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# 7 Protectionist U.S. Trade Policy and Korean Exports

Chong-Hyun Nam

Since the end of World War II, tariff barriers to trade in manufactures have been almost eliminated in most of the advanced industrial countries (AICs) through successive rounds of trade negotiations in the GATT. The shift into a more open international trading system, which was chiefly led by the United States, not only brought about unprecedented growth of the world economy but also produced an environment in which some developing countries emerged as significant exporters of labor-intensive manufactures, the newly industrializing economies (NIEs). The Republic of Korea is well known as a successful front-runner among the NIEs in that regard.

As the world economic climate changed for the worse, however, beginning with the first oil crisis in 1973–74 and culminating with the second oil price increase in 1979–80, protectionist pressures grew tremendously in most of the AICs. Because the already low tariffs in the AICs are mostly bound by the GATT, nontariff barriers (NTBs) have become the main method of protection in the AICs. Recent studies indicate that the United States has been one of the leading nations in applying the NTBs, and the major export items of the developing countries, notably of the NIEs, have been the prime target of those actions (see, e.g., Nogues, Olechowski, and Winters 1985; Finger and Nogues 1987; and Nam 1987). In this paper, the nature and extent of trade restriction measures undertaken by the United States and their effects on Korean exports to the United States during the 1980s are examined.

The paper will begin with a brief description of the development of trade between Korea and the United States. This will be followed by the review of protectionist elements embedded in the current U.S. trade laws. Then an attempt will be made to examine the pattern of the U.S. NTBs and their effects

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on Korean exports. Finally, policy implications for Korea will be considered in a concluding section.

## 7.1 Trade Development between Korea and the United States

During the past quarter century, Korea's strong performance in exports has been the principal factor behind its successful growth and industrialization. As can be seen from table 7.1, exports exploded from $119 million in 1964 to $62.4 billion in 1989, with an average annual growth rate of 28.5 percent in nominal value. The ratio of exports to GNP was only 4.3 percent in 1964 but rose rapidly to 29.7 percent in 1989. As a result, Korea has become a major exporting nation, ranking eleventh in the world with a share of 2.1 percent in total world exports in 1989.

Rapid expansion of exports has accompanied the rapid growth of real GNP, and this in turn has brought fundamental changes in all sectors of the economy. Real GNP in Korea increased nearly thirteenfold between 1964 and 1988, with an annual growth rate of 10.7 percent. The rapid expansion of

**Table 7.1** **Major Economic Indicators of the Korean Economy, 1964–89**

| | 1964 | 1974 | 1989 | 1964–74[a] | 1974–89[a] | 1964–89[a] |
|---|---|---|---|---|---|---|
| Population (million) | 28.0 | 34.7 | 42.4 | 2.2 | 1.3 | 1.7 |
| GNP (in billion won)[b] | 9,449 | 24,207 | 119,577 | 9.9 | 11.2 | 10.7 |
| Per capita GNP: | | | | | | |
| in thousand won[b] | 337 | 698 | 2,822 | 7.6 | 9.8 | 8.9 |
| in U.S. dollars[c] | 102 | 540 | 4,968 | | | |
| Sectoral value added (share of GNP, %): | | | | | | |
| Primary industry | 47.6 | 25.7 | 10.8 | | | |
| Manufacturing | 10.5 | 27.4 | 31.3 | | | |
| Services and social overhead | 41.9 | 46.9 | 57.9 | | | |
| Sectoral employment (share of total labor force, %): | | | | | | |
| Primary industry | 62.5 | 48.4 | 20.1 | | | |
| Manufacturing | 8.2 | 17.3 | 27.6 | | | |
| Services and social overhead | 29.3 | 34.3 | 52.3 | | | |
| Exports and imports: | | | | | | |
| Commodity exports, f.o.b. (in million U.S. dollars) | 119 | 4,460 | 62,377 | 43.7 | 19.2 | 28.5 |
| Ratio of exports to GNP | 4.3 | 28.5 | 29.7 | | | |
| Commodity imports, f.o.b. (in million U.S. dollars) | 365 | 6,852 | 61,465 | 34.1 | 15.7 | 22.8 |
| Ratio of imports to GNP | 13.3 | 43.8 | 29.3 | | | |

*Source:* Economic Planning Board, *Major Statistics of Korean Economy* (various years).

[a]Based on current prices.

[b]Average annual growth rate.

[c]Based on 1985 prices.

exports was achieved mainly by the increase in production of manufactured goods since the early 1960s. Exports of manufactured goods accounted for only 51.1 percent of total exports in 1964 but increased to 94.5 percent by 1989. As a result, the manufacturing sector's share in GNP increased from 10.5 percent in 1964 to 31.3 percent in 1989, whereas the share of agriculture decreased from 47.6 to 10.8 percent for the same period.

Ever since Korea began its outward-oriented economic development in the mid-1960s, access to the U.S. market has been critical to Korea's export success. The United States took as much as 47.3 percent of Korea's total exports in 1970 but only 26.3 percent in 1980 (see table 7.2). The absorption by the United States of Korea's exports rose again to 29.8 percent in 1990. At the same time, the United States was the second largest supplier of imports, next to Japan, in the Korean market in 1970 with a share of 29.5 percent of Korea's total imports. The U.S. share in Korea's import markets steadily declined to 21.9 percent in 1980, but rose again to 24.3 percent in 1990.

The relative importance of Korea to the United States both as a purchaser of U.S. exports and as a supplier for the U.S. market is not nearly as great, but that is changing rapidly. Korea took less than 1 percent of total U.S. exports in 1970, but it took 3.9 percent in 1990. Meanwhile, although Korea supplied less than 1.4 percent of total U.S. imports in 1970, it supplied more than 4.3 percent in 1990. As a result, the bilateral trade volume between the two countries has increased from a mere $980 million in 1970 to more than $36 billion in 1990, surpassing the volume between the United States and

**Table 7.2** **Trade Dependency between Korea and the United States, 1970–90 (million U.S. dollars)**

| | 1970 | 1980 | 1990 | 1970–80[a] | 1980–90[a] |
|---|---|---|---|---|---|
| Korea's exports to the U.S.[b] | 395 | 4,607 | 19,360 | 27.8 | 15.4 |
| Share (%) in Korea's exports | 47.3 | 26.3 | 29.8 | | |
| Share (%) in U.S. imports | .9 | 1.8 | 3.9 | | |
| Korea's imports from the U.S.[b] | 585 | 4,890 | 16,942 | 23.7 | 13.2 |
| Share (%) in Korea's imports | 29.5 | 21.9 | 24.3 | | |
| Share (%) in U.S. exports | 1.4 | 2.2 | 4.3 | | |
| Korea's trade balance against the U.S.[b] | −190 | −284 | 2,418 | | |
| Korea's trade balance against world[b] | −1,149 | −4,787 | −4,828 | | |

*Source:* Korea Foreign Trade Association, *Major Statistics of Korea Economy,* 1990.

[a]Average annual growth rates are given in percentages.

[b]All measures are in customs clearance base.

France and between the United States and Italy early in the 1980s. Since 1983, Korea has been the seventh largest trading partner of the United States, standing behind only Canada, Japan, Mexico, West Germany, Taiwan, and the United Kingdom.

The relative dependence between Korea and the United States in trade is, therefore, quite a contrast. When measured by the ratio of bilateral trade volume to each country's total trade volume, Korea's dependence on the U.S. market represented more than 27 percent in 1990, whereas the U.S. dependence on Korea's market was merely 4.1 percent. The relative dependence of each country can be contrasted even more when measured by the ratio of bilateral trade volume to GNP in each country. The ratio is estimated at 16.2 percent for Korea but only 0.7 percent for the United States. This vividly illustrates how much each country can hurt the other by introducing new protectionist measures. This also indicates how much bargaining leverage each country may have when each other's market is being held hostage in bilateral trade negotiations.

The dependence of Korean exports on the U.S. market has been more critical in some of the leading export sectors than in others. Table 7.3 presents the shares of Korea's major export items going to the United States. In 1988, the United States took more than 50 percent of Korean exports in road vehicles, footwear, and data-processing machines. The United States also received more than 30 percent of Korean exports in apparel and clothing, metal products, telecommunications apparatus, and electrical machineries. On the other hand, Korea relied on the United States to supply more than 60 percent of its imports of transport equipment (including aircraft), cereal, furskins, and pulp products. Korea also relied on imports from the United States for more than one-quarter of its imports of electrical machinery, organic chemicals, metalliferous ores, and textile fibers. Thus, Korean exports to the United States tend to be mostly labor-intensive consumer goods, whereas Korean imports from the United States comprise mostly resource-based raw materials, including agricultural products and highly sophisticated capital goods.

While bilateral trade between the two countries grew tremendously in size, the bilateral trade balance was persistently in favor of the United States until 1981. It shifted into Korea's favor beginning in 1982 and has since grown to a significant magnitude, reaching a peak at $9.7 billion in 1987. Since then, however, Korea's bilateral trade surplus against the United States decreased significantly to $2.4 billion by 1990. Partly owing to its rising bilateral trade surplus against the United States, and partly owing to an accelerated increase in the domestic savings rate as a result of rapid economic growth, Korea began to register an overall trade surplus beginning in 1986. Such a successful transformation into a trade surplus economy from a long debt-ridden deficit economy has, however, been met by industrial countries, notably by the United States, with an increased level of protection. The overall trade balance of Korea moved into the red again in 1990.

**Table 7.3** **Korea's Major Exports to and Imports from the United States, 1988 (million U.S. dollars)**

| | Exports | | | | Imports | | | |
|---|---|---|---|---|---|---|---|---|
| | | Value | | | | Value | | |
| Ranking | Commodity[a] | Total (A) | To U.S. (B) | B/A (%) | Commodity[a] | Total (A) | From U.S. (B) | B/A (%) |
| 1 | Road vehicles | 4,525 | 3,452 | 76.3 | Electrical machinery and apparatus | 5,526 | 1,454 | 26.3 |
| 2 | Apparel and clothing accessories | 8,693 | 3,236 | 37.2 | Transport equipment, excluding road vehicles | 1,691 | 1,017 | 60.2 |
| 3 | Footwear | 3,801 | 2,336 | 61.5 | Organic chemicals | 3,162 | 816 | 25.8 |
| 4 | Telecom. sound recording apparatus | 6,210 | 2,234 | 36.0 | Cereal and cereal preparations | 1,151 | 790 | 68.6 |
| 5 | Electrical machinery and apparatus | 6,416 | 2,176 | 33.9 | Raw hides, skins, and furskins | 1,141 | 770 | 67.5 |
| 6 | Office and automatic data-processing machines | 2,574 | 1,310 | 50.9 | Metalliferous ores and metal scrap | 1,887 | 593 | 31.4 |

(*continued*)

**Table 7.3** (continued)

| | Exports | | | | Imports | | | |
|---|---|---|---|---|---|---|---|---|
| | | Value | | | | Value | | |
| Ranking | Commodity[a] | Total (A) | To U.S. (B) | B/A (%) | Commodity[a] | Total (A) | From U.S. (B) | B/A (%) |
| 7 | Miscellaneous manufactured articles | 3,959 | 1,701 | 43.0 | Machinery for particular industries | 2,593 | 556 | 21.5 |
| 8 | Manufactures of metals | 1,973 | 783 | 39.7 | Textile fibers and their waste | 1,484 | 524 | 35.3 |
| 9 | Textile yarn, fabrics, made-up articles | 4,847 | 624 | 12.9 | Pulp and waste paper | 838 | 522 | 62.2 |
| 10 | Iron and steel | 3,186 | 577 | 18.1 | General industrial machinery and equipment | 2,602 | 485 | 18.6 |
| Subtotal | | 46,184 | 18,429 | 39.9 | | 22,075 | 7,527 | 34.1 |
| Total exports/imports | | 60,696 | 21,404 | 35.3 | | 51,811 | 12,757 | 24.6 |

*Source:* Korea Foreign Trade Association.

