

REGULATION OF FOREIGN TRADE IN KOREA

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I. INTRODUCTION

Thirty years ago, Korea accounted for only 0.18% of world trade.¹ By 1993, Korea ranked thirteenth in world trade, accounting for 2.13%.² The growth of the Korean economy during the last thirty years can be attributed in part to an expanding trade relationship with the United States. While the United States is still Korea's largest trading partner,³ Korea has recently exhibited a diversifying pattern away from its dominant reliance on the United States' market.⁴

From the mid-1980s on, trade relations between the United States and East Asian countries intensified as the United States' trade deficit rapidly increased.⁵ Many Korean manufacturers have been charged with engaging in unfair trade practices in the American market.⁶ Secondly, while Korea has gradually opened its domestic market, it has been accused of keeping many important areas closed. Additionally, the United States has complained

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¹ KOREA FOREIGN TRADE ASS'N, STATISTICS OF FOREIGN TRADE (1967).

² KOREA FOREIGN TRADE ASS'N, STATISTICS OF FOREIGN TRADE (1994). Korea is the sixth largest trading partner of the United States.

³ Tae Hee Lee, Current Developments in International Trade and Investment Strategies in the Republic of Korea, Addresses at the Beijing Conference on the Law of the World 9 (Aug. 20 - 26, 1989).

⁴ See *Korea Foreign Trade Promotion Corporation, Foreign Trade*, July 1995 at 36. The ratio of Korea's U.S. exports to its total exports has decreased from 43.7% in 1970 to 22.1% in 1993. Similarly, the import ratio has decreased from 29.5% in 1970 to 21.4% in 1993.

⁵ BANK OF KOREA, MONTHLY BALANCE OF PAYMENTS, 1981, 1989, 1990. In 1980, Korea's trade deficit with the United States leveled off at 0.28 billion dollars. By 1988, Korea had a trade surplus with the United States of 8.65 billion dollars.

⁶ See KOREA FOREIGN TRADE ASSOCIATION, ANNUAL REPORT ON THE IMPORT RESTRICTIONS AGAINST THE KOREAN ITEMS FROM THE ADVANCED COUNTRIES (1995).

that tariff rates for many products are excessive and that administrative regulations virtually prohibit foreign participation in various service markets. Finally, the United States has claimed that intellectual property rights of American citizens are rampantly violated by Korean publishers and manufacturers in the Korean domestic market.⁷

This paper discusses the important features of the 1986 Foreign Trade Act (FTA) of Korea as amended in 1993 to demonstrate what the Korean government has done to promote foreign trade and domestic industries while coping with foreign pressure to open domestic markets and establish "fair" trade practices. Finally, this paper discusses the recent history of Korean-U.S. bilateral relations.

II. LAWS THAT GOVERN IMPORTS AND EXPORTS IN KOREA

A. *A Summary of the Foreign Trade Act of 1986*⁸

1. *Purpose*

The purpose of the Foreign Trade Act is to contribute to the development of a strong national economy through an increase in international trade by simultaneous promotion of imports and exports.⁹ This is exemplified by the reformulation of Article 1 from ". . . the encouragement of export and the regulation of import . . ." into ". . . enlargement of international transactions." The former stood for a trading system heavily regulated by the government which brought about disputes with trading partners in the course of pursuing the policy strictly in compliance with the purpose. The reformulation makes it clear that the purpose of the Act is to step up economic development by increasing international trade through the balanced promotion of imports and exports. Additionally, the inclusion of the phrase "the enlargement of international transactions" in the purpose provision of the Act establishes a legal ground for promoting the import and export

⁷ Sang Don Lee, *Trade Law and Customs of Korea*, in *DOING BUSINESS WITH KOREA* 2, 2 (Thomas J. Schoenbaum & Sang Don Lee eds., 1990).

⁸ Foreign Trade Act, Law No. 3895 (1986) (codified as amended at 5 *CURR. LAWS OF REP. OF KOREA* 2679) [hereinafter FTA]. The Foreign Trade Act was originally enacted in 1967 to replace the Foreign Trade Act of 1957, the Export Promotion Act the Trade Association Act, and the Provisionary Measure Act for Furnishment of the Export Subsidy.

⁹ FTA, *supra* note 8, at art. 1.

businesses and for breaking down the excessive trade regulations imposed on domestic residents. The provision also establishes a fair trade order to prohibit unfair export practices such as dumping, the export of goods produced with government subsidies, and the export of goods which indicate false origins or false trade marks. Also included in the Act are provisions to limit unfair imports from foreign countries which restrict Korean exports. There are indications that the Act will be supplemented further and modified into a complete international trade law in the foreseeable future.

2. *Basic Principles*

The basic principle of the FTA is to promote "free and fair trade" under the conditions prescribed by valid treaties, other international agreements, and generally approved international laws.¹⁰ In the case of provisions which restrict international trade, the government will apply such provisions during a limited period of time and only to the extent necessary to obtain the restrictions' objectives.

The Foreign Trade Act empowers the Minister of Trade and Industry to oversee foreign trade.¹¹ The Minister of Trade and Industry is ultimately responsible for trade administration and as such is given wide discretion in taking measures to promote and regulate trade. Such measures frequently take the form of "administrative guidance," a formal or informal request made by an administrative body for an individual or private company to follow certain government policies.¹² Except in the case of formal administrative guidances such as "directives" or "orders," business people are not required to follow the guidance.¹³

3. *Features*

The FTA provides that all international trade is subject to the conditions of the Act. If the head of an administrative agency desires to restrict the export and import of goods, he should consult in advance with the Minister

¹⁰ FTA, *supra* note 8, at art. 2.

¹¹ FTA, *supra* note 8, at art. 3.

¹² For example, the Government often influences domestic commercial banks from which trading companies obtain loans.

¹³ However, few businessmen would willfully ignore the guidance of the Minister of Trade and Industry. Sang Don Lee, *id.* p. 6. LEE, *supra* note 7, at 6.

of Trade and Industry to determine if such restrictions are permissible under the Act.¹⁴ This requirement is intended to prevent inconsistencies in foreign trade policies by centralizing policy decisions, leaving the Minister of Trade and Industry with the final word on the application of foreign trade laws and regulations.

Generally speaking, the Foreign Trade Act is superior to other Korean statutes. Subsequent statutes cannot supersede the FTA in matters of international trade, unless specifically provided for in the later statute.¹⁵ However, if certain provisions of the Act regulate a particular trade which is also regulated by another statute, both statutes must be complied with as much as possible.¹⁶ When such a conflict arises, the Minister of Trade and Industry will give Public Notices of the guidelines to be followed by coordinating such conflict and by incorporating the coordinated guidelines into an Integrated Public Notice.¹⁷ This makes the Foreign Trade Act the primary law governing international trade.

