Chapter 4

REPUBLIC OF KOREA

TARIFF

High Tariff

After the implementation of the Uruguay Round, the internationally competitive textiles and textile products sector will have, on average, high tariffs (between 16.3 percent and 35 percent). In addition, there will be high tariffs on some items such as automobiles (maximum 80 percent), glass fibers (maximum 25 percent), copper products (maximum 13 percent), and aluminum products (maximum 13 percent). The bound rate for electrical equipment is 62.4 percent, and the binding rate for industrial goods as a whole is 89 percent.

The Republic of Korea’s efforts to push forward liberalization—including phasing down to a certain level and/or eliminating the tariff on textile and apparel products by 2004 and dropping its 80 percent high-end bound rate for automobiles to a flat rate of eight percent in February 1999—are appreciated. Given its status in the current world trade system and its status as an OECD Member with a more developed economy than most other countries, further steps toward trade liberalization are expected.

SUBSIDIES AND COUNTERVAILING MEASURES

The Issue of Financial Support

In recent years, financial support provided by the Government of Korea has come under scrutiny. The United States and the EU, in particular, have expressed serious concerns about the adverse effects on the world market of such support provided in particular to the shipping and semiconductor industries.
On 14 May the EU approached the Industry Ministerial Council concerning support of the shipping industry. The EU proposed requesting consultation under the WTO Agreement based on the Trade Barrier Rule (TBR). In the proposal the EU noted that support in the form of debt forgiveness and debt for equity swaps provided to distressed shipping companies by the Korea Development Bank (100% owned by the Korean Government) had caused excess production facilities and employment in the Korean shipping industry, leading to the dumping of Korean ships on the export market. Because the request for consultation will be decided together with the subsidy payment plan for the struggling European shipbuilding industry, and because European countries have experienced difficulties in coordinating their views on subsidy payments, a decision was not immediately forthcoming. The EU held bilateral consultations with Korea to seek a compromise, but the consultations broke down in September 2002. The EU subsequently reached consensus on applying to the WTO for consultations together with its provisional subsidy plan. The issue was brought to the WTO for dispute settlement in October 2002, but a panel had not yet been established as of February 2003.

The United States, the EU, and Japan are beginning to harbor serious concerns about support to the semiconductor industry, particularly the distortion to the market caused by support to Hynix (formerly Hyundai Electronics), one of the world’s leading semiconductor manufacturers. Since January 2001 the Korea Development Bank has purchased over 1 trillion yen in corporate bonds under the so-called “Bond Program” to underwrite corporate bonds. Hynix, however, is not redeeming these bonds at market price. In addition, it has been argued that other forms of financial support have been provided; none of which are based on market principles. This financial support, as in the case of the shipbuilders, is no more than a de facto bailout of the economically troubled Hynix. It has been noted, moreover, that exports below cost by Hynix are having a seriously adverse effect on the world semiconductor market and on the semiconductor industry. There are questions as to whether the above financial support by Korea is a prohibited subsidy (red subsidy) under the Agreement on Subsidies and Countervailing Measures or a specific subsidy causing serious prejudice to another country (yellow subsidy). The Korean government, however, has argued strongly that the above financial support is no more than private enterprise financing – i.e., that it is a commercial act with no government involvement and that the main factor behind the increase in exports has been the depreciation of Korea’s currency, the won.

On July 25, 2002, and on November 27, 2002, respectively, the EU and the United States initiated countervailing duty investigations, alleging that the Korean government provided illegal subsidies to its semiconductor industry. As of February 2003, the EU had not yet reached a conclusion, and the United States had suspended its investigation.

Japan should continue to monitor developments arising from financial support provided by the Korean government and its effects on the Japanese industry.
STANDARDS AND CONFORMITY ASSESSMENT SYSTEMS

Detailed Rules for the Control of Product Origin

In July 1991, Korea established its “Detailed Rules for the Control of Product Origin” (Customs Agency Notification) that require labels of product origin to be affixed to the smallest packaging unit of products, according to a revision of the International Trade Control Regulations in May 1991. These labels had to be: (a) written in Hangul (domestic language) or English characters; (b) displayed in a form and method that is easy for final purchasers to read; (c) placed in an easily recognizable location; and (d) made in a way that they can be permanently preserved. The rules initially covered 250 items at the four-digit level under the harmonized tariff system. In application, the system places excessive burdens on trading companies and therefore constitutes a restriction on trade which is likely to be inconsistent with Article II:2 of the TBT Agreement.

The system was slightly improved in May and July 1993 when revisions to the law made it possible to label in Chinese characters and expanded the number of exceptions for which labeling on the package was permitted. Effective July 2000, the law was further amended to allow stamps and labels for cases in which the nature of the product makes permanent labeling difficult. The revisions, however, also strengthened the requirements to confirm the origin of OEM products. Further, the list of products covered under the regulation had reached 653 as of January 2003. Many problems, therefore, remain.