[a]Commodity classification is based on the Standard Korea Trade Classification at the two-digit level.

## 7.2 Protectionist Elements in U.S. Trade Policy: A Developing Country's Perspective

During the postwar period, the United States emphasized international cooperation to strengthen the multilateral trading system based on the GATT's framework. However, beginning in the 1970s, and especially during the 1980s, the United States has increasingly pursued an aggressive bilateral approach to protect certain domestic interests and to increase its access to foreign markets. Both the growing trade deficits of recent years and a heightened sensitivity to so-called unfair foreign trade practices are often cited as major factors behind such a policy shift in the United States.

According to a recent IMF (1988) report, over the period 1980–87, the United States initiated a total of 411 antidumping (AD) investigations, 283 countervailing duty (CVD) investigations, 60 safeguard investigations, and 60 investigations of "unfair" trade practices abroad under Section 301 of the U.S. Trade Act of 1974. Of these, about 40 percent were directed at exports from developing countries, whereas their share in total U.S. imports represented only 26 percent. The recent trend contrasts with the total of 196 AD and 125 CVD investigations and 20 Section 301 investigations conducted by the United States during the postwar period until 1980. Furthermore, as of May 1988, the United States maintains 62 voluntary export restraints (VERs) out of a total of 261 known to exist worldwide. These affect mainly textile and steel products that are major export items of developing countries, especially NIEs.

There is considerable evidence indicating that such actions based on U.S. trade laws have been used more as a form of "administered protection" or "process protectionism" rather than to counter "unfair" foreign trade practices (see, e.g., Finger, Hall, and Nelson 1982; and Schott 1989). A number of VERs that protect the domestic market are, for instance, the result of AD or CVD investigations or safeguard actions.[1]

Since the 1979 trade legislation, the scope of U.S. trade laws has been steadily broadened to cover almost any foreign trade and industrial policy as a potential candidate for retaliation, and the criteria and requirements for granting import relief in particular situations have been significantly eased. The recently passed Omnibus Trade and Competitiveness Act of 1988 is one such example. According to the law, the scope for which AD or CVD actions could be applied was significantly extended and the criteria relaxed. Further, the U.S. administration was given enough discretionary power to eliminate any foreign trade practices that are deemed to be "unfair" according to the criteria set by U.S. government officials. Threats to restrict access to its domestic market have been used as a major bargaining chip by the United States.

1. It is striking to learn that such administered protection is cited as one of the serious reasons why Canada recently entered into a free trade agreement with the United States (see IMF 1988, 12).

The increased use of a bilateral approach to settle trade disputes by the United States appears to have worked adversely, especially against developing countries, whose bargaining leverage is relatively weak. For instance, once a charge is successfully filed, the burden of proof falls entirely on exporters. Such proof, however, requires not only a large amount of information but also expensive legal costs, which may be too burdensome for many developing countries to bear.[2] Hence merely filing a petition itself can be a powerful means of harassing developing country exporters.

In the following section, a brief review will be made of major U.S. trade laws and practices, examining protectionist elements inherently embedded in those laws and practices, mainly from the perspective of developing countries.

### 7.2.1 Safeguard Actions (Section 201)

The objective of Section 201 of the Trade Act of 1974, as amended, is to provide an industry temporary relief from import competition for structural adjustment. Hence, it is not necessarily related to any potentially "unfair" foreign trade practices. Its principles are embodied in Article XIX of the GATT, the escape clause that, under the appropriate circumstances, permits contracting parties to escape temporarily from GATT commitments and take measures to protect an injured domestic industry.

Under Section 201, the U.S. International Trade Commission (ITC) is required to report its findings on injuries to the president; if the finding is affirmative, the ITC's report includes a remedy recommendation that the president may consider to alleviate the injury. Relief may be provided through any combination of tariffs and quotas, trade adjustment assistance to the injured domestic industry, or negotiated orderly market agreements (OMAs) with relevant foreign nations. Relief may last for a maximum of eight years.[3]

Import relief under Section 201 is supposed to be applied to all imports rather than those from a selected number of countries or firms; hence, it is nondiscriminatory. Furthermore, Article XIX of the GATT authorizes member countries to retaliate if the country undertaking safeguard actions does not compensate its trading partners for the increased protection provided for its domestic industry.

When properly enforced, therefore, Section 201 seems to provide an appro-

2. For example, in June 1988, a Korean firm producing industrial belts was petitioned by U.S. firms on AD and CVD charges, but the CVD charge was dropped in April 1989 for *de minimus* benefits, and the AD charge was closed with no injury finding in June 1989. In the meantime, however, it cost the firm nearly $300,000 in legal expenses (for U.S. lawyers) alone to defend itself against the invalid charges. The firm's exports to the U.S. market were $4.3 million in 1988. An UNCTAD (1984, 16) study also reports that the cost of a fairly routine AD or CVD proceeding in the United States easily exceeds $100,000.

3. Prior to the 1988 Trade Act, the maximum period was five years, with a possible extension of three more years.

priate route for temporary protection while causing less friction to its trading partners, especially developing countries. Unfortunately, however, this route has been used infrequently, compared to other means of administered protection, for several reasons. First, the standard used in determining injury under Section 201 is in general higher than that used for AD or CVD cases since Section 201 investigations include imports from all sources that are not allegedly unfair trade (see Stern and Wechsler 1986). Second, even if injury to a domestic industry has been found, the president is not legally bound to follow the ITC's recommendation to remedy the situation. Finally, the president may be, in fact, reluctant to authorize protection measures because that could provoke retaliation unless compensation is adequate. In an effort to avoid such retaliation, the president frequently resorts to negotiated settlements through VERs or OMAs with certain key suppliers that limit their exports to the United States.

### 7.2.2 Antidumping and Countervailing Duties

United States antidumping laws[4] are designed to raise the price of foreign goods sold in the United States at "less than fair value" (LTFV) or "dumped." The U.S. countervailing duty law[5] aims to offset the price advantage of imported goods due to subsidies provided by foreign governments. According to these statutes, import relief is to be automatically granted on the finding of material injury, or threat of material injury, inflicted on the domestic industry by foreign imports and the finding that the imports causing the injury are either sold at LTFV or subsidized.

These unfair trade laws are consistent with GATT rules as they appear in Articles VI and XVI. GATT rules require, for instance, that the importing country's industry has been injured and that that injury was caused by either LTFV or government subsidies, but under the GATT each importing country sets up its own specific criteria for such findings. For the past decade, these criteria have been constantly revised to make it easier to raise protectionist barriers using the U.S. AD and CVD laws. There is considerable evidence to indicate that these unfair trade laws have been abused in the United States as anticompetitive or antitrade instruments, reducing the general welfare of both exporting and importing countries. The abuse is made possible, especially against developing countries, partly because the laws fail to reflect modern economics and partly because there is a lot of leeway for government officials to interpret and enforce the laws. Some of the notable features will be discussed briefly below.

First, under the current U.S. AD laws or GATT rules, any price discrimination between the home market and abroad due to exporting at a price lower

4. Tariff Act of 1930, Sec. 731, as amended.
5. Tariff Act of 1930, Sec. 701, as amended.

than that charged on the home market, regardless of the cost of production, may be subject to AD charges. In many developing countries, however, domestic prices may be set higher than their export prices, for a variety of reasons.[6] For instance, in developing countries where imports are protected and the domestic market size is not large enough to warrant perfect competition, a domestic monopoly or oligopoly may sell its products on the domestic market at prices higher than internationally competitive levels. In these circumstances, foreign competitors are not harmed because their export prices are normally set at least at or above international levels. In fact, sales in domestic markets are favored more than sales abroad in such cases. Nonetheless, such a price difference is normally subject to an AD charge. It is believed that such price discrimination is most common in developing countries, especially where a policy shift from inward to outward orientation has yet to be made.

Even in outward-oriented developing countries, it is not uncommon to maintain relatively high import barriers. This is because the extent of liberalization of their import regime is often dictated by policy options open to them at the time they shift from inward to outward orientation. For example, economies like Korea or Taiwan, which are unlike Hong Kong or Singapore, pursued their outward orientation without wholesale dismantling of their import barriers, at least until very recently. In these economies, outward orientation was achieved through the use of export subsidies to offset the antiexport bias of their import barriers (an "export-subsidy" route to outward orientation), instead of an outright liberalization of trade with currency adjustments (a "free trade" route to outward orientation).[7]

The export-subsidy route is a close substitute for the free trade route, at least in theory, since a 10 percent tariff on all imports, together with a 10 percent subsidy on all exports, would be equivalent to no tariff and no subsidy and a 10 percent depreciated exchange rate. Unless the export-subsidy route leads to a balance-of-payments surplus, therefore, foreign competitors should not consider it harmful compared to a free trade situation. In fact, developing economies like Brazil, Mexico, and Korea have, until recently, all been experiencing balance-of-payments deficits despite subsidies provided for their exports, indicating that their subsidies were not enough to offset their currency overvaluation. Nonetheless, their import protection policies have frequently led to AD charges, and, at the same time, their export subsidies have been frequently countervailed by the United States.

6. Providing import protection for an export industry may sound ironic, but it is often done as part of an overall incentive system or under infant-export arguments. Or exports may be differentiated products, which may differ slightly from products for domestic sales.

7. The export-subsidy route has often been preferred to the free trade route, mostly for political reasons: because of the political influence of vested interest groups benefiting from import protection, because of the fear of the inflationary effect of a required devaluation, and because of the erroneous belief on the part of policymakers that exports and import substitution could be better promoted under the export-subsidy route.

Second, the GATT fails to provide a general definition of the export or domestic subsidies to be banned. It does take, however, a somewhat more lenient view of domestic subsidies while strictly banning any form of export subsidies, providing a positive list of objectives for which domestic subsidies may be used.[8] However, U.S. CVD law forbids any domestic subsidies as long as they are industry specific, irrespective of their objectives.[9] Therefore, even domestic subsidies aimed at compensating externalities or offsetting other domestic distortions are banned under current U.S. CVD law. This amounts to depriving developing countries of some of the more efficient means of supporting their industrialization efforts.