The Foreign Trade Act, having been enacted by consolidating other related laws and regulations, is a comprehensive law regarding international trade which operates through several major substantive provisions.¹⁸

First, trade businesses and trade agent businesses are distinguished according to their character and transactional qualifications.¹⁹ Second, the Act introduces a system to maintain order in imports and exports by adopting provisions to prohibit unfair import and export trade, to prohibit any unreasonable delay in the settlement of trade disputes, and to provide for conditions and procedures to conclude agreements for reciprocal fair trade with foreign companies.²⁰ Additionally, there are provisions for the establishment of importers' and exporters' trade associations.²¹

Third, the Act establishes a new import relief system in which the Trade Commission investigates injury to the domestic industry caused by excessive imports.²² Fourth, the Act introduces new mechanisms to protect the

¹⁴ FTA, *supra* note 8, at art. 5.

¹⁵ *Id.* at art. 5, 18 and 19.

¹⁶ *Id.* at art. 18-19.

¹⁷ *Id.*

¹⁸ For examples of the related laws & regulations, see *supra* note 8.

¹⁹ FTA, *supra* note 8, at arts. 7 and 14.

²⁰ *Id.* at arts 46-47.

²¹ *Id.* at art. 48.

²² *Id.* at art. 32.

industrial design of export goods, by encouraging the development of new designs which will enhance the value and reputation of export goods.²³

Finally, the Act establishes a Link Trade Promotion Commission which promotes link trades such as barter trade, compensation trade, counter purchase, and industrial cooperation.²⁴ Additionally, when it is necessary for the promotion of link trades, the Commission also has the power to approve special imports or exports which would otherwise be prohibited by other provisions of the Act.²⁵

B. Other Laws That Govern Imports and Exports in Korea

The Customs Act and the Foreign Exchange Control Act are the two additional laws of major significance which govern Korean international trade.²⁶

1. The Customs Act²⁷

The purpose of the Customs Act is to contribute to the development of the national economy, to secure revenue through the proper and reasonable imposition and collection of customs taxes, and to ensure proper clearance of imported or exported goods.²⁸

Customs administration is overseen by the Minister of Finance. The Minister's authority, which is delegated to the head of the Office of Customs Administration,²⁹ relates to the imposition and collection of customs,

²³ *Id.* at art. 49-50.

²⁴ *Id.* at art. 56. Such link practices are crucial to increase trade transactions with countries such as China and North Korea, which have stringent foreign exchange laws.

²⁵ *Id.* at art. 57.

²⁶ Other laws related to international trade in Korea include: the Export Inspection Act, the Export Insurance Act, the Foreign Capital Inducement Act, the Export Association Act, the Free Trade Zone Establishment Act, the Industrial Complex Administration Act, the Temporary Measure for the Promotion of the Providing of Supplies for the Military Act, the Export Financing Regulation, the Design & Package Promotion Act and the Agricultural and Aquatic Products Export Promotion Act.

²⁷ The Customs Act was originally enacted in 1967 and has since been modified seventeen times. See Customs Act, Law No. 1976 (1967), amended by Customs Act, Law No. 4674 (1993).

²⁸ *Id.* at art. 1.

²⁹ FTA, *supra* note 8, at art. 6.

clearance through customs, and contraband control.³⁰ Additionally, there are three kinds of local administrative organs: a customshouse, a branch of the customshouse, and a customs monitor station.³¹

The first major feature of the Customs Act is its similarity to a tax law. As such, it could be classified as both substantive and procedural.³² It consists of provisions relating to the imposition, collection,³³ and reduction of duties, as well as exemption from duties.³⁴ Additionally, it contains provisions for the regulation of bonded transportation and storage.³⁵

Second, the Customs Act includes provisions for customs clearance and customhouse brokerage.³⁶ Considering that the administration of customs duties and the regulation of customs clearance are made concurrently, these provisions are important because it is difficult to have an efficient administration of clearance and customhouse brokerage distinct from the collection of customs duties. Customs clearance is the administrative processing of imports and exports according to the terms and conditions of the import or export approval obtained from the administrative agencies. Accordingly, customs clearance has the effect of carrying out the government's regulations and policies towards trade administration on the spot. Finally, the Customs Act includes provisions providing for punishment and investigation into crimes related to customs and customs clearance.³⁷

³⁰ Article 5-1 of the Customs Act. Customs, *supra* note 27, at art. 5-1.

³¹ *Id.* at art. 5-2. These local administrative organs, through delegation from their respective department heads in Customs Administration, are in charge of practical matters relating to the imposition and collection of customs, reduction of and exemption from customs, clearance through customs, and contraband control. However, the scope of the delegated authority varies among them.

³² The Customs Act is substantive in the sense that it regulates the imposition of taxes or reduction and exemption of taxes; it is procedural in that it regulates the reduction of and exemption from customs and the procedures of custom collection.

³³ Customs, *supra* note 27, at art. 17-26.

³⁴ *Id.* at art. 27-37.

³⁵ *Id.* at art. 65-127.

³⁶ *Id.* at art. 137-149.

³⁷ *Id.* at art. 179-186.

2. *The Foreign Exchange Control Act*³⁸

Korea, like many developing countries, exercises careful control over the flow of foreign exchange.³⁹ The Ministry of Finance is the agency in charge of foreign exchange control.⁴⁰ The Bank of Korea, as the government's agent, partially executes this function.⁴¹

The Foreign Exchange Control Act (FECA) purports to control foreign exchange and other transactions with foreign countries with a view towards attaining an equilibrium in international balance of payments, stabilizing the value of domestic currency,⁴² and efficiently managing foreign exchange funds.⁴³ Under FECA, the government's authority extends beyond the power to establish foreign exchange rates and license foreign exchange banks to include the power to approve and control virtually all foreign exchange transactions.⁴⁴ For businesses conducting international commercial transactions with Korean parties, a knowledge of the prohibitions and requirements of Korean foreign exchange controls is essential in order to avoid the consequences of noncompliance.⁴⁵ For example, the export and import of any means of payment,⁴⁶ precious metals, or securities is permitted only with approval from the Governor of the Bank of Korea.⁴⁷

³⁸ Foreign Exchange Control Act, Law No. 4447 (1991) [hereinafter FECA] *reprinted in* 4 CURR. LAWS OF REP. OF KOREA 2153. The Foreign Exchange Control Act was originally enacted in 1961 and has since been modified five times.

³⁹ TAE HEE LEE & WILLIAM H. GALLAWAY, JR., *Foreign Exchange Controls in Korea and Their Impact upon International Commercial Transactions*, in BUSINESS LAWS IN KOREA, 230 (Chan Jin Kim ed., 1982).

⁴⁰ FECA, *supra* note 38, at art. 5-7(2).

⁴¹ CHAN JIN KIM, *Legal Aspects of Private Foreign Investment in Korea*, in Business Laws in Korea, in BUSINESS IN LAWS IN KOREA 203 (Chan Jin Kim ed., 1982). The Korea Exchange Bank, Commercial Banks, and Korean branch offices of banks such as Chase Manhattan Bank, Citibank, American Express Bank, and Bank of America are also authorized to deal in foreign exchange.