Japan pointed out the problems involved in this system during the Trade Policy Review (TPRM) for the Republic of Korea that was held at the WTO in 1996 and 2000. Nonetheless, many problems still remain. As a result, it is necessary for Japan to continue to seek improvements for those requirements that place excessive burdens on exporters.

TRADE IN SERVICES

1) Financial Services

In the Republic of Korea, in particular, all liberalization measures were made under commitments related to IMF support. Some of these measures were bound in its GATS schedule. In January 2001, the second relaxation of foreign exchange regulations took place, paving the way for the elimination of the ceiling on overseas funds transfers by the general public. We find such actions laudable.
2) Telecommunications

There is a 49% foreign ownership ceiling in the telecommunications sector. Japan seeks the relaxation of this restriction.

3) Maritime Transport

The Foreign Capital Inducement Act required direct investments in the Korean shipping industry by foreign companies to take the form of joint ventures. Although this restriction was abolished on 1 January 1999, it only abolished restrictions on foreign shipping cargo services. In other words, the restriction still applied to domestic shipping cargo services.

4) Construction Service

The business activities of foreign companies in the Korean construction market are regulated by the Construction Industry Law and the “Regulation on Foreign Investment”, a subordinate ordinance to the Foreign Capital Inducement Act. We would like to see those regulations relaxed. The Construction Industry Law obligates contractors for projects worth more than 2 billion won (approximately 210 million yen) to subcontract at least 20-30 percent of the project with specialty firms. Such an obligation limits the services provided by foreign companies.

5) Audio-Visual Services and Advertising Services

South Korea regulates mass culture using a number of laws: the Public Performances Law, the Film Promotion Law, the Broadcasting Law, and the Law Concerning Musical Recordings, Videos and Games. For instance, the Film Promotion Law stipulates the registration of participants in the film industry, imports and exports, and film censorship.

When former President Kim Dae Jung visited Japan in October 1998, he announced new openness of Japanese cultural policies designed to further the mutual understanding and development of both countries. The first and second rounds of opening measures came in October 1998 and September 1999, and the third round in June 2000. The third round permitted the screening of all films, except those not open to people aged 18 or under, and animated films that had not won international film awards. As regards films and animated films which had been screened, production of videos is permitted. Public performances are also fully open, and broadcasting, including sporting events, documentaries, news programs, and game software, including for personal computers and for businesses, are partially permitted.

Despite these opening measures, restrictions remain on the screening of films which are not open to people 18 or under, animated films other than those that have won international
film awards, and videos in the area other than screened films, entertainment broadcasts, Japanese-language records (including CDs, etc.), and software for family game consoles.

Although former President Kim had announced the full elimination of these regulations by 2002, the strong anti-Japanese public sentiment that arose over the history textbook issue that occurred in 2001 lead to a freeze on the cultural opening. At present no schedule has been set for such opening. We hope that the cultural opening agenda pursued since 1998 will be steadily implemented.

6) Computer-Related Services

South Korea imposes quantitative restrictions on licenses for security consulting services. Japan seeks immediate improvements in this area.

TRIPS

Issues of Counterfeit and Pirated Products, etc.

Improvements to the legal system covering intellectual property in Korea were completed before the end of 1999 in advance of the time limit set under the TRIPS Agreement. Japan welcomes Korea’s commitment to putting this system in place, including undergoing an implementation review under the TRIPS Council.

On the other hand, a survey of Japanese companies showed that 24% of companies have suffered injury from counterfeit and pirated products in Korea. The study also showed that Korea is the largest supplier of goods that Japanese customs seizes for infringing on intellectual property rights. Japan’s industry has persistently pointed out weaknesses in the administration of Korea’s system, such as the control of pirated and counterfeit products, etc. The Korean government has made some improvements, including stiffer criminal penalties and changes in the way in which damages are calculated. However, from the point of view of properly protecting intellectual property and ensuring the correct performance of the TRIPS Agreement, Japan needs to monitor how Korea tackles the administration of the system, while at the same time working to provide more information concerning specific issues raised by industry and rights holders. (See Chapter 10 on ASEAN.)
REGIONAL INTEGRATION

Under the South Korea-Chile FTA expected to enter into in the middle of 2003 (signed in February 2003), Chile will eliminate tariffs for some tires, textiles and steel products over a transitional period of 13 years. South Korea will do the same for powdered milk and other products over a transitional period of 16 years.

According to GATT Article XXIV:5, concerning the period of time required for the formation of regional integration: “the formation of such a customs union or of such a free-trade area within a reasonable length of time.” The Understanding on the Interpretation of GATT Article XXIV adds: “The ‘reasonable length of time’…should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.” Japan will continue to monitor whether the two countries adequately explain the reasons why a period in excess of 10 years is required.