Third, both the GATT and the U.S. AD (or CVD) laws require an injury test as a prerequisite for imposing AD duties (or CVDs) on dumped (or subsidized) imports, yet the meaning of *material injury* is not clearly defined.[10] The concept of material injury is increasingly problematic, particularly for developing countries. Aside from the unclear definition of material injury, the loose requirement of a causal link between dumping (or subsidies) and injury in the GATT rules as well as in U.S. law[11] can lead to the abuse of AD (or CVD) measures by blurring the distinction between subsidies and shifts in comparative advantage as a major cause of the material injury. In fact, this view is partly supported by the evidence that recent U.S. countervailing actions have been heavily concentrated in a few industries, such as iron and steel, textiles, and metal products, in which comparative advantage has already been established in favor of developing countries (see, e.g., Nam 1987, 739).

Finally, when the ITC's preliminary determination of injury is positive, the Department of Commerce (DOC) calculates dumping margins by comparing the adjusted "U.S. price" of the imported product to its "fair value" or "foreign market value." The fair value is normally estimated on the basis of the home market price of exporting nations. But the DOC can determine the fair value on the basis of the export price to third countries when the sales volume in the home market is small. The DOC can also use a "constructed value" for the fair value when neither the home market price nor the export price to third countries is deemed adequate for the fair value. The "constructed value" appears to be the most abused concept in calculating dumping margins, however. It is based on the estimated cost of production using the best information available, often information provided by petitioners. The constructed value also includes general expenses of at least 10 percent of the estimated produc-

8. For detailed GATT rules on subsidies, see Nam (1987).

9. See Sec. 771[5][B] of the U.S. Trade Agreement Act of 1979.

10. According to the U.S. Trade Agreement Act of 1979, *material injury* is defined as "harm which is not inconsequential, immaterial or unimportant" (Sec. 771[7][A]).

11. When the ITC determines the existence of injury, that determination is based on the cumulative effect on the U.S. industry of imports from all sources in the aggregate, rather than the imports from the country in question.

tion costs, plus a profit of at least 8 percent of the sum of such general expenses and the production cost, and the cost of packing for shipment to the United States. The value, so constructed, may be sufficiently elastic to meet any protectionist purpose of government officials.

### 7.2.3 Unfair Import Practices (Section 337)

Section 337 of the Tariff Act of 1930, as amended, is designed to provide relief to firms suffering from the infringement of intellectual property rights by foreign competitors and from unfair methods of competition or unfair acts in the importation of merchandise into the United States. The violations of intellectual property rights include import practices that infringe on valid and enforceable U.S. patents, copyrights, or trademarks. Other unfair import practices include methods or acts (such as antitrust violations, false designation of origin, or improper interference with contractual obligations) that destroy, threaten, or substantially injure a U.S. industry or prevent its establishment.

Section 337 is administered by the ITC. The ITC investigates any alleged violation of the law under Section 337 and reports its findings to the president, along with a statement of the action to be taken as a result of the investigation. The president can reject the ITC's findings, but such presidential action is rare.

The penalties in Section 337 cases can be very severe. A violation can result in a general exclusion of the concerned product, and all other goods containing it as an intermediate input, from the U.S. market. In addition, or alternatively, the ITC may issue a cease-and-desist order to the exporters committing the unfair act or practice. The 1988 Trade Act has significantly reinforced the penalty scheme for the enforcement of Section 337. At the same time, the 1988 Trade Act amended Section 337 so that U.S. petitioners need not prove injury to win an affirmative ITC determination in cases involving infringement of U.S. intellectual property rights. No doubt, these amendments significantly increase the chance that this law will be abused. The abuse is more likely against exports from NIEs like Korea since the structure of their exports is rapidly shifting into technologically more sophisticated products.

Recently, at the request of the EC, a GATT panel was formed to investigate Section 337. The panel reported in January 1989 that Section 337 violated the GATT rule (Article III, 4) of national treatment for imports. The panel found that Section 337 treated imported goods charged with patent infringement less favorably than domestic goods would be treated under U.S. domestic law. The United States, however, has not yet indicated whether it will revise its laws to accommodate the panel's recommendation.

### 7.2.4 The National Security Clause (Section 232)

Recently, U.S. firms or industries have even tried to have the U.S. government invoke trade restrictions against imports from Japan and other countries

for reasons of national security. According to Section 232 of the Trade Expansion Act of 1962, as amended, the U.S. president is allowed to "adjust" imports so that they will not be a threat to or impair national security. Of course, this law is backed up by the GATT in principle.[12]

In the past, many U.S. industries have sought relief from import competition under the national security clause, but the U.S. government has been very cautious in granting it. The danger of misuse of the national security argument is quite obvious because it could readily be applied to all kinds of economic activities. Also, such misuse could readily call for the escalation of retaliation. For that reason, perhaps, only one industry, the powerful oil industry—and no manufacturing industry—has been successful so far in getting import relief under Section 232 (see Saxonhouse 1986, 234). The abuse of this law is not, however, unthinkable in the future.

### 7.2.5 Section 301

Section 301 of the Trade Act of 1974, as amended in 1988, is designed to enforce U.S. rights under international agreements and to effectively counter foreign unfair trade practices. Unfair trade practices include any act, policy, or practice of a foreign government that is found to violate an international trade agreement or anything that is construed to be "unjustifiable, unreasonable, or discriminatory."[13] Section 301 requires the U.S. trade representative (USTR) to take all appropriate and feasible actions to eliminate such unfair foreign trade practices.

Section 301 was considerably strengthened by requiring tougher reciprocity in market access as amended in the 1988 Omnibus Trade and Competitiveness Act. The meaning of *unreasonable practices* was further elaborated to include, for example, the failure of effective protection of intellectual property rights, the denial of fair and equitable market opportunities, toleration of private anticompetitive schemes, export targeting, and the persistent denial of workers' rights. The 1988 Trade Act made retaliatory action mandatory in cases involving "unjustifiable" acts[14] and at the USTR's discretion in cases involving "unreasonable or discriminatory" practices.

The 1988 Trade Act also amended Section 301 by adding a provision that is known as "Super-301." This provision requires the USTR to identify "prior-

12. Article XXI of the GATT states, e.g., that "nothing in this agreement shall be construed . . . (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests."

13. Unjustifiable practices are those that are inconsistent with international legal rights; unreasonable practices are unfair or inequitable practices, although they may not be inconsistent with international legal rights; and discriminatory practices are the denial of most-favored-nation (MFN) treatment to U.S. goods, services, or investments (see Sec. 301[d]).

14. Mandatory retaliation has certain exceptions, however. For instance, the USTR need not retaliate when the United States receives an unfavorable determination or ruling by the GATT, when a foreign country is taking specific measures to eliminate the problem, or when U.S. action is likely to affect the U.S. economy adversely.

ity foreign unfair practices" and "priority foreign countries" and to conduct bilateral negotiations with designated countries over a three-year period to reduce, eliminate, or compensate for these practices, or to retaliate. The Super-301 provision was only a temporary measure, however, lasting two years and expiring in 1990.

During the 1980s, and especially since the mid-1980s, the United States accelerated the use of Section 301 at an unprecedented rate, often directing it against developing economies. The aggressive use of Section 301 is particularly worrisome for developing countries, for several reasons.

First, Section 301 is neither covered by the GATT nor consistent with the GATT's principle of nondiscrimination. This law can be used highly selectively in choosing target countries or target practices, and there are no certain rules for retaliation. Therefore, the uncertainties that traders face under the threat of 301 actions can be unbearably high, particularly for developing countries whose trade dependency on the U.S. market is relatively high.

Second, any retaliation or threats of retaliation can quickly generate amplified political responses from trading partners. In particular, developing countries may feel that any unilateral liberalization effort needs to be reserved for future trade negotiations with the United States.

Finally, to enforce Section 301 properly, the United States has to constantly play the role of an international police force against all economic policies in all countries, which would require an exorbitant amount of resources. Resources certainly could be used more efficiently.

### 7.2.6 Voluntary Export Restraints

Beginning in the late 1970s, VERs became a popular means of import restriction in the United States. VERs are often negotiated when other GATT-consistent trade remedies are found to be ineffective or have difficulties controlling the flow of imports. Since VERs pretend to be voluntary and are bilateral in nature, they escape both U.S. laws and the GATT. While VERs give U.S. trade negotiators greater flexibility in providing protection for domestic producers, they reduce the pressure for domestic industries to adjust to changing conditions.

Since VERs allow foreigners to administer the export controls, they implicitly compensate the exporting country by transferring quota rents to the exporters at the cost of domestic consumers. Furthermore, VERs tend to provide more stable and certain trade environments, with secure market-sharing arrangements, than would alternative trade measures. Mostly for these reasons, exporting countries often easily yield to pressure to accept a VER.

However, there are reasons to worry about the rising trend of VERs. First, once a VER is instituted, it is not easy to get out of the trap since both exporters and importers have shared interests in maintaining it. Further, there is a great temptation to expand it to a global scale, thus contributing to the erosion of an open world trading system. As a result, the smooth industrial transfor-

mation to a changing comparative advantage would be significantly disturbed or delayed in both countries. The life of sunset industries may be prolonged, but the sunrise industries may stop growing long before they reach a peak. The damage will certainly be greater for countries with the potential for more rapid growth.

## 7.3 The Pattern of U.S.-Administered Protection as Applied to Korean Exports

### 7.3.1 Recent Trends

Korean exports have been facing increasingly adverse market situations in industrial countries, particularly since the mid-1970s. Of Korean exports going to nineteen industrial countries, the share of exports under import restrictions rose from 27.8 percent in 1976 to a peak of 45.8 percent in 1981, as shown in table 7.4. According to the table, however, the share has declined since then, to 22.3 percent by 1989.

A similar pattern holds for Korean exports to the United States: the share of Korean exports under restrictions rose from 37.5 percent in 1976 to a peak of 43.3 percent in 1985 but declined to 19.7 percent in 1989. The recent decline in the export coverage of NTBs, however, may be attributed more to the rapid growth of Korean exports than to the increased liberalization of import restric-

**Table 7.4** **Korean Exports under NTBs by Major Trading Partners**

| | 1976 | 1981 | 1985 | 1987 | 1989 |
|---|---|---|---|---|---|
| Exports to the U.S.: | | | | | |
| Total exports (million U.S. dollars) | 2,493 | 5,661 | 10,754 | 18,311 | 20,639 |
| Exports under NTBs (million U.S. dollars) | 935 | 2,412 | 4,656 | 4,855 | 4,072 |
| Share (= B/A) (%) | 37.5 | 42.6 | 43.3 | 26.5 | 19.7 |
| Share (%) of exports under NTBs to other industrial countries: | | | | | |
| Canada | 39.3 | 45.6 | 31.1 | 42.9 | 23.9 |
| EC | 31.6 | 39.3 | 29.5 | 41.0 | 22.3 |
| Japan | 14.5 | 48.5 | 32.0 | 19.4 | 23.7 |
| 19 industrial countries[a] | 27.8 | 45.8 | 36.6 | 31.0 | 22.3[b] |

*Source:* Korea Foreign Trade Association, *Overview on Import Restrictions of Major Industrialized Countries* (various issues).

*Note:* NTBs here include VERs, ADs, CVDs, safeguard actions, and other import restriction under administrative or unfair trade regulations in force or under investigation.

[a]The nineteen industrial countries are the United States, Canada, Japan, Australia, New Zealand, Germany, the United Kingdom, France, the Netherlands, Belgium, Luxembourg, Denmark, Italy, Greece, Ireland, Finland, Norway, Sweden, and Austria.