⁴² For the stabilization of the foreign exchange rate, Korea has adopted the Market Average Exchange Rate System, a floating exchange rate system, in which the exchange rate is set by the interbank rate among domestic foreign exchange banks. The rate is limited to a daily fluctuation range of 4%.

⁴³ FECA, *supra* note 38, at art. 1.

⁴⁴ *Id.* at art. 4.

⁴⁵ LEE & GALLAWAY, *supra* note 39, at 246; *see infra* note 48.

⁴⁶ Means of payment include government notes, bank notes, coins, checks, bills of exchange, promissory notes, postal money orders, letters of credit or other payment orders.

⁴⁷ FECA, *supra* note 38, at art. 27.

FECA includes provisions relating to banks dealing in foreign exchange transactions, the establishment of a foreign exchange committee, examinations on the commercial foreign exchange transactions, and penalties for noncompliance with the Foreign Exchange controls.⁴⁸ The Act makes clear that Korea's foreign exchange policy should be directed towards relaxing the restrictions.⁴⁹ Therefore, the government should limit required restrictions and eventually abandon willful restrictions.

III. RESTRICTIONS ON TRADE

A. *The Import and Export License System*

Under the Foreign Trade Act, as under the Foreign Trade Transaction Act of 1967, trade is regulated in two ways simultaneously: through the administration of traded goods and through the administration of trader's qualifications. While the import and export license mechanism is not common in developed countries, Korea has maintained a license system since the 1960s. Despite suggestions to drop the license system during the modification of the Trade Transaction Act in 1967 and 1987, the system was maintained in order to protect domestic traders from foreign competition.⁵⁰

In most cases, a company applying for a trade license which meets all the required qualifications will receive a trade license. However, the Minister of Trade and Industry retains the discretion to reject a license application if it appears that granting the license will injure the domestic industry.⁵¹ This discretionary power has tended to treat foreign applicants unfairly by scrutinizing their qualifications more strictly than those of domestic

⁴⁸ Noncompliance with the Korea's Foreign Exchange Control Act has two consequences: The first affects the commercial transaction and the parties' ability to enforce their legal rights under the transaction. The Supreme Court of Korea has held that noncompliance with the foreign exchange controls did not per se invalidate the commercial agreement between the parties. *R.H. Macy and Co., Inc. v. Samsung Industrial Co., Ltd.* 72 c 2161 Supreme Court (1975). The second effect is the imposition of civil and criminal sanctions. *LEE & GALLAWAY, supra* note 39, at 269.

⁴⁹ FECA, *supra* note 38, at art. 2.

⁵⁰ KOREA ECONOMIC DAILY, Oct. 8, 1994. On October 7, 1994 Korea's Chamber of Commerce and Industry suggested repealing the provisions of the Foreign Trade Act regarding the license and approval system to strengthen competitiveness. This system is expected to be repealed in the near future.

⁵¹ FTA, *supra* note 8, at art. 7(2).

applicants. The import and export business license is usually not transferable. However, there are special circumstances in which a trade license can be transferred.⁵²

The Foreign Trade Act provides that *all* matters related to international trade are governed by the terms and conditions prescribed in the Act.⁵³ As a result, even when someone attains permission to engage in international trade based on a statute other than the Foreign Trade Act, that person still must obtain permission pursuant to the Foreign Trade Act.⁵⁴

B. Approval of Imports and Exports

The Foreign Trade Act's import and export approval system is categorized according to the kinds of goods being traded. In addition to the license requirement, those who wish to import or export must obtain approval from the Minister of Trade and Industry. The approval power of the Minister is mostly delegated to presidents of foreign exchange banks according to the terms and conditions provided by the Enforcement Decrees.

When the government allows importation or exportation of particular goods under the Act, it places a time limit on approval and makes sure that the conditions of the approved trade are strictly enforced. The government can perform *ex post facto* examinations of imports and exports within a limited period of time in order to maintain the external reputation of domestic trading companies and to smooth the demand and supply of necessary goods.

1. Public Notices on Imports and Exports

Since becoming a GATT signatory in 1967, Korea has tried to improve trade administration, especially in the area of import liberalization. Import

⁵² FTA, *supra* note 8, at art. 10(1). For instance, when the owner of a trading company dies, the trading license is automatically transferred to the owner's successor. Additionally, when a trading company is merged with another, the new entity can inherit the trading license.

⁵³ FTA, *supra* note 8, at art. 5(1).

⁵⁴ See, e.g., Hemp Control Act, Law No. 2895 of 1976 (codified as amended in 6 CURR. LAWS OF REP. OF KOREA 3458); Agrochemicals Management Act, Law No. 3322 of 1980 (codified as amended in 5 CURR. LAWS OF REP. OF KOREA 258); Noxins Chemical Substance Control Act, Law No. 4261 of 1990 (current version at 6 CURR. LAWS OF REP. OF KOREA 3389).

liberalization was substantially achieved by switching from a positive trade regulation system to a negative trade regulation system. Under the latter system, items that are not restricted or prohibited are automatically approved.

In 1986 the Periodical Public Notice with periodical limitation was changed into a Public Notice with no periodical limitation. Now, the contents of the Notice can be modified at any time as economic circumstances or Trade Commission policies change. This change, coupled with the adoption of the negative trade regulation system, is generally regarded as the cornerstone in the development of Korea's trade administration system.

Under the Foreign Trade Act, Public Notices on imports and exports are divided into three groups: Public Notices, Integrated Public Notices, and Special Public Notices. The Public Notices contain outlines and procedures for importing and exporting according to the provisions of the Foreign Trade Act. These Notices, which are issued regularly, list (1) classifications of automatic approval items ("liberalized items"); (2) restricted approval items and prohibited items;⁵⁵ (3) restrictions on quantity, amount, standard, or area of distribution for the restricted approval items; and (4) procedures for recommendations or confirmations required for restricted approval items.⁵⁶ Items which are not on the lists of restricted approval or prohibited items are automatic approval items.⁵⁷ The Integrated Public Notices integrate all outlines and procedures for importing and exporting according to special laws other than the Foreign Trade Act. Special Public Notices are used for the importation or exportation of materials which are traded outside the regulations imposed by the Foreign Trade Act.⁵⁸

Anyone who wishes to import or export goods should first look to the Public Notices, Enforcement Decrees, Integrated Notices, and Special Notices for special goods. To import or export restricted items, the applicant must obtain the recommendation of the government agencies concerned or the

⁵⁵ Since 1978, there are no longer prohibited items.

⁵⁶ FTA, *supra* note 8, at art. 18.

⁵⁷ Reviewing import liberalization in Korea, the restricted import items went from 402 out of total 1,312 items in 1967 to 240 out of total 10,241 items in 1992. The automatic import items went from 792 in 1967 to 10,034 in 1992. As a result, the ratio of import liberalization increased from 60.4% in 1967 to 97.7% in 1992. (Source : materials of the Ministry of Trade and Industry, 1985, 1987, 1992.)

⁵⁸ These materials include plants, strategic materials or raw materials necessary for the defense industry, industrial equipment, airplanes and airplane parts.

