The combination of a social attitude tolerant of concentrated power, and of a government policy of encouraging economic concentration while discouraging excessive competition, does not prepare the Korean businessman to understand the fundamentally opposite attitude and policies underlying American antitrust law. The average Korean businessman would be astounded to learn that under United States law an agreement to restrain competition by agreeing on prices¹¹¹ or market division¹¹² is per se illegal¹¹³ and could subject the violator to treble damages in favor of private parties, as well as to criminal charges by the United States Government. The astonishment would be compounded by his learning that these laws could be applied to both his conduct and that of his competitors which occurred solely in Korea, so long as such conduct had a direct effect on United States markets.¹¹⁴

It should be noted at this juncture that many sectors of Korean industry have formed associations to coordinate the activities of the members to prevent excessive competition leading to unprofitable export prices.¹¹⁵ The associations also coordinate responses to restrictions imposed on Korean exports by foreign countries, and to promote the products of association members. In effect, the associations assume a role similar to the MCI in trying to ensure the orderly exploitation of export markets. A potential problem with the internal regulatory activities of these associations, and of other informal

MCI to limit the number of Korean companies bidding for foreign contracts. In this area, GTC's are given preferential treatment.

111. *E.g.*, U.S. v. Trenton Potteries Co., 273 U.S. 392 (1927) (proscribed price fixing between competitors regardless of the good intentions of the defendants).

112. *E.g.*, U.S. v. Addyston Pipe & Steel Co., 175 U.S. 211 (1899) (landmark case which ruled against market division).

113. See J. TOWNSEND, EXTRATERRITORIAL ANTITRUST: THE SHERMAN ACT & U.S. BUSINESS ABROAD, 38 (1980), in which the author discusses the rationale of the per se rule. Some types of agreements or business practices are conclusively presumed to produce an unreasonable restraint of trade because the question of whether a business practice has had an ill effect on competition is too difficult to resolve in a judicial proceeding. Therefore, no inquiry need be made into economic data or factual circumstance to determine reasonableness.

114. See U.S. v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945), which established that a state can impose liabilities where conduct abroad has illegal domestic consequences. See also, J. TOWNSEND, EXTRATERRITORIAL ANTITRUST: THE SHERMAN ACT & U.S. BUSINESS ABROAD, 40-81 (1980) for a thorough discussion of precedent leading to jurisdiction.

115. *E.g.*, toy makers, textile manufacturers, and electronics manufacturers.

agreements among manufacturers, is the vulnerability of such arrangements to attack under the American antitrust laws.

Antitrust, therefore, is a potentially hazardous area for Koreans trading with the United States, although at this time the author knows of no American antitrust proceedings against Korean companies arising from anticompetitive activity in the area of trade. There seems to be little doubt, however, that many of the practices of Korean companies are per se violations of the American antitrust laws. In response, many Korean companies could assert the defense that their behavior was ordered by the Korean Government.¹¹⁶

In the area of antitrust, it is incumbent upon the United States to rethink its position on free and open competition. It should not, on the one hand, enforce the antitrust laws against anticompetitive agreements between companies from developing countries on grounds of economic efficiency and benefit to the consumer while, on the other hand, it negotiates voluntary restrictions on exports by those nations and contemplates measures to protect United States business. The United States either does or does not want free competition. American management and labor unions are trying to protect privileges that are as economically unjustified as were the monopoly profits of the oil and tobacco trusts at the turn of the century.

VI. Conclusion

Despite discussion of difficulties in United States-Korean trade relations, it must be stressed that trade relations between the two nations have been relatively smooth, as evidenced by the explosive growth in trade between the United States and Korea over the past decade. United States-Korean trade relations are in fact becoming increasingly problem free. The Korean Government has been accelerating the rate at which it is decontrolling the Korean economy. Such decontrol is occurring not because freedom of enterprise is seen, as it is in the United States, as a good in itself. Rather, the Korean Government realizes that not second guessing responsible businessmen results in economic efficiency and the superior allocation of resources. The Government's net of review and approval has been allowed to become more informal, so that smaller transactions are less rigorously scrutinized.

The major stumbling blocks to open and vigorous trade are increasingly the result of American plans, rather than because of Korean strategy. It is Americans who need to be less bureaucratic, less law-bound, more adaptable and flexible. The Yankee sea captains

116. See *InterAmerican Refining Corp v. Texaco Maracaibo, Inc.*, 307 F. Supp. 1291 (D. Del. 1970), in which the court permitted defendants to defend against a boycott action on the grounds that the boycott had been compelled by the Venezuelan Government.

who opened the China trade with the West 180 years ago were, in many ways, less culturally provincial, more imaginative, and more committed to free trade than their current American descendants.

The stakes are enormous. The author, along with many others, believes that the Far East, especially the Confucian Far East consisting of China, Korea, and Japan, will be the cutting edge of the world economy for at least the next fifty years. The continued prosperity of the United States depends on its being in full partnership with that cutting edge, not on its dragging its heels in opposition. The United States' geography, history, and temperament render it the natural economic ally of the Confucian Far East. The problems discussed in this overview are minor and readily solved if the larger picture is kept in mind. The possibilities and opportunities presented by United States-Korean trade are a major part of that picture. The problems flowing through United States-Korean trade relations are rivers easily bridged.