[b]Of the nineteen industrial countries, New Zealand is omitted.

tions on the part of the United States: Korea's overall exports to the United States increased more than threefold, from $5.7 to $20.6 billion for the period 1981–89, while its exports to the United States under import restrictions increased about twofold, from $2.4 to $4.1 billion for the same period. The recent decline of Korean exports to the United States under NTBs, particularly during the later half of the 1980s, could also have been induced partly by a U.S. policy shift from raising protection of domestic industries to increasing access to foreign markets.[15] Nevertheless, 20 percent of Korean exports to the United States were still taking place under various forms of administered protection as of 1989.

Table 7.5 presents estimates of Korean exports going to the U.S. market under various types of administered protection. Over the period 1984–89, Korea exported a total of $27.1 billion to the U.S. market under various measures of administered protection. Of this total, nearly 77 percent was covered by VERs, 11.5 percent by ADs or CVDs, 4.5 percent by safeguard actions, and the remaining 6.7 percent by other unfair trade laws like Section 337 or the National Security Clause of Section 232.

VERs, therefore, appear to be the most important import-restricting instrument in force against Korean exports to the United States as far as their export coverage is concerned. Two of them were particularly notable during the later half of the 1980s. One is the VER on textile and clothing products under the Multifiber Arrangement (MFA) quotas, and the other is a VER agreement on iron and steel products.

International trade in textiles and clothing has long been regulated by restrictive trading systems. At first, the Short Term Cotton Textile Arrangement (STA) came into effect in 1961, and this was followed by a more comprehensive agreement known as the Long Term Arrangement on Cotton Textiles (LTA) in 1962. The LTA evolved into the first Multifiber Arrangement (MFA I) in 1974, in which coverage was expanded to noncotton products, especially synthetic fiber products. Since then, there have been several renewals: currently, MFA IV (1986–91) is in effect.

The main objective proclaimed in these agreements were to foster the expansion of world trade in textiles with the reduction of barriers to such trade while, at the same time, preventing disruptive effects in individual markets. But, each time the MFA was renewed, it was accompanied by an increase in coverage as well as in intensity to regulate international trade in textile products. According to a recent study by Kim (1989), for example, the number of

15. In recent years, e.g., the United States has launched a number of Section 301 investigations mainly to increase its access to Korean markets, beginning with cases for the liberalization of the insurance market and the protection of U.S. intellectual property rights in Korea in 1985. U.S. interests moved to cases of import liberalization of cigarettes, beef, and wine in 1988 and more recently to such areas as the opening up of the domestic telecommunications industry and removing restrictions on direct foreign investments. So far, most of these cases have been concluded to the satisfaction of the United States, and no Section 301 threat has yet been transformed into retaliatory action.

**Table 7.5** **Korean Exports Going to the United States under Restrictions, by Type of Administrative Protection, 1984–89 (million U.S. dollars)**

| Year | VER | | ADs[a] | CVDs | Safeguard | Section 337 & Section 232[b] | Exports under Restrictions[c] | Total Exports to U.S. | Share ([6]/[7]) |
|---|---|---|---|---|---|---|---|---|---|
| | Textile (1a) | Steel (1b) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 1984 | 2,166 | 975 | 1,106 | 249 | 0 | 35 | 4,662 | 10,479 | 44.5 |
| | (46.5) | (20.9) | (23.7) | (5.3) | (0) | (.8) | (100) | | |
| 1985 | 2,191 | 869 | 412 | 11 | 1,157 | 15 | 4,656 | 10,754 | 43.3 |
| | (47.1) | (18.7) | (8.8) | (.2) | (24.9) | (.3) | (100) | | |
| 1986 | 2,510 | 731 | 397 | 10 | 17 | 965 | 4,621 | 13,880 | 33.3 |
| | (54.3) | (15.8) | (8.6) | (.2) | (.4) | (20.9) | (100) | | |
| 1987 | 2,944 | 735 | 354 | 0 | 23 | 799 | 4,855 | 18,311 | 26.5 |
| | (60.6) | (15.1) | (7.3) | (0) | (.5) | (16.5) | (100) | | |
| 1988 | 3,065 | 846 | 310 | 0 | 7 | 4 | 4,239 | 21,404 | 19.8 |
| | (72.3) | (20.0) | (7.3) | (0) | (.2) | (.1) | (100) | | |
| 1989 | 3,135 | 652 | 270 | 0 | 11 | 4 | 4,072 | 20,639 | 19.7 |
| | (77.0) | (16.0) | (6.6) | (0) | (.3) | (.1) | (100) | | |
| Total | 16,011 | 4,787 | 2,849 | 270 | 1,215 | 1,822 | 27,105 | 95,467 | 28.4 |
| | (59.1) | (17.7) | (10.5) | (1.0) | (4.5) | (6.7) | (100) | | |

*Source:* See table 7.4.

*Note:* Numbers given in parentheses represent the share of exports under respective restriction in total exports under all restrictions.

[a]Exports that were subject to ADs and CVDs at the same time were included in AD cases.

[b]Section 337 refers to unfair importing practices, and Section 232 refers to National Security Clause.

[c]Exports under restriction = (1) + (2) + (3) + (4) + (5), including exports under investigation.

product categories of Korean exports in textile and clothing products going to the U.S. market under restrictions increased from twenty-seven during the MFA II period (1978–81) to seventy-five during the MFA IV period (1987–91), out of a maximum of 111 categories. When the MFA restriction ratio was measured by the share of MFA-restricted exports to total exports of textile and clothing products going to the U.S. market, it showed an increase from 73 to 97.3 percent between the two periods. It is, therefore, evident that most of the Korean exports of textile and clothing products going to the U.S. market are now subject to MFA quotas. Amazingly enough, however, Korea was able to increase its exports of textile and clothing products to the United States from $1.1 to nearly $4 billion for the period 1981–88, largely through product diversification and quality upgrading, whereas total Korean exports of textiles and clothing to all markets increased from $5.5 to $14.1 billion for the same period.

VERs on iron and steel products have a long history as well. The first one came into effect in 1968 when the United States negotiated VERs with Japanese and European exporters of steel to the United States. These were phased out with the worldwide steel boom in 1973. But, as steel market conditions continued to deteriorate in the late 1970s, the U.S. government introduced the trigger-price system (TPS) in 1978. Under the TPS, any imports priced below the trigger price were to be automatically retaliated against by AD duties, where the trigger prices were determined by Japanese unit costs of production plus freight from Japan to the United States.

As import penetration continued in the early 1980s, despite the TPS, U.S. steel producers began to file AD or CVD suits, and the U.S. government had to suspend the TPS in 1982. These unfair-trade-law suits, however, were not enough to control imports. The import penetration ratio reached over 20 percent of apparent domestic consumption in 1983 and over 25 percent in 1984. In early 1984, Bethlehem Steel and the United Steel Workers filed a petition under Section 201 to limit the share of imports to less than 15 percent of the U.S. market, and the ITC recommended quotas to keep the import share less than 18.5 percent of the domestic market. The U.S. government, however, opted for the VER approach in place of imposing worldwide quotas under section 201 to limit steel imports. The stated purpose of the VER was to control "unfairly traded" steel. But bilateral negotiations on VERs were concluded with major steel suppliers, including countries that trade fairly. For this VER program, Congress passed the Steel Import Stabilization Act, which enabled the president to enforce the steel VER for a five-year period ending on 30 September 1989. Under this VER program, Korea reached an agreement with the United States to limit its steel exports to less than 1.9 percent of U.S. domestic consumption on average. Recently, the steel VER was extended for another two and a half years.

Since the steel VER came into effect in late 1984, Korean exports of steel products have showed a declining trend in value despite the price-raising effect

of VERs, indicating that Korean steel exports declined more rapidly in volume in recent years (see table 7.5: further discussion follows in sec. 7.4 below).

Excluding VERs, table 7.6 presents data on the frequency of various types of administered protection initiated by the United States against Korean exports or industries for the period 1980–89. According to the table, the number of initiations began to surge especially after 1982, when Korea began to record a trade surplus vis-à-vis the United States while the overall trade deficit of the United States began to grow at an unprecedented rate. The frequency reached a peak of eleven initiations in 1985 and since then has declined to six initiations in 1988.

Of the various types of administered protection, ADs have been most frequently employed, with a total of twenty-five cases for the period 1980–89. CVD cases and safeguard actions have been relatively infrequent, with a total of eight and eleven cases, respectively, for the same period. It is interesting to observe that initiations under Section 337 of the Tariff Act of 1930 have risen significantly, especially in the later half of the 1980s, with a total of sixteen cases for the period 1980–89. During the same period, three cases were initiated under Section 232 of the Trade Expansion Act of 1962. This contrasts with the number of administered protection cases that were registered during the 1970s. There were only six AD charges, four Section 337 cases, and no Section 232 cases during the 1970s. Administered protection, however, more

**Table 7.6** **Frequency of U.S.-Administered Protection Initiated against Korean Exports, 1980–89**

| | ADs | | CVDs | | Safeguard | | Section 337 | | Section 232 | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Year | Ini. | Aff. | Ini. | Aff. | Ini. | Aff. | Ini. | Aff. | Ini. | Aff. | Ini. | Aff. |
| 1970s | 6 | 2 | 9 | 4 | 10 | 6 | 4 | 2 | | | 29 | 14 |
| 1980 | | | | | 1 | 1 | | | | | 1 | 1 |
| 1981 | 1 | 1 | | | 1 | 1 | | | | | 2 | 2 |
| 1982 | 2 | . . . | 1 | 1 | | | | | | | 3 | 1 |
| 1983 | 5 | 3 | | | 1 | . . . | 3 | 2 | 1 | . . . | 10 | 5 |
| 1984 | 3 | . . . | 2 | 1 | 3 | . . . | | | | | 8 | 1 |
| 1985 | 5 | 3 | 3 | 1 | 3 | . . . | | | | | 11 | 4 |
| 1986 | 4 | 3 | 1 | 1 | | | 4 | 3 | | | 9 | 7 |
| 1987 | | | | | 1 | . . . | 5 | 3 | 1 | . . . | 7 | 3 |
| 1988 | 2 | 1 | 1 | . . . | 1 | . . . | 1 | . . . | 1 | . . . | 6 | 1 |
| 1989 | 3 | 2 | | | | | 3 | 2 | | | 6 | 4 |
| Total, 1980–89 | 25 | 13 | 8 | 4 | 11 | 2 | 16 | 10 | 3 | . . . | 63 | 29 |

*Source:* See table 7.4.

*Note:* Ini. = number of cases initiated. Aff. = affirmative determination, including alternative arrangements. Figures represent numbers of cases.

often took the form of CVD or safeguard actions during the 1970s, with nine and ten initiations, respectively.

The probability that such charges could obtain import relief appears to have been small, however. On average, roughly 46 percent of those charges made during the period 1980–89 ended up with some form of import relief, but the probability varies highly depending on the type of charge made. For example, nearly 70 percent of the Section 337 cases were able to obtain import relief either by an exclusion order or by a negotiated settlement through arrangements. But no case under the National Security Clause of Section 232 was successful in obtaining import relief. Petitions under Section 201 also had difficulty in obtaining import relief. However, more than half the AD or CVD cases obtained import relief with affirmative final determination.