Export or Import Associations concerned.⁵⁹ Automatic approval items will be approved without any restrictions.

There are cases in which particular items are both in the automatic approval list of the Foreign Trade Act and in the restricted list of the Integrated Notice under the special laws concerned. In these cases, special laws take priority over the Foreign Trade Act. Accordingly, the conditions of the Integrated Notice control.

As shown above, measures restricting the import or export of goods in the Public Notices are either procedural or qualification regulations. Regarding qualification regulations, disputes arise as to whether the regulations for the protection of domestic infant industries and for the increase of profits of public monopoly corporations are justified under the World Trade Organization regime.⁶⁰

2. *Special Measures to Restrict Imports or Exports*

The Minister of Trade and Industry may enact special restrictive measures on trade when the country faces an emergency situation such as war, civil disturbance, or natural disaster.⁶¹ Additionally, these restrictions may be applied when Korea's rights or interests are at stake, or when Korea is treated unfairly by its trading partners.⁶² Finally, while the special emergency provision gives the Minister of Trade and Industry the power to enact trade measures rapidly to minimize industrial injury, it is unlikely that this provision will be used often because Korea's economy is heavily dependent on international trade and such measures would likely bring about counter-measures from Korea's trading partners.

IV. INVESTIGATION OF INDUSTRIAL INJURY FROM IMPORTS

A. *Introduction*

The Foreign Trade Act of 1986 introduced a new kind of import relief mechanism—the investigation of industrial injuries from imports. Until the

⁵⁹ For example, those who want to import live fish should get import recommendations from the Agriculture and Fishery Development Corporation, a public corporation which is under the supervision of the Ministry of Agriculture, Forestry, and Fishery.

⁶⁰ The Korean Government maintains that these regulations are permissible under Articles 11(2) and 17 of the GATT.

⁶¹ FTA, *supra* note 8, at art. 4.

⁶² *Id.*

Foreign Trade Act, Korea did not have an emergency import relief mechanism because, as a developing country, Korea could protect domestic industries under Article 18 of the GATT.⁶³ Accordingly, prior to 1986, the only import relief measures were tariff measures such as antidumping duties, countervailing duties, emergency duties, and adjustment duties.⁶⁴

While import relief measures are internationally systematized by the anti-dumping clause⁶⁵ and the safeguards clause of the GATT,⁶⁶ measures protecting domestic industries vary according to the level of economic development. Developed countries commonly use import relief mechanisms for industrial injuries caused by unfair importation. Developing countries typically use *ex ante* import regulation mechanisms to protect their promising infant industries.

Korea utilizes both tariff and non-tariff measures. Non-tariff measures include a system to diversify the countries from which it imports, specifically focusing on countries with which it had an excessive bilateral trade deficit.⁶⁷ Tariff measures used by Korea include anti-dumping duties,⁶⁸ countervailing duties,⁶⁹ retaliatory duties,⁷⁰ emergency duties,⁷¹ adjustment duties,⁷² and a tariff quota system.⁷³

⁶³ General Agreement on Tariffs and Trade, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT].

⁶⁴ Customs, *supra* note 27, at art. 10, 13.

⁶⁵ GATT, *supra* note 63, at art. 6.

⁶⁶ *Id.* at art. 19.

⁶⁷ KOREA'S TRADE ASSOCIATION, TRADE YEAR BOOK, (1981 - 1994). Since 1978, Korea has adopted the policy of diversifying importing countries. However, this policy may be against the principle of non-discrimination and is accordingly expected to be repealed in the near future under the World Trade Organization system.

⁶⁸ Customs, *supra* note 27, at art. 10. For antidumping duties to be imposed, there must be imports at a price less than fair value *and* subsequent substantial injuries to domestic industries.

⁶⁹ *Id.* at art. 13.

⁷⁰ *Id.* at art. 11. The Minister of Finance can impose retaliatory duties on goods imported from any country which discriminates against goods imported from Korea.

⁷¹ *Id.* at art. 12. Emergency duties may be levied when there is an urgent need to protect a staple industry so as to restrict the importation of specified goods and to improve an imbalance in tariff rates owing to changes in the industrial structure. The duties may be imposed at a rate of 40 percent above the basic tariff rate.

⁷² *Id.* at art. 12-2. In order to protect related the industries, adjustment duties may be levied when, as a result of a change in tariff classification, there is an increased importation of goods receiving received automatic approval. Generally, adjustment duties can be imposed up to 100 percent of dutiable value of the goods. However, in the case of low-priced goods,

Korea modified its anti-dumping provisions in the previous Customs Act to comply with the GATT. As a result, there have not been many problems applying the provisions because of their consistency with international standards. However, problems exist in application of other import relief mechanisms. Emergency duties have been criticized as a violation of Article 19 of the GATT because the structure of the Customs Act is based on Article 18(B) of the GATT, which allows import limitations to protect the balance of payments.⁷⁴ Additionally, tariff measures for import relief have been ineffective because tariff rates have decreased as a result of multilateral tariff concessions. A better alternative may be the adoption of import quantity regulations or policies to support related industries because these measures could control the amount of imports directly, as opposed to tariff measures which control import levels indirectly. Finally, since the non-tariff measures lack explicit legal provisions regarding their effects and procedures, problems have arisen due to a lack of clarity, perceived unfairness, and a lack of objectivity resulting from excessive administrative discretion.

Considering the above problems, Korea recently adopted explicit provisions for investigation petitions and procedures. The recently adopted import relief provision of the Foreign Trade Act⁷⁵ provides for relief when domestic industry is injured or threatened with material injury by a rapid increase in imports. This provision was adopted for the *ex post facto* protection of domestic industry with a view towards trade liberalization rather than the protection of infant industries. Additionally, Korea established two special offices within the Ministry of Trade and Industry to guarantee objectivity and fairness in investigations: the Investigation Committee⁷⁶ and the Trade Commission.⁷⁷

the tariff rate can be raised by more than 100 percent.

⁷³ *Id.* at art. 16. The tariff quota system allows the Minister of Finance to increase the tariff rate when the level of importation of specified goods exceeds a certain level.

⁷⁴ The provision in the Customs Act providing for the imposition of emergency duties is expected to be modified in the near future so as to be in strict compliance with Article 19 of the GATT.

⁷⁵ FTA, *supra* note 8, at art. 32. During the review of enactment of the Foreign Trade Act of 1986 there was almost a consensus within the Ministry of Trade and Industry to provide a Korean version of Section 201 of the United States Trade Act. However, after interministerial discussions, the decision was made to develop a kind of unique system. SANG DON LEE, *supra* note 7, at 9.