LTFV charges, especially ADs, therefore, appear to have been the most important instrument of administered protection applied to Korean exports during the 1980s, and charges under Section 337 for the infringement of intellectual property rights showed a rapid rise during the later half of the 1980s. It is likely that charges under Section 337 will increasingly become a source of harassment in the future since U.S. producers no longer need to prove injury before the ITC to win the case. Some aspects of administered protection regarding the LTFV cases will be examined in more detail below in light of the Korean experience.

### 7.3.2 LTFV Cases

According to current LTFV case laws in the United States, the ITC is given the authority to determine the existence of injury on a case-by-case basis, and the DOC is in charge of determining the existence and the magnitude of dumping (or subsidization) brought by exporting firms (or governments). When the U.S. government receives a LTFV petition, the ITC is required to complete its preliminary investigation on injury within forty-five days, and the DOC is required to complete its preliminary determination on dumping (or subsidization) within 160 days (with a possible extension of fifty days).

If the preliminary determination of injury is negative, the case ends there. But if it is positive, the investigation continues to final determination, irrespective of the outcome of the DOC's preliminary determination on dumping (or subsidization). If the DOC's preliminary determination on dumping (or subsidization) is positive, however, "suspension of liquidation" of imports becomes necessary, and the concerned importers must post a bond with the government to pay ADs (or CVDs) if the final determination is also positive. Both the ITC and the DOC are required to complete final determination on injury and dumping (or subsidization), respectively, within seventy-five days of DOC's preliminary determination on dumping (or subsidization).

Table 7.7 provides information on the actual disposition of AD or CVD investigations conducted by the United States against Korean exports during the 1980s. Several features are worth noting. First, out of a total of thirty AD

**Table 7.7** **Disposition of AD and CVD Investigations by the United States against Korean Exports, 1980–88**

| | No. of Investigations | Average AD Margins | Average Subsidy Margins |
|---|---|---|---|
| Preliminary disposition | 30 | | |
| | (100) | | |
| A. Affirmative dumping (or subsidy) determination | 16 | 14.64 | 5.45 |
| | (53) | (2.27–64.37) | (1.75–12.5) |
| B. Alternative arrangements negotiated | 0 | | |
| | (0) | | |
| C. Restrictive, total (A + B) | 16 | | |
| | (53) | | |
| D. Negative injury determination[a] | 3 | | |
| | (10) | | |
| E. Negative dumping (or subsidy) margin determination,[b] including *de minimus* | 6 | | |
| | (20) | | |
| F. Case withdrawn or terminated | 3 | | |
| | (10) | | |
| G. Not restrictive, total (D + E + F) | 12 | | |
| | (40) | | |
| H. Pending or under investigation | 2 | | |
| | (7) | | |
| Final disposition | 30 | | |
| | (100) | | |
| A. ADs or CVDs imposed | 8 | 18.10 | 2.60 |
| | (27) | (1.91–64.81) | (.78–4.42) |
| B. Alternative arrangements negotiated | 5[c] | 3.34 | 1.71 |
| | (16) | (1.26–5.00) | (1.62–1.8) |
| C. Restrictive, total (A + B) | 13 | | |
| | (43) | | |
| D. Negative injury determination | 1 | | .53 |
| | (3) | | |
| E. Negative dumping (or subsidy) margin determination,[d] including *de minimus* | 4 | | |
| | (13) | | |
| F. Case withdrawn or terminated | 8[e] | | |
| | (27) | | |
| G. Not restrictive, total (D + E + F) | 13 | | |
| | (43) | | |
| H. Pending or under investigation | 4 | | |
| | (13) | | |

*Source:* See table 7.4.

*Note:* The percentage of dispositions is shown in parentheses.

[a]Investigation ends. There is no preliminary subsidy (or dumping-margin) determination in such cases.

[b]Investigation continues without suspension of liquidation.

[c]Includes five agreements reached after an affirmative final decision.

[d]If the final subsidy (or dumping margin) is negative, there is no final injury determination.

[e]Includes one case withdrawn after an affirmative subsidy determination.

or CVD cases initiated during the period 1980–88, sixteen cases (53 percent) received a positive determination on dumping (or subsidization) in their preliminary investigations. But, in their final determination, only eight cases ended up with the imposition of ADs or CVDs, whereas alternative arrangements were reached in five cases to limit exports or raise export prices. It appears, therefore, that preliminary determinations have been slightly biased toward affirmative outcomes, as compared with final determinations. Second, more important is that in only three cases was the preliminary injury finding negative; investigations went on to final determination in 90 percent of the cases, even though only 53 percent of the cases were successful in obtaining a positive determination in the DOC's preliminary investigation. This must have increased both the burden of concerned exporters' legal expenses and the uncertainty faced by both exporters and importers. In the process, many financially squeezed exporters would have been pressured into negotiated settlements through "arrangements."

Finally, calculations show that average dumping margins for AD cases were much greater than average subsidy rates for CVD cases, roughly 10 percent versus 2 percent, indicating that ADs have been a more powerful instrument than CVDs to control Korean exports. Also, in some cases, wide variation in dumping margins was observed between preliminary and final determinations, notably in the notorious color television (1983 to the present) and album (1985 to the present) cases. For example, according to U.S. *Federal Register* reports for the color television case, in 1983 the dumping margin was calculated at 2.9 percent in the preliminary determination but 15.8 percent in the final determination. In an expedited review for the same case in 1984, however, the dumping margin was calculated at 32.4 percent in the preliminary determination but at only 11.5 percent in the final determination. In the album case, in 1985 the dumping margin was calculated at 4.0 percent in the preliminary determination but jumped to 64.8 percent in the final determination. The final dumping margin was based on the so-called constructed value. The same 64.8 percent dumping margin continued to survive even in the administrative review conducted in 1989 because the DOC still relied on the "best" information available to calculate the "constructed value." In fact, Korean album exporters have long since given up their struggle to export to the U.S. market in the face of harassment by AD charges.[16]

### 7.3.3 Industry Incidence of U.S.-Administered Protection

Table 7.8 presents frequency data on the industry incidence of administered protection initiated against Korean exports during the period 1980–89. According to the table, the metal products industry has been most frequently affected by administered protection, with a total of sixteen initiations during

16. Korean exports of album products to the U.S. market amounted to over U.S. $36 million in 1984. Since 1986, however, that figure has never reached more than U.S. $0.33 million per year.

**Table 7.8** **Industry Incidence of U.S.-Administered Protection on Korean Exports, 1980–89**

| Industry | ADs | CVDs | Safeguard | Unfair Trade Practice (Sec. 337) | National Security Clause (Sec. 232) | Total |
|---|---|---|---|---|---|---|
| Agricultural and marine products | | | 2<br>(1) | | | 2<br>(1) |
| Textiles | 2<br>(1) | | | 1<br>(1) | | 3<br>(2) |
| Footwear | | 2 | 1<br>(1) | | | 3<br>(1) |
| Iron and steel | 6<br>(5) | 2<br>(2) | 2<br>(1) | | | 10<br>(8) |
| Metal products | 4<br>(2) | 5<br>(2) | 3 | 3<br>(1) | 1 | 16<br>(5) |
| Machinery | | | | | 2 | 2 |
| Electrical and electronic products | 5<br>(3) | | 1 | 5<br>(4) | | 11<br>(7) |
| Transport equipment | 1 | | 1 | | | 2 |
| Chemicals | 4<br>(1) | 1 | | 2<br>(1) | | 7<br>(2) |
| Miscellaneous | 3<br>(1) | | | 4<br>(2) | | 7<br>(3) |
| Total | 25<br>(13) | 8<br>(4) | 11<br>(2) | 16<br>(10) | 3 | 63<br>(29) |

*Source:* The same as in table 7.4.

*Note:* Figures represent number of cases. Number of affirmative determinations including alternative arrangements is shown in parentheses.

the period 1980–89, but the chance to obtain import relief was only 30 percent. The iron and steel industry has also frequently suffered from administered protection with a total of ten initiations for the same period. The success rate for obtaining import relief, however, was very high for the iron and steel industry, with an 80 percent chance. The major instruments of administered protection applied to these two industries include AD and CVD charges, with nine and eight cases, respectively, during the period 1980–89.

Various forms of administered protection that were initiated against the iron and steel industry in the early 1980s were eliminated in return for the steel VER that was agreed on in 1984. The 1984 steel VER agreement also stipulated that, if any Korean steel exports were to encounter new investigations under Section 201, Section 232, Section 301, or AD or CVD laws, Korea was entitled to terminate the VER agreement with respect to some or all of the products covered by the steel VER. This illustrates vividly how alternative forms of administered protection can be exchanged to ensure a desired level of protection of the U.S. steel industry.

Exports of electrical and electronic products, which has emerged as Korea's

number one export category in recent years, were also frequently met by AD charges or patent infringement charges, with four cases each for the period 1980–89.

Unlike AD or CVD actions, safeguard actions were dispersed more widely across industries, but the probability of their obtaining import relief was very slim: less than 20 percent. Out of a total of eleven initiations made during the period 1980–89, only two cases—stainless steel products and canned mushrooms—were able to obtain import relief. Neither import relief action lasted more than three years, however.

Under the National Security Clause of Section 232, there were three investigations during the period 1980–89, concerning machine tools, bearings, and certain plastic molding machines, but none led to any positive action for import relief.

In recent years, more technologically sophisticated Korean export products have been increasingly charged by U.S. industries with patent infringement under Section 337 of the Trade Act of 1930. These include, for example, such products as computer memory chips, car phones, metallic balloons, microwave-oven timers, and plastic bags. Since the punishment for patent infringement can be as severe as banning entry of the concerned articles into the United States, most cases tend to be settled through negotiated arrangements. For instance, of a total of sixteen cases initiated under Section 337 during the period 1980–88, ten were resolved through negotiated arrangements such as royalty payments or price or export quantity undertakings, three were dismissed or negatively determined, and two were put under an exclusion order by the ITC. Of the remaining two cases, one was unilaterally withdrawn by the petitioner, and the other remains under investigation.

## 7.4 Effects of U.S.-Administered Protection on Korean Exports

As seen in table 7.5 above, of the various forms of administered protection that have been applied against Korean exports by the United States, VERs have been the most important instrument so far as their coverage of Korean exports is concerned. Combined exports under the MFA quotas and the steel VER quotas, for example, constituted more than 70 percent of Korean exports that were going to the U.S. market under various forms of administered protection during the period 1984–88.

The economic effect of such VERs on Korean exporters or the Korean economy, however, has been analyzed infrequently. For one thing, VERs are a relatively less painful instrument of administered protection from the exporter's point of view. For another, any sensible analysis of VERs on an exporting country needs to be based on a global, instead of a bilateral, trade model since the United States makes bilateral VER agreements with many different major exporters at the same time. Any numerical exercise with such a global model, however, requires many ad hoc assumptions on various elasticities and may therefore be subject to a relatively large margin of error.

Nonetheless, the recent study by Tarr (1987) may be suggestive of the possible effects of such VERs on an exporting economy. Using a global trade model, Tarr estimated the welfare effects on Korea of the recent steel VERs imposed by the United States and the EC. According to Tarr's estimates, Korea is better off under the steel VERs than it would have been in the absence of them, with a net welfare gain of $32.4 million as a result of the steel VERs. The steel VERs were estimated to increase Korea's export price of steel products by $23.3 per ton on average and to reduce Korea's export volume of steel products going to U.S. and EC markets by 312,000 metric tons. This would result in a quota-rent transfer of $41.9 million to Korean exporters at the expense of U.S. and EC consumers. This would also incur a loss of $9.8 million for Korean exporters in inframarginal rents on their sales to the rest of the world.

Tarr's estimates of the welfare effects of the steel VERs on Korea, however, require cautious interpretation. First, the estimated welfare gain for Korea is based on an extremely short-run and static model. The analysis, therefore, fails to consider any dynamic consequences of the steel VER such as the welfare loss due to its investment-deterring effect on the steel industry in a dynamic economy like Korea's with the lowest steel-making costs in the world.[17] Partly because of delayed domestic investments in the steel industry, which was characterized by scale economies, Korea has not even been able to fill its VER quotas granted by the United States in recent years.[18] As can be seen in table 7.9, the share of Korean steel exports in U.S. steel consumption peaked in 1984 with a 2.3 percent share but declined to a 1.4 percent share in 1987, well below the 1.9 percent limit set by the Korea-U.S. steel VER agreement of 1984. Second, while the quota rents due to the steel VER are transferred to Korean exporters, some of them are bound to be dissipated by various forms of rent-seeking activities. Further, the quota rents help inefficient firms survive owing to reduced competitive pressures, while potentially more efficient firms are prevented from entering the industry.[19]

17. For a detailed analysis of the international competitiveness of the Korean steel industry, see Nam (1986).

18. Another important reason why Korea has been unable to fill its export quotas in recent years can be found in the dramatic recovery of the U.S. steel industry in terms of its international competitiveness, making home or other export markets more profitable for Korean steel makers. According to a recent report from the International Business and Economic Research Corporation (1989), e.g., the U.S. steel industry has significantly reduced its production costs by eliminating obsolete capacity and modernizing its facility. Between 1983 and 1988, according to the report, the U.S. steel industry closed down 39 million tons of obsolete capacity (about 25 percent of its total capacity), resulting in an increase in its capacity utilization rate from 56.2 to 88.7 percent and in cost reductions of at least 35 percent per ton of steel production. As a result, the U.S. steel industry was able to turn its losses of $2.2 billion in 1983 into profits of $1 billion by 1987.

19. In allocating VER quotas among exporters, the Korean Ministry of Trade and Industry sets up the basic rules and guidelines, and the Korea Iron and Steel Association oversees their actual implementation. According to the rules, VER quotas are divided into basic and open quotas, of which basic quotas are to be allocated to individual firms on the basis of their previous year's export performance in the U.S. market of VER-quota items, whereas open quotas are determined on the basis of their export performance in the U.S. market of nonquota items and in non-U.S.

**Table 7.9** **Korean Exports of Steel Products under the Steel VER (%)**

| | $t-3$ | $t-2$ | $t-1$ | $t$ | $t+1$ | $t+2$ | $t+3$ |
|---|---|---|---|---|---|---|---|
| Exports to the U.S. | | | | | | | |
| Volume | 63.7 | 45.2 | 91.0 | 100.0 | 76.6 | 61.3 | 62.7 |
| Unit price | 111.2 | 108.0 | 88.4 | 100.0 | 121.4 | 125.2 | 123.2 |
| Share in U.S. consumption | 1.2 | 1.4 | 2.1 | 2.3 | 2.0 | 1.7 | 1.4 |
| Exports to third countries: | | | | | | | |
| Volume | 198.2 | 128.3 | 99.5 | 100.0 | 102.8 | 105.3 | 109.6 |
| Unit price | 44.8 | 84.2 | 93.6 | 100.0 | 96.9 | 93.5 | 102.1 |
| Exports to all countries: | | | | | | | |
| Volume | 153.8 | 100.8 | 96.7 | 100.0 | 93.7 | 90.8 | 94.1 |
| Unit price | 53.6 | 86.5 | 91.7 | 100.0 | 103.1 | 100.0 | 105.9 |

*Source:* Adapted partly from Barks (1989, table 21, p. 54) and American Iron and Steel Institute, *Annual Statistical Report* (various years).

*Note:* $t$ = 1984, when the Korea-U.S. steel VER went into effect.

Table 7.9 provides data on Korean steel exports going to the U.S. market as well as to third-country markets before and after the Korea-U.S. steel VER agreement of 1984. Korean exports of steel products going to the U.S. markct declined sharply—by nearly 40 percent in volume—within the next two years after the 1984 steel VER agreement was reached. The unit export price rose by 25 percent over the same period. But it is not clear how much of this price rise may be attributed to the U.S. steel VER since the prices of Korean steel exports may be affected by such other factors as changes in the product composition of Korean exports and other cyclical factors as well. But the unit price of Korean steel exports to third-country markets did show a decline of 6.5 percent for the same period, due, perhaps, to the intensified competition in these markets.[20] Overall, Korean steel export volume declined 6 percent for the ensuing three years after the 1984 steel VER went into effect, but Korean exports to third-country markets increased 10 percent, suggesting that there was a substantial shift from U.S. to third-country markets for the disposition of Korean steel exports.

The MFA restrictions on the trade of textiles and clothing have long been in force, but relatively little is known about their economic consequences on exporters. One may be tempted, however, to conjecture that effects would

areas of all steel products. Until 1989, about 90 percent of total VER quotas took the form of basic quotas, while the remaining 10 percent were open quotas. However, as Korea's quota-filling rate dropped to as low as 60 percent of the VER quotas granted by the United States in 1989, the Ministry of Trade and Industry readjusted the distribution of basic and open quotas by reducing basic quotas to 70 percent and raising open quotas to 30 percent of total VER quotas in 1990. In principle, quota trading among exporters is not allowed in Korea.

20. It is puzzling that Korean steel exports to third countries were halved in volume while their export price doubled in the three years prior to 1984, as seen in table 9.10 below. They may reflect the severity of the worldwide recession in the steel market in the early 1980s with actual existence of dumping in third-country markets, while the U.S. market was sheltered under the TPS.

occur in the MFA case similar to those already seen in the steel VER case. In fact, according to Tarr and Morkre's (1984) estimates, tariff equivalents of MFA quotas on U.S. imports of apparel from Hong Kong turned out to be 20.2 percent on average in 1980. Recently, Kim et al. (1986) recalculated the average quota rent of apparel using the composition of Korean exports to the United States: it turned out to be 17 percent. According to Kim's experiments with a simple model, in 1983 Korean exports of textiles and clothing to the U.S. market would have increased by 16.7 percent in value if the MFA quotas of the United States were lifted, despite the resulting export price reduction of 17 percent for MFA-regulated products. The net welfare effect on Korea of the MFA quotas of the United States is unknown, however.

Unlike the VER cases, other measures of U.S.-administered protection, directed at Korean exporters only, are not likely to affect the U.S. domestic prices of the concerned products in any significant way.[21] This is mainly because Korean exports constitute only a portion of U.S. consumption of the concerned products, and they are likely to be highly standardized, with an ample substitution possibility from other supply sources. Therefore, any price-raising effect of U.S.-administered protection could be a fatal blow to the Korean exporters of the concerned products, and any reduction of Korean exports could be readily replaced by increased domestic production or imports from other competitors, leaving the domestic prices and quantity consumed in the United States relatively intact. In such cases, the welfare loss borne by Korean exporters due to U.S.-administered protection will be directly proportional to the extent of their export loss in the U.S. market. Korean exporters facing this type of U.S.-administered protection, therefore, will make an extra effort to divert their exports to third-country markets, in order to maintain a certain operational rate and salvage some of their losses in the U.S. market.

The changes in export value of goods subject to various forms of U.S.-administered protection, except for VERs, are summarized at an aggregate level in table 7.10.[22] A few notable features appear. First, for all cases with all outcomes, export value to the U.S. market declined by 10 percentage points on average between the year before and the year after the initiation of the investigation. There is also, clearly, export diversification from the U.S. market to third-country markets after the initiation of the investigation. Within a three-year period after the initiation of the investigation, export value to third-country markets increased by 50 percentage points, whereas it showed only a 5 percentage point increase during the three-year period prior to the initiation

21. According to an estimate by Messerlin (1988, 36), when facing AD measures by the EC, exports from NIEs do not enjoy any price increases, whereas exports from industrialized countries enjoy a 12 percent price increase.

22. Table 7.10 and tables 7.11 and 7.12 below are based on export value data classified by Korean CCCN or HS codes, which were converted from the U.S. import trade codes by the Korea Foreign Trade Association. Hence, errors might have been committed in calculating export values to the extent that Korean CCCN or HS codes do not match the U.S. International Trade Classification codes.

**Table 7.10** **Effects of U.S.-Administered Protection on Korean Exports, 1980–88 (%)**

| | $t-3$ | $t-2$ | $t-1$ | $t$ | $t+1$ | $t+2$ | $t+3$ |
|---|---|---|---|---|---|---|---|
| All cases with all outcomes (50 cases): | | | | | | | |
| Exports to the U.S. | 56.9 | 75.5 | 103.1 | 100.0 (5,806) | 93.4 | 115.7 | 125.9 |
| Exports to third countries | 95.2 | 99.7 | 97.2 | 100.0 (6,084) | 123.6 | 141.6 | 150.2 |
| Exports to all countries | 78.4 | 87.6 | 104.5 | 100.0 (11,889) | 113.1 | 128.0 | 131.3 |
| Cases with affirmative determination: | | | | | | | |
| Cases with positive government action (10 cases): | | | | | | | |
| Exports to the U.S. | 41.8 | 76.3 | 80.5 | 100.0 (475) | 54.2 | 46.7 | 92.9 |
| Exports to third countries | 86.2 | 108.4 | 112.0 | 100.0 (377) | 156.2 | 192.1 | 187.1 |
| Exports to all countries | 60.4 | 88.4 | 99.5 | 100.0 (851) | 123.4 | 158.2 | 110.8 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Cases with alternative arrangement (11 cases): | | | | | | | |
| Exports to the U.S. | 90.3 | 91.9 | 90.9 | 100.0 (2,759) | 120.2 | 129.8 | 116.7 |
| Exports to third countries | 83.1 | 98.2 | 91.3 | 100.0 (2,976) | 128.8 | 94.7 | 126.2 |
| Exports to all countries | 76.1 | 88.6 | 85.8 | 100.0 (5,735) | 121.0 | 106.6 | 119.4 |
| Cases with negative determination (25 cases): | | | | | | | |
| Exports to the U.S. | 52.2 | 74.9 | 109.8 | 100.0 (2,458) | 100.7 | 139.1 | 142.4 |
| Exports to third countries | 108.9 | 100.7 | 101.6 | 100.0 (2,339) | 107.5 | 138.8 | 151.1 |
| Exports to all countries | 90.5 | 91.4 | 118.0 | 100.0 (4,797) | 105.8 | 124.4 | 141.8 |

*Source:* Author's calculation based on the trade data provided by the Korea Foreign Trade Association.