⁷⁶ Enforcement Decree of the Foreign Trade Act, art. 67(2) *reprinted in* 5 CURR. LAWS OF REP. OF KOREA (1992) [hereinafter Enforcement Decree]. The Investigation Committee consists of the Minister of Trade and Industry, an official of the Ministry of Trade and Industry, an official of the administrative agency in charge of the related industry, and an

B. *Petition for the Investigation*

While an investigation can be launched without a petition if the circumstances indicate its necessity, private parties have the right to request an investigation. If a domestic industry is injured or threatened with material injury by either the rapid increase of imports,⁷⁸ foreign supply of trade and distribution services, or unfair import transactions, any person or organization concerned may request an investigation into the effect of the imports on the domestic industry.⁷⁹ “[A]ny one or any organization concerned” refers to industry suppliers whose proportion of the supply or the number of the companies is thirty percent or more of the total domestic suppliers.⁸⁰ “Unfair import transactions” refers to (a) the importation of goods which infringe upon the intellectual property rights protected under the laws and regulations of the trading partners, (b) the importation of goods whose origins are misrepresented, or (c) the importation or exportation of goods which are in substantial breach of the terms and conditions of sales contracts.⁸¹ The term also refers to the importation of goods which are in breach of fair and reasonable usages in trade, such as false or excessive advertising.⁸²

The petitioner may request that the Minister apply temporary measures before the final decision. When the Commission decides the domestic industry may be injured irretrievably without immediate measures during the period of investigation, it may propose that the Minister of Trade and Industry restrict the quantity of imports. The Minister should enforce these

official of the organization or entity concerned.

⁷⁷ FTA, *supra* note 8, at art. 37-40. The Trade Commission was established by the Foreign Trade Act of 1986. The Trade Commission consists of a Chairman and six members, one of whom is a permanent member. Members are appointed by the President on the recommendation of the Minister of Trade and Industry.

⁷⁸ Before the modification of the Foreign Trade Act in 1989, the Act required, as a condition of the petition, either a “rapid increase in imports” or “excess imports.” The condition “excess imports” served to protect infant industries because it allowed a petition to be filed whenever a trade deficit in certain goods was realized. In the 1989 modification of the Act, the condition “excess imports” was repealed, thus bringing the import relief mechanism nearer to an advanced system of import administration.

⁷⁹ FTA, *supra* note 8, at art. 31. This corresponds to Section 202(b)(1)(A) of the United States Trade Act of 1974 and GATT Article XIX(1)(a).

⁸⁰ Enforcement Decree, *supra* note 76, at art. 64(2).

⁸¹ FTA, *supra* note 8, at art. 44(1).

⁸² *Id.*

temporary measures.⁸³ Such temporary measures will be repealed when the Commission decides either that there is no industrial injury or that final measures should be implemented because of industrial injury from imports.⁸⁴

C. Investigation Process

The Investigation Committee and the Trade Commission conduct concurrent investigations. The Investigation Committee investigates several factors, including the degree of import increases, the amount of injury to the domestic industry, the current and prospective international competitiveness of the domestic industry, the possible methods and levels of relief measures and their effect on consumers' interests, the competitive relations of the domestic industry, bilateral trade relations, and other matters deemed necessary by the Minister of Trade and Industry.⁸⁵

When making its decision on possible relief and recommendations to the Minister of Trade and Industry,⁸⁶ the Trade Commission determines the effects of imports on the domestic industry and whether the industry has been injured. In making such a decision, the scope of the "domestic industry" in the Act is an important factor. The amount and the degree of injury to the domestic industry depend on the definition of the domestic industry. The Provisions for the Operations and Procedures of the Investigation (Article 90-1) state, "The scope of the domestic industry means the domestic goods of the same kind as the imported goods or domestic goods having a direct competitive relationship with them, and the parts manufactured in this country where the domestic manufacturers import the same goods and the parts which are the subjects of the petition. Where the domestic manufacturers produce several kinds of goods, those goods could be grouped as being within the scope of the domestic industry."⁸⁷

The Provisions also provide that the "rapid increase of import" means the absolute increase in imports or the relatively increasing trend of imports compared with that of domestic production. The term "absolute increase in imports" means a substantial increase in quantity of imports. The criterion

⁸³ *Id.* at art. 35.

⁸⁴ Enforcement Decree, *supra* note 76, at art. 73.

⁸⁵ *Id.* at art. 67(4).

⁸⁶ *Id.* at art. 66(5).

⁸⁷ Public Notice of the Trade Commission.

of the relative increase makes it easier for any person or organization concerned to petition for the investigation because of its ability to be satisfied even though there may be no substantial increase in the quantity of imports. When the Commission makes a decision on the effect of imports on the domestic industry, it is binding on the Minister.⁸⁸

After both the Investigation Committee and Trade Commission conclude their investigations, the Trade Commission decides the appropriate measures and makes a recommendation to the Minister of Trade and Industry.

D. Enforcement of the Remedy

Upon receiving the recommendation for remedial measures from the Trade Commission, the Minister of Trade and Industry may either directly enforce the measures or request cooperation from the head of the administrative agency concerned. This depends on the features of the remedial measures. Remedial measures can take one of several forms: (1) adjustment of tariff rates; (2) various assistance measures for improvement of technology and productivity such as tax assistance or finance assistance; (3) designation of the industry under investigation as an industry for rationalization under the Industry Development Act; (4) suspension or prohibition of import with respect to certain traders; or (5) other actions as provided by the Presidential Decree for relief of domestic industry.⁸⁹

The Minister of Trade and Industry, or the head of the administrative agency concerned, decides whether to enforce such measures within ninety days from the date of the proposal while considering the report of the Investigation Committee, the relationship with the counterpart countries, and the economic effect of such measures.⁹⁰ The Minister of Trade and Industry should deliberate with the Chairman of the Trade Commission when deciding to enforce the remedial measures.⁹¹ The remedial measures should be enforced only on a temporary basis,⁹² during which time the domestic

⁸⁸ There is no provision about the binding power of the Trade Commission, but it was made explicit during the process of interpellation and reply in the 131st session of the National Assembly. Additionally, the binding power is confirmed by the general construction of the relevant provisions of the Foreign Trade Act of 1986. FTA, *supra* note 8, at art. 37-43.

⁸⁹ FTA, *supra* note 8, at art. 34(2).

⁹⁰ *Id.* at art. 34(5).

⁹¹ *Id.*

⁹² Enforcement Decree, *supra* note 76, at art. 72(4). Specifically, no measure shall be applied for a period in excess of five years.

industry is expected to improve competitiveness through actions like the adjustment of the industrial structure.

E. Annual Examination

The Trade Commission conducts an annual examination of the effect of remedial measures on the domestic industry after the administrative agency concerned enforces such measures and may make proposals to the Minister of Trade and Industry to prolong the period of enforcement, modify, or repeal the measures.⁹³

V. SYSTEM TO MAINTAIN ORDER IN IMPORT AND EXPORT

Generally, the primary goals of a system to maintain order in imports and exports include: the eradication of unfair trade practices;⁹⁴ the prevention of price manipulations to divert foreign currency; and the prevention of commodity shunting to avoid tariff and non-tariff barriers.⁹⁵ In Korea, the main goal behind the system to maintain order in imports and exports is the efficient restraint of excess competition among exporters.⁹⁶ While the restraint of excess competition has been one of the main aspects of Korea's trade policy since the Trade Act of 1957, maintaining export order also remains in the forefront of Korean foreign trade policy as exemplified by the effort to tighten regulations on unfair trade practices. The Foreign Trade Act of 1986 includes provisions to regulate unfair exports, encourage the expedient settlement of disputes in imports and exports, regulate the conclusion of the agreement to maintain order in imports and exports and to regulate voluntary export restraints, prevent price manipulations and protect the design of the export goods.