*Note:* Administered protection includes here AD and CVD, Section 201, Section 337, and Section 232 cases. $t$ = the year when the cases were initiated. The numbers given in parentheses represent actual export values in million U.S. dollars.

of the investigation. Second, a breakdown of all cases based on the final outcome of the investigation shows a more pronounced difference in their export responses. For the cases facing some form of positive action on the part of the U.S. government to restrict imports, for example, exports to the United States declined sharply, by some 50 percentage points in value, within the two years after the initiation of the investigation, while exports diverted to third-country markets from the U.S. market showed quite substantial growth. However, the cases facing affirmative determination but settled by alternative arrangements seem to have been relatively mildly affected in their exports to the United States. Finally, the mere threat of initiating an investigation may also have some effect on exports: export value declined by 10 percentage points in the cases with a negative final determination between the prior and the subsequent year of the initiation of the investigation. In this case, export value did not grow any in the first year after the initiation of the investigation, at a time when definitive measures were still not decided on.

The various types of administered protection have very different effects on Korean exports, as shown in table 7.11. When the cases with a final affirmative determination, including arrangement cases, are considered, AD or safeguard actions appear to have had the most significant effect on export value. Within one year after the initiation of the investigation, exports to the U.S. market declined in value by 40 percent on average in AD cases and by more than 50 percent in a safeguard case. However, exports to the U.S. market appear to have been least affected in the CVD cases and only mildly so in the unfair-trade-practice cases (Section 337 cases). This was, perhaps, because the two CVD cases considered in table 7.11 included steel products, for which a very low CVD rate—less than 2 percent on average—was initially applied, and these actions were subsequently dropped in return for the 1984 steel VER agreement. On the other hand, most of the Section 337 cases—six of eight cases facing affirmative determination—were resolved by alternative arrangements such as royalty payments and other compensation methods, rather than by accepting an exclusion order from the ITC. Such arrangements may not necessarily lead to a decrease in exports.

The breakdown by industry of the export decline, in response to U.S.-administered protection, is shown in table 7.12. As can be seen, the iron and steel industries showed no systematic response in their exports, except for the first year after the initiation of the investigation. This was, perhaps, due to the fact that most of the charges made against the iron and steel industries were concentrated in the early 1980s, just before the 1984 steel VER agreement was reached. The metal products industry also showed an expected pattern of export decline in the first year after the initiation of the investigation. The most significant effect on exports with an expected pattern can be found in the electrical and electronics industry, which has emerged as the number one export industry of Korea in recent years. The export value of this industry declined by over 35 percent within the two-year period after the

**Table 7.11** **Effects of U.S.-Administered Protection on Korean Exports, by Type of Measures: Cases with Affirmative Determination (%)**

| | $t-3$ | $t-2$ | $t-1$ | $t$ | $t+1$ | $t+2$ | $t+3$ |
|---|---|---|---|---|---|---|---|
| ADs (10 cases):[a] | | | | | | | |
| Exports to the U.S. | 73.6 | 95.8 | 82.3 | 100.0 (822) | 59.7 | 61.1 | 93.7 |
| Exports to third countries | 77.6 | 97.5 | 120.9 | 100.0 (588) | 151.0 | 180.7 | 207.1 |
| Exports to all countries | 65.9 | 92.9 | 102.1 | 100.0 (1,409) | 123.0 | 156.3 | 130.5 |
| CVDs (2 cases): | | | | | | | |
| Exports to the U.S. | 60.3 | 71.5 | 117.1 | 100.0 (453) | 168.0 | 216.5 | 162.4 |
| Exports to third countries | 90.4 | 119.0 | 84.5 | 100.0 (808) | 66.3 | 69.0 | 64.3 |
| Exports to all countries | 66.2 | 84.4 | 89.8 | 100.0 (1,260) | 95.5 | 111.3 | 92.5 |
| Safeguard (1 case): | | | | | | | |
| Exports to the U.S. | 87.1 | 121.4 | 142.4 | 100.0 (18) | 48.7 | 34.3 | 46.0 |

*(continued)*

**Table 7.11** (continued)

| | $t-3$ | $t-2$ | $t-1$ | $t$ | $t+1$ | $t+2$ | $t+3$ |
|---|---|---|---|---|---|---|---|
| Exports to third countries | 376.1 | 345.2 | 211.9 | 100.0 (10) | 123.1 | 91.0 | 24.0 |
| Exports to all countries | 188.8 | 200.2 | 166.9 | 100.0 (28) | 74.9 | 54.3 | 38.2 |
| Unfair trade practice (8 cases):[b] | | | | | | | |
| Exports to the U.S. | 58.5 | 69.1 | 75.6 | 100.0 (1,941) | 127.1 | 125.2 | 139.5 |
| Exports to third countries | 55.3 | 75.8 | 66.8 | 100.0 (1,947) | 147.2 | 100.8 | 137.7 |
| Exports to all countries | 57.5 | 70.2 | 71.4 | 100.0 (3,889) | 135.6 | 111.2 | 138.6 |

*Source:* See table 7.10.

*Note:* Affirmative determination includes alternative arrangements. The numbers given in parentheses represent actual export values in million U.S. dollars.

[a]Two cases that were subject to ADs and CVDs at the same time were included in AD cases.

[b]Unfair trade practice refers to Section 337 cases.

**Table 7.12** **Effects of U.S.-Administered Protection on Korean Exports to the United States, by Industry and Final Outcome**

| | $t-3$ | $t-2$ | $t-1$ | $t$ | $t+1$ | $t+2$ | $t+3$ |
|---|---|---|---|---|---|---|---|
| Iron and steel [9]: | | | | | | | |
| Affirmative [7][a] | 98.5 | 119.5 | 104.7 | 100.0 (833) | 91.3 | 115.8 | 111.1 |
| Negative [2] | 67.3 | 75.3 | 105.4 | 100.0 (117) | 109.2 | 89.4 | 82.0 |
| Metal products [9]: | | | | | | | |
| Affirmative [3][a] | 51.6 | 65.7 | 52.9 | 100.0 (127) | 78.0 | 112.7 | 139.1 |
| Negative [6] | 49.1 | 47.3 | 50.7 | 100.0 (549) | 97.6 | 92.2 | 63.0 |
| Electrical and electronics [8]: | | | | | | | |
| Affirmative [5][a] | 37.6 | 51.8 | 65.5 | 100.0 (2,011) | 78.2 | 64.4 | 92.8 |
| Negative [3] | 74.4 | 144.7 | 263.4 | 100.0 (373) | 124.6 | 228.8 | |
| Others [20]: | | | | | | | |
| Affirmative [6][a] | 63.2 | 80.3 | 97.5 | 100.0 (264) | 86.6 | 57.7 | 92.9 |
| Negative [14] | 46.6 | 71.7 | 102.8 | 100.0 (1,420) | 95.7 | 145.8 | 185.0 |

*Source:* See table 7.10.

*Note:* Administered protection includes here AD and CVD, Section 201, Section 337, and Section 232 cases. The number of cases involved is shown in square brackets. The numbers given in parentheses represent actual export value in million U.S. dollars.

[a]Affirmative determination includes alternative arrangements.

initiation of the investigation, for the cases faced with an affirmative determination. A similar pattern of export responses is observed for the remaining industries.

## 7.5 Concluding Remarks

This paper provides evidence that recent U.S. trade policy shows a strong drift toward protectionist bilateralism, endangering the international trading system based on the GATT rules. Evidence follows both from the review of protectionist elements embedded in current U.S. trade laws and from the examination of the pattern of U.S.-administered protection as applied to Korean exports during the 1980s.

However, the Korean experience indicates that greater and safer access to the U.S. market has been critical to Korea's economic success, and it will be no less so in the future, too. The key concern of Korea regarding U.S. trade policy is, therefore, how to help the United States stop or turn back its drift toward protectionist bilateralism. It appears that Korea may serve that purpose most effectively through the new round of multilateral trade negotiations that is currently under way, possibly in collaboration with other developing countries. Several ways to do so may be suggested.

First, Korea (or developing countries in general) should be ready to negotiate away its privilege of so-called special and differential treatment in the GATT—which has been largely ineffective or even served adversely in many developing countries by encouraging them to adopt an inward-oriented development path—in return for the dismantling of NTBs and protection-oriented legislation in the United States (or AICs). In other words, Korea (or developing countries) would be better off accepting the principle of full reciprocity in return for free and secured access to the U.S. market (or AICs' markets). The timetable for this to occur should be one of the main subjects of negotiation at the multilateral trade negotiations.

At the same time, Korea (or developing countries) should demand the rewriting of the current GATT rules on the AD or CVD process, and, accordingly, of national laws, in order to better reflect the merits of modern economics. The rules should be amended, for example, to accommodate economically meaningful tax-cum-subsidy measures to compensate for externalities or other market imperfections. Also, the possibility of the abuse of such statutes needs to be minimized, by making the rules more strict and possibly by having petitioners bear at least part of the legal costs for invalid charges.

Korea should also actively seek a multilateral agreement on the rules governing protection of intellectual property rights so that those rights are adequately protected but at the same time the free flow of technical know-how is not disturbed. In recent years, the fear of abuse of Section 337 in the United States has been of growing concern to Korean exporters. Korea (or developing countries) should demand that an injury test be required before the ITC makes a decision about the infringement of intellectual property rights.

Finally, it would be in Korea's (or developing countries') interests for the escape clause of the GATT (Article XIX) to be amended by relaxing the requirement for compensation so that Section 201 can become a main route for temporary import relief for structural adjustment in the United States (or AICs). Import restrictions would be at least more transparent and nondiscriminatory under Section 201 than they would be under other means of administered protection.

## References

Bark, Taeho. 1989. The history, institutional framework and economic consequences of VERs in Korea. Working Paper no. 8917. Seoul: Korea Development Institute, June.

Finger, J. Michael, H. Keith Hall, and Douglas R. Nelson. 1982. The political economy of administered protection. *American Economic Review* 72 (June): 452–66.

Finger, J. Michael, and Julio Nogues. 1987. International control of subsidies and countervailing duties. *World Bank Economic Review* 1 (September): 707–25.

International Business and Economic Research Corporation. 1989. VRAs and steel: Fair trade or protection. Report prepared for the Korea Iron and Steel Association. Washington, D.C.

International Monetary Fund (IMF). 1988. Issues and developments in international trade policy. Occasional Paper no. 63. Washington, D.C.

Kim, Chungsoo. 1989. The Multi-Fibre Arrangement and structural adjustment of the Korean textile industry. Paper presented at the Workshop on International Textile Trade, the Multi-Fibre Arrangement, and the Uruguay Round, Stockholm, 20–21 June.

Kim, Chungsoo, et al. 1986. *Effects of neo-protectionism on the Korean exports.* Seoul: Korea Institute for Economics and Technology, May.

Messerlin, Patrick. 1988. Antidumping laws and developing countries. WPS 16. Washington, D.C.: World Bank, June.

Nam, Chong-Hyun. 1986. Changing comparative advantage and trade and adjustment policies in the steel industry. In *Industrial policies for Pacific economic growth,* ed. Hiromichi Mutoh, Sueo Sekiguchi, Kotaro Suzumura, and Ippei Yamazawa. Sydney: Allen & Unwin.