⁹³ FTA, *supra* note 8, at art. 36.

⁹⁴ An example of an unfair trade practice is the import and export of counterfeit goods.

⁹⁵ Other policies include: the prevention of excess competition among exporters; the voluntary operation of export quotas; the design protection of exported goods; the reasonable settlement of trade claims; and providing a remedy for the industrial injury.

⁹⁶ Excessive competition in exports may result in decreased profits followed by a decrease in the quality of exported goods. This drop in quality could result in trading partners resisting future goods and a resultant decrease in exports.

A. *Regulation of Unfair Imports and Exports*

A recent international trend has developed to strengthen the regulation of unfair imports and exports. To prevent trade disputes, Korea prohibits unfair imports and exports and encourages fair transactions in accordance with international trade agreements. The Foreign Trade Act of 1986 empowers either the Trade Commission or the Minister of Trade and Industry to recommend corrective orders to those who are found to be engaging in unfair trade practices.⁹⁷ Additionally, when acts of unfair trade are found to impede the development of foreign trade, the Minister of Trade and Industry has the authority to suspend the license of the trade business or trade agent business for a specified period of time with respect to specific goods or trading counterparts.⁹⁸

Although the provision is literally applicable to both imports and exports, the purpose of the clause is the regulation of exports that infringe foreign intellectual property rights. These provisions are expected to be more efficient in regulating these violations than prior legislative attempts.⁹⁹

B. *Fast Settlement of Disputes in Imports and Exports*

Unnecessary delays in the settlement of claims may compromise the credibility of Korean businesses.¹⁰⁰ To protect the credibility of Korean businesses, the Foreign Trade Act prohibits the unreasonable postponement of dispute settlement.¹⁰¹ To facilitate efficient settlements, the Minister of Trade and Industry may request Korean exporters to present the plans for the procedures and settlements of the claim as well as the related documents in

⁹⁷ FTA, *supra* note 8, at art. 44(1).

⁹⁸ *Id.* at art. 44. The prohibited methods of unfair competition include: patent infringement; misappropriation of trade dress; false designation of origin; copyright infringement; misappropriation of trade secrets; and tortuous interference with contractual relations.

⁹⁹ See Design Act, Law No. 2507 (1973), as amended by Law No. 4208 (1990), reprinted in KOREA LEGISLATION RESEARCH INSTITUTE, CURRENT LAWS OF THE REPUBLIC OF KOREA (1992); Patent Act, Law No. 4207 (1990), reprinted in KOREA LEGISLATION RESEARCH INSTITUTE, CURRENT LAWS OF THE REPUBLIC OF KOREA (1992).

¹⁰⁰ Claims may be brought for reasons such as: the low quality of exported goods; delayed shipment; inconsistency with the terms of sale; and improper packing.

¹⁰¹ FTA, *supra* note 8, at art. 46(1).

respect with the claim.¹⁰² If necessary, the Minister of Trade and Industry may investigate the disputes even if they are settled without unreasonable postponement.¹⁰³ Finally, the Minister of Trade and Industry may recommend that the Korean trader enter into arbitration or conclude an arbitration agreement for a reasonable settlement.¹⁰⁴

C. *Agreements to Maintain Order in Imports and Exports*

In addition to multilateral and bilateral trade agreements, domestic exporters and importers are permitted voluntarily to conclude agreements among themselves as to transaction conditions. However, there is a risk of the extraterritorial application of foreign antitrust laws to these activities among Korean exporters.¹⁰⁵ To reduce this risk and potentially alleviate the occurrence of bilateral trade disputes, the Foreign Trade Act includes provisions relating to agreements on imports and exports.

The Foreign Trade Act permits the conclusion of agreements among domestic importers and exporters on the price, quantity, quality, and other transactional conditions.¹⁰⁶ The rationale behind permitting these agreements is the prevention of disorder resulting from excess competition among exporters desiring to export particular goods to the same country.

Additionally, export associations, as well as other organizations designated by the Minister of Trade and Industry, may conclude agreements with a producer organization of a foreign country.¹⁰⁷ These agreements are provided for in advance as a precaution against import restrictions likely to be imposed by the importing countries. If necessary to maintain order in imports and exports, the Minister of Trade and Industry may supplement these agreements with additional regulatory rules.¹⁰⁸

While these agreements are permissible, any person who desires to enter one must first obtain the approval of the Minister of Trade and Industry.¹⁰⁹ The agreements concluded with the approval of the Minister of Trade and

¹⁰² *Id.* at art. 46(2).

¹⁰³ *Id.* at art. 46(3).

¹⁰⁴ *Id.* at art. 46(4). This recommendation has a binding effect on the concerned parties.

¹⁰⁵ Sang Don Lee, *supra* note 7, at 14.

¹⁰⁶ FTA, *supra* note 8, at art. 47(1).

¹⁰⁷ *Id.* at art. 47(2). These agreements may be made with regard to price, quantity, quality and other transactional conditions.

¹⁰⁸ *Id.* at art. 46(3).

¹⁰⁹ *Id.*

Industry are not subject to provisions of other laws relating to the regulation of monopolies and fair transactions.¹¹⁰ When the contents of the agreements are likely to restrict free competition among businessmen in domestic markets, the Minister of Trade and Industry makes agreements in advance with the Minister of the Economic Planning Board for approval of such agreements. The Minister of Trade and Industry should exercise this regulatory authority wisely to foster orderly marketing practices in exports and imports, which will help to promote free and fair trade in the future.

Agreements among exporters or importers in Korea dealing in competition-restrictive areas are more troublesome. In those cases, if the counterpart trading nation raises an antitrust suit against the exporter or importer, a question could arise as to whether the approval of the Minister of Trade and Industry could block the extraterritorial reach of a foreign competition law.¹¹¹

D. Prohibition of Price Manipulation in Imports and Exports

Due to serious problems of foreign exchange shortages since the 1950s, Korean foreign exchange controls have been strict in comparison to other countries.¹¹² Traditionally, the diversion of foreign currencies has been a significant problem. The Foreign Trade Act of 1986 prohibits importers and exporters from manipulating import or export prices for the purpose of evading foreign currency control.¹¹³ To ensure compliance with these provisions, the Act provides that violators can either be sentenced to a prison term of up to five years or can be fined up to three times the import or export price.¹¹⁴

¹¹⁰ *Id.* at art. 5.

¹¹¹ This question has not been answered yet, but it does not seem plausible that Korea's exporters or importers could defend themselves based upon the sovereign compulsion doctrine, as mere approval is obviously not a compulsory act. Sang Don Lee, *supra* note 7, at 14.