———. 1987. Export-promoting subsidies, countervailing threats, and the General Agreement on Tariffs and Trade. *World Bank Economic Review* 1 (September): 727–43.

Nogues, J. Julio, Andrzej Olechowski, and L. Alan Winters. 1985. The extent of nontariff barriers to industrial countries' imports. Report no. DRD 115. Washington, D.C.: World Bank, January.

Saxonhouse, Gary R. 1986. The national security clause of the Trade Expansion Act of 1962: Import competition and the machine tool industry. In *Law and trade issues of the Japanese economy,* ed. Gary R. Saxonhouse and Kozo Yamamura. Seattle: University of Washington Press.

Schott, J. Jeffrey. 1989. US trade policy: Implications for US-Korean relations. In *Economic relations between the United States and Korea: Conflict or cooperation?* ed. Thomas O. Baynard and Soo-Gil Young. Washington, D.C.: Institute for International Economics, January.

Stern, Paula, and Andrew Wechsler. 1986. Escape clause relief and recessions: An economic and legal look at Section 201. In *Law and trade issues of the Japanese*

*economy*, ed. Gary R. Saxonhouse and Kozo Yamamura. Seattle: University of Washington Press.
Tarr, G. David. 1987. Effects of restraining steel exports from the Republic of Korea and other countries to the United States and the European Economic Community. *World Bank Economic Review* 1 (May): 397–418.
Tarr, G. David, and Morris E. Morkre. 1984. *Aggregate costs to the United States of tariffs and quotas on imports: General tariff cuts and removal of quotas on automobiles, steel, sugar, and textiles*. Staff Report to the Federal Trade Commission. Washington, D.C.: Bureau of Economics, December.
UNCTAD (United Nations Conference on Trade and Development). 1984. Protection and structural adjustment: Anti-dumping and countervailing practices. TD/B/979. January.

## Comment Shujiro Urata

The purpose of Chong-Hyun Nam's paper is twofold—to examine the changing pattern of U.S. import protection policies and to investigate quantitatively the effect of such policies on Korean exports to the United States. The paper finds that U.S. import protection policies, mainly in the form of nontariff barriers (NTBs), were intensified in the early 1980s, when the problem of the U.S. trade deficit became serious. Nam argues that types of NTBs such as antidumping (AD) charges and countervailing duties (CVDs) are adopted in order to obtain voluntary export restraints (VERs), by pressuring exporting countries. VERs, which escape GATT illegality, are one of the most preferred forms of import protection as they provide benefits not only to import-competing producers in importing countries but also to exporters in the form of rents, at the cost of consumers in importing countries.

The paper finds that the NTBs applied by the U.S. government on Korean exports worked effectively to reduce the volume of Korean exports to the United States. Facing restrictions on their exports to the U.S. market, Korean producers adopted mainly two measures: a shift in export destinations away from the U.S. market and an upgrading of exports to high-value-added items.

On the basis of these findings, and recognizing the importance of the U.S. market for Korean exports, Nam presents a number of interesting and important policy recommendations for Korea. These recommendations may be grouped into two types—those that could be pursued unilaterally by Korea and those that seek a change in GATT trading rules and/or in U.S. trade laws.

Among the policy recommendations included in the first group, the most important one is the abolishment of the special and differential treatment extended to Korea and other developing countries in the GATT since such treatment adversely effects the economic development of these countries. As for changing international trading rules, the most important proposal is to revise tax-cum-subsidy measures to compensate for inefficiency caused by external-

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ities or other market imperfections, which are not regarded as "legal" in international rules. Justification for such policy, according to Nam, may be found in the teachings of modern economics.

The examination of changes in U.S. import protection policies was well conducted and the description of the findings succinct. Moreover, the method of analysis used to measure the effect of NTBs on exports of the targeted products is interesting, and the results reveal that U.S. import protection measures were effective in limiting Korean exports in some products, as noted above.

The paper addresses some of the most important trade policy issues confronting us at present: proliferation of NTBs and the problem of North-South trade. The findings may be regarded as evidence supporting an argument against import protection in the form of NTBs from the point of view not only of exporting countries but also of importing countries. The main problem of import protection is, as correctly argued by Nam, its retardation effect on industrial transformation, which in turn deters the economic growth of both exporting and importing countries.

Although I agree with most of the arguments presented by Nam for the liberalization of foreign trade, I have different opinions on a few points. The first is Nam's suggestion for the revision of tax-cum-subsidy measures in the GATT and U.S. trade rules. While in theory tax-cum-subsidy measures may be justified to correct for the problems caused by market imperfections, the application of such measures is not without difficulties. Take the case of scale economies, for example, which is usually considered as warranting government intervention. Production subsidy for an industry subject to scale economies such as chemicals is often argued to be justified in order to overcome the infant stage and to achieve a minimum efficient scale of production. However, there are potential problems with the application of such measures. First, it is not so simple to identify the presence of scale economies in production, let alone the level of production corresponding to the minimum efficient scale. Second, such measures may provoke retaliation from trading partners, thereby leading to trade wars. Finally, rents may be created, with the result that removal of the subsidy may become difficult when such action is called for.

I now turn to a point that I think needs some empirical evidence in order to justify the argument. Referring to AD charges caused by lower export prices in relation to domestic prices, Nam asserts that, even in such cases, foreign competitors are not harmed because the export price is normally set at least at or above international levels. This observation must be supported by empirical evidence. In addition, this assertion points to the existence of import barriers in exporting countries because, without such barriers, exporters cannot maintain higher prices in the local market. Accordingly, import liberalization in developing countries may be called for.

Turning to the effect on Korean exports of U.S. import protection policies

against Korean exports, Nam identifies a shift in export destinations and a quality upgrading of exports. I would be interested to know the effect of these changes on Korean foreign investment. As is often pointed out, faced with similar restrictions, Japanese producers shifted their location of production from Japan to the United States and to other countries that were free from such restrictions. This type of reaction from Korean producers may not have been so prevalent yet; however, such corporate strategy is likely to be carried out more actively in the future.

Finally, a few observations on the issue of trade liberalization, especially in relation to the Uruguay Round of multilateral trade negotiations are in order. The world is currently witnessing new and contrasting developments in the orientation of international trade policies pursued by developed countries, on the one hand, and by developing countries, on the other. Developed countries, especially those in Western Europe and North America, have been actively adopting protectionist policies since the mid-1970s, which had been preceded by substantial liberalization since the end of World War II. In contrast, the number of developing countries adopting liberalization policies has increased since the mid-1980s. Developing countries opened up their economies not only because of the pressure by developed countries but also because of their recognition that such policies would improve resource allocation, thereby increasing their exports and outputs as well as their consumers' welfare.

Recognizing the fact that developing countries, which were opposed to liberalization, are finally ready to open up their markets, the world must not miss this opportunity to promote expansion of world trade, which would lead to further expansion of the world economy. The results of Nam's analysis indicate clearly the unfavorable effect of protectionism by developed countries on developing countries, and in his paper Nam suggested proposals that could be carried out by developing countries. What is needed now is to convince developed countries of the unfavorable effect of protectionism on their economic performance. For that purpose, a detailed analysis of the effect of protectionism, in particular that in the form of NTBs, on developed countries is required.

## Comment Chia Siow Yue

This is an excellent and highly informative paper. My comments are on three aspects of Chong-Hyun Nam's presentation, namely, the characteristics of U.S.-Korea bilateral trade, the rise in bilateral trade friction, and Korean policy responses.

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First, since Korea embarked on export-oriented industrialization in the 1960s, it has been and remains extremely dependent on the U.S. market. Bilateral trade has seen very rapid growth, but Korea remains a relatively small market for U.S. exports. As noted by Nam, this asymmetry in bilateral trade also characterizes U.S. trade relations with the other Asian newly industrialized economies (NIEs). This has led to unequal bargaining strength in trade negotiations, much to the aggravation of Korea (and other Asian NIEs).

Second, the growing trade deficit of the United States with Korea and the latter's growing competitiveness in high-tech sectors has led to a rise in trade friction as the United States seeks to redress Korean "unfair" trade practices, achieve greater access to the Korean market, and protect its intellectual property. The United States is no longer a benevolent hegemonic power and trading partner but is increasingly insisting on a level playing field. Korean exports to the United States are increasingly subject to U.S. NTBs and no longer eligible for GSP (Generalized System of Preferences) benefits, and the United States has demanded that Korea improve its enforcement of intellectual property rights and appreciate its currency. While Nam's paper emphasizes the negative developments in U.S. trade policy, it should also be noted that many restrictive U.S. trade practices were adopted in response to the perception that Korea has been guilty of "unfair" trade practices in the first place. It should also be noted that, in spite of these U.S. measures, Korean exports to the United States have continued to maintain high levels of growth, as Korean exporters diversify and upgrade. And while Korea (and other Asian NIEs) complain about the growth of protectionist measures by the United States, they face even more difficulties in penetrating the markets of Western Europe and Japan. Korea and the other Asian NIEs cannot expect to continue to depend heavily on the U.S. market and record growing surpluses. Bilateral trade will have to be more balanced to avoid further U.S. trade policy offensives.

Third, the final section of Nam's paper focuses on Korea's strategy in GATT to promote multilateralism and to reverse U.S. protectionist bilateralism. I would like to expand on this and discuss in broader terms the Korean policy responses to U.S. pressure for a level playing field as well as to domestic developments. Korea is rapidly undertaking structural adjustments, making trade policy changes, and seeking outward investments. There is less emphasis on government intervention in industrial and export targeting, a reflection of the adverse experience in the 1970s in promoting heavy and chemical industries, and a greater emphasis on promotion of domestic research and development to offset the problem of technology acquisition and on the promotion of small and medium-sized enterprises to promote equity and countervail the power of business conglomerates. In an effort to ensure continuing market access for its exports, Korea has resorted to the use of lobbyists and economic diplomacy. It is not clear, however, whether the use of paid lobbyists in the United States has been effective; critics argue that Korea's lobbying efforts have not been as effective as those of Japan and Taiwan.

In GATT negotiations, Korea appears prepared to give up the privilege of special and differential treatment and accept the principle of full reciprocity. It is also participating actively in Asia-Pacific forums such as the Pacific Economic Cooperation Conference (PECC) and the Asia-Pacific Economic Conference (APEC). Korea has also embarked on import liberalization and the enforcement of intellectual property rights, policy changes facilitated by the improved current account balance and by domestic inflationary pressures. It should be noted, however, that import liberalization by Korea will not necessarily improve U.S. export competitiveness and the bilateral trade balance. To ensure that its market-opening measures will benefit the United States, Korea has thus resorted to buying missions in the United States, and giving preferential market access to U.S. industries. However, there is a Korean perception that its efforts at import liberalization are not appreciated by the United States. Korea is also emphasizing further market and product diversification—market diversification to the EC, Japan, other Asian NIEs, and developing countries and reduced product concentration through technological upgrading and a shift to the production of parts and components. Finally, Korea has embarked on defensive outward investment—in the United States and other industrial countries, to counter the growing trade friction and to gain access to technology—and in Southeast Asia and other developing countries, in order to remain cost competitive in the face of rapidly rising domestic wages and currency appreciation.