¹¹² In 1988, as Korea's current account balance improved from a deficit to a surplus, Korea became subject to Article 8 of the International Monetary Fund Agreement (IMF) which mandates foreign exchange liberalization. Since then, the Government has accelerated the foreign exchange liberalization policy.

¹¹³ FTA, *supra* note 8, at art. 45.

¹¹⁴ *Id.*

E. *Protections of Designs of Export Goods*

Prior to the Foreign Trade Act, the design registration system was incapable of meeting the rapidly increasing need for efficient protection and development of new designs for export goods.¹¹⁵ The Foreign Trade Act prevents imitations of new designs prior to registration, in an effort to protect the design of exported goods and thus to establish order in exports and to promote the design development of export goods.¹¹⁶ Businessmen or producers may apply to the Minister of Trade and Industry for protection of designs of specific goods.¹¹⁷ Once the products' designs are nominated for protection, anyone who desires to export the nominated goods must obtain approval for export from the administrative agencies concerned.¹¹⁸

VI. REMARKS ON RECENT KOREA-UNITED STATES TRADE FRICTION

The two most prominent aspects of Korea's foreign trade are high export dependence on the United States and high import dependence on Japan. Until 1981, Korea had a trade deficit with the United States, but since then the deficit has turned into a surplus reaching \$4.3 billion in 1985 and then accelerating further from 1986 to 1988.¹¹⁹ The reason for the rapid increase in exports to the United States during the period from 1986 to 1988 was the significant appreciation of the Japanese yen against the U.S. dollar. This appreciation gave Korean exporters a competitive advantage over their Japanese counterparts in the U.S. market. However, during this period, Korean imports from the United States did not increase at the same rate because approximately 40 percent of Korea's imports from the U.S. consisted of primary products, for which demand is more rigid with respect to price and income.¹²⁰ In 1992, Korea exported to the United States 22 percent of its total textile exports, about one-quarter of its other light-industry

¹¹⁵ While the provisions of the Design Act and the Design Promotion Act are still applicable to *registered* designs, the provisions of the Foreign Trade Act are applicable to the design of *exported* goods irrespective of registration.

¹¹⁶ FTA, *supra* note 8, at art. 49-50.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ As the bilateral trade surplus with the United States rapidly increased, so did the deficit with Japan, in 1981 the trade deficit with Japan was \$2.9 billion, but it swelled to \$5.2 billion in 1987.

¹²⁰ CHO SOON, *THE DYNAMICS OF KOREAN ECONOMIC DEVELOPMENT* 164 (1994).

products, and about one-third of its total machinery exports.¹²¹ Trade frictions between Korea and the U.S. can be analyzed in terms of four stages.¹²²

A. *Beginning Period (1971-1982)*

During this period, to restrict imports from Korea, the United States applied safeguard provisions,¹²³ import duties, tariff quotas, antidumping duties,¹²⁴ countervailing duties, patent protection provisions¹²⁵ and concluded several bilateral agreements with Korea.¹²⁶ In responding to these measures, Korea voluntarily regulated exports through bilateral agreements and voluntary export restraints.

B. *Deepening Period (1983-1985)*

Coming into the 1980s, the composition of Korean exports changed from primarily labor-intensive goods to capital-intensive items.¹²⁷ While continuing to restrict imports from labor light industries, the United States began to restrict imports from capital and technology intensive industries through non-tariff barriers such as antidumping and countervailing duties.¹²⁸ The application of these measures to these capital and technology

¹²¹ *Id.* at 166.

¹²² HYUNG JONG SHIN, KOREA'S FOREIGN TRADE 902 (1992).

¹²³ Import items from Korea subject to U.S. safeguard provisions included metal dinnerware, canned tuna, CB radios, enameled ware, color televisions, and other products.

¹²⁴ Antidumping duties were imposed on color television, nails, bicycles, and steel ropes.

¹²⁵ Items such as handbags, bicycles, tires and tubes, leather cloths, pipes, tubes, steel, shoe parts, and machine components were subject to the Patent Protection Act.

¹²⁶ on textiles, steel, Additionally, the United States imposed MFA (Multi-Fiber Agreement) quotas on textiles in 1974, an orderly marketing arrangement (OMA) on footwear between July 1977 and June 1981, and an OMA on color television sets between December 1978 and June 1980.

¹²⁷ Examples of labor intensive goods include textiles & footwear. Examples of capital & technology intensive goods include automobiles, televisions, video-cassette recorders, and personal computers.

¹²⁸ IL SAGONG, KOREA IN THE WORLD ECONOMY 131 (1993). Anti dumping charges were the most frequently used protectionist measures against Korean exports during the 1980s. There were 63 initiations of protectionist measures other than voluntary export restraints against Korean exports from 1980 to 1989, and 25 out of the 63 cases were antidumping charges. Initiations under Section 337 of the Tariff Act of 1930 were also used frequently

intensive products was especially harmful because some could have successfully competed based on price. Additionally, during this time, the United States pressured Korea to liberalize its commodity, service, and capital markets and to increase the protection of intellectual property rights.

In response to these actions, Korea tried to comply with the United States' demands. Korea put its import liberalization plan into practice earlier than originally planned, lowered the tariff rates on items important to the United States, and strictly controlled the illegal copying of intellectual properties such as U.S. publications and software.¹²⁹ Additionally, in 1984, the Korean buying delegation traveled to the United States to purchase \$3.3 billion worth of goods.¹³⁰ However, these efforts did not satisfy the United States. Alleging that Korea's measures to open markets and protect intellectual property rights were unsatisfactory, the United States continued to press Korea to open its markets by threatening Section 301 sanctions under the Trade Act of 1974.¹³¹ This continuous use of Section 301 threats caused an increased anti-American sentiment to develop among the Korean people.

C. Intensifying Period (1986-1990)

Beginning in 1982, the Korean trade surplus with the United States steadily increased, peaking at \$9.6 billion in 1987. During the period from 1986-1990, the United States pressured Korea to make macroeconomic adjustments, particularly regarding the appreciation of Korea's currency, the Won.¹³² Additionally, the United States continued to apply pressure by imposing import restrictions and insisting on stronger protection of intellectual property rights. Finally, the United States pressured Korea to

in relation to infringement of intellectual property rights, particularly in the second half of the 1980s.

¹²⁹ Additionally, the Government increased efforts to investigate infringement of intellectual property rights and to prosecute offenders.

¹³⁰ Korean Foreign Trade Ass'n, FOREIGN TRADE (1985).

¹³¹ Since 1985, the United States has aggressively used Section 301.

¹³² IL SAGONG, *supra* note 128, at 131 n.17. Under the 1988 Omnibus Trade and Competitiveness Act, the United States government registered complaints against what it referred to as Korea's foreign exchange rate manipulation. However, it is unclear how exchange rate "manipulation" is distinguished from exchange rate "management", as practiced by the United States and other G-7 countries.

open markets and to adopt programs to enlarge the United States market share.¹³³

As a result of the pressure from the United States, Korea revalued its currency by 15.8 percent in 1988.¹³⁴ By 1989, the exchange rate was able to be maintained at a steady level because the Won had appreciated to an appropriate equilibrium level.¹³⁵ To enhance the market mechanism's ability to determine the exchange rate, a market average exchange rate system was introduced on March 2, 1990.¹³⁶

Since 1987, Korea and the U.S. have successfully negotiated a variety of sectoral agreements. National treatment of United States banks has been granted by allowing them access to rediscounts from the Bank of Korea and the privilege of issuing certificates of deposit.¹³⁷ Additionally, the establishment of United States firms in the insurance industry has been permitted with a slight restriction since 1986.¹³⁸ In late 1988, agreements were reached with respect to the importation of motion pictures and the opening of advertisement markets.¹³⁹ Finally, the Korean government is in the process of carrying out two five-year plans on the protection of intellectual property rights.¹⁴⁰ Since these negotiations with the United States, the globalization of the financial services market in Korea has accelerated. This has forced Korean industries to confront the era of market-opening and liberalization while yet unprepared.

D. Adjusting Period (since 1990)

Since 1990, U.S.-Korea trade relations have moved into an adjusting period and Korea's trade balance with the United States has changed to a

¹³³ The United States required Korea to open services and the agricultural products market in 1986.

¹³⁴ HYUNG JONG SHIN, *KOREA'S FOREIGN TRADE* 920 (1992).

¹³⁵ *Id.*

¹³⁶ *Id.* Since the adoption of the system, the Korean Won has tended to depreciate, along with the current account deficit. This exchange rate system is one kind of managed floating rate system and was introduced to enhance the automatic adjustment function of the market so as to minimize Government intervention in exchange rate determination.

¹³⁷ CHO SOON, *supra* note 120, at 169.

¹³⁸ As a result of the agreement in the field of insurance industry, Korea's insurance market was almost completely opened to foreign firms.

¹³⁹ CHO SOON, *supra* note 120, at 169.

¹⁴⁰ *Id.*

deficit from surplus.¹⁴¹ Since the early 1990s, pressure from the United States has increased, especially in those areas where the United States expects to be competitive.¹⁴² The United States has asked Korea to phase out restrictions on agricultural products at the earliest possible date, to protect intellectual property rights, and to open the service industries completely.¹⁴³ To encourage accession, the United States has restricted imports from Korea.¹⁴⁴

In response to this pressure, the Korean government has been making great efforts to liberalize its rigid import regime,¹⁴⁵ lower tariff rates, liberalize restrictions in foreign investment,¹⁴⁶ and protect intellectual property rights. The motivations behind these Korean efforts have been to achieve a structural transformation of the economy and to improve economic relations with the United States and other trading partners. While the United States Trade Representative has been sympathetic to Korean problems and avoided an invocation of Super 301, the United States kept Korea on the priority watch list in 1992 and 1993.¹⁴⁷

The United States continues to insist that Korea must demonstrate, through its actions, that it will faithfully implement market-opening policies. While the main object of Korea's trade policy has been to protect the domestic market and promote exports, Korea has continuously liberalized its markets. Korean policy-making groups and the general population realize that the Korean Government must switch its trade policy from protectionism to liberalization in order to survive under the World Trade Organization.

¹⁴¹ The reason behind this change is the market-opening and liberalization in Korea, an increase in consumption in the Korean private sector and the application of protective measures by the United States.

¹⁴² For example, certain agricultural products, such as rice and beef, intellectual properties and service industries such as insurance and banking.

¹⁴³ CHO SOON, *supra* note 120, at 168.

¹⁴⁴ *Id.* at 166-69.

¹⁴⁵ See KOREA ECONOMIES DAILY Jan. 1, 1994 (explaining that the Korean people did not support liberalization of the agricultural markets).

¹⁴⁶ IL SAGONG, *supra* note 128, at 114-119. Foreign investment, about 30% of which originated in the United States, has played an important role in Korea's economic development.

Since the Foreign Capital Investment Promotion Act of 1960 and the Foreign Capital Investment Act of 1966, the government has attempted to attract foreign direct investment by assuring protection and guaranteeing remittance rights. *Id.*

¹⁴⁷ CHO SOON, *supra* note 120, at 171.

VII. CONCLUSION

If the Korean Government faithfully performs its obligation to open its market as required by the strict rules of the WTO, and the United States puts confidence in the Korean Government's attitude to do so and understands their current situation, the trade disputes between the two countries should be resolved successfully.

The Foreign Trade Act has not been effectively modified to cope with frequent fluctuations of the internal and external circumstances in foreign trade. This is due to its rapid economic growth and development which was influenced by the government's export-driven policy. However, the Foreign Trade Act included many modifications designed to cope with the rapid increase in trade, diversified modes of international transactions, frequent fluctuations of international economic orders, and pressures from trading partners. Despite these amendments, trade pressure from the United States and other countries have been intense. Regardless of whether these demands are reasonable, the Korean government faces the enormous task of satisfying the international requirements and demands of its trading partners, while at the same time supporting and protecting its domestic export-import industries in the midst of considerable regulatory changes and market fluctuations.

Korea's domestic industries are undergoing tremendously volatile times as a result of increased competition coming from the rapid market opening as well as the steep hikes in labor costs and frequent labor strikes which cause irregular halts in production and add to the instability of the market. These rapid changes and the accompanying uncertainty are often a cause for concern for Koreans. They tend to perceive trade pressures from other countries, such as the United States, as too severe in light of the current economic development level of their country and consider them too premature and unreasonable. On the other hand, other countries, the United States, for example, have often named Korea as an unfair trader, and view the progress of Korea's trade liberalization as too slow.

In order to bridge the gap between these vastly different positions, the Korean government must, on one hand, prove to the world its willingness to open its market completely by faithfully carrying out its step by step plans as described in this article. On the other hand, it must implement coherent and effective domestic policies that assure and stabilize the industries affected by the new open market policies. In doing so, it must improve communications between the regulatory agencies and the industries as well as the industry workers so that the parties better understand the market's

direction and each other's interests and concerns. The Korean government must also develop more consistent and systematic labor policies that reflect the improved economic status of the country and the new expectations of the parties involved.

In the mean time, Korea's trading partners, especially the United States, should be patient but persistent in their demands for eventual complete opening of the Korean market. They should keep in mind that Korea is not yet a fully developed country. Korea's wealth is relatively new, and its market infrastructure is not yet on a par with other mature markets such as the United States'. The Korean society is still unstable due to its unique political and geographical situation, as evidenced by the recent events such as the widespread labor strikes and the crisis involving North Korea. If Korea is forced to open its market too quickly due to pressures from its developed partner countries, it may be impossible for Korea to complete the current stage of its economic development.

While the Korean government makes sincere and consistent efforts to cooperate with the international trend toward a free market, its trading partners should allow sufficient time while offering gentle encouragements along with reasonable and appropriate demands. The international market has little to gain by forcing the Korean market to stumble as a result of untimely drastic changes.

