

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. Since the previous Trade Policy Review of Korea, in 2000, the general thrust of its trade and investment policies has been greater liberalization, including the further opening of its economy to international trade and foreign investment. This has exerted additional competitive pressure on domestic producers to improve productivity, and contributed to a more efficient allocation of Korea's resources. Nevertheless, some protectionist measures continue to shield domestic producers, especially farmers, from foreign competition.

2. The tariff is Korea's main instrument of trade policy and provides significant tax revenue. The applied MFN rate averaged 12.8% in 2004; falling slightly, from 13.8% in 2000, owing to implementation of WTO commitments. No unilateral tariff cuts occurred during the period under review. High tariffs, averaging 52.2% in 2004 (compared to 54.8% in 2000), apply to agriculture (WTO definition); out-of-quota tariffs, often exceeding 200%, apply to many other commodities. By contrast, industrial tariffs (WTO definition) averaged 6.7% in 2004 (7.5% in 2000). The multiplicity of tariff rate bands (often involving small rate differences and decimal points) not only distorts competition, thus resulting in an inefficient allocation of Korea's resources, but adds to tariff complexity. Almost all tariffs are *ad valorem*, contributing significantly to tariff transparency. On the other hand, alternate specific rates (mainly as out-of-quota duties) tend to conceal relatively high *ad valorem* equivalents, which vary between the same commodities (depending upon quality) and over time, providing greatest protection when world prices are lowest. These non-*ad valorem* duties undermine economic efficiency, transparency, and tariff predictability. Other measures (e.g. "autonomous" tariff quotas, usage tariffs, and duty concessions) that selectively reduce tariffs on inputs, often according to end-use, are also likely to constitute a potential impediment to efficient resource use and add to tariff complexity and uncertainty. Although 91% of tariff rates are bound, the predictability of the tariff is eroded by the considerable leeway to raise applied tariffs provided by the substantial gap between applied and bound MFN rates. Korea has used this gap to apply higher "adjustment duties" as "flexible tariffs" on several products.

3. Limited tariff preferences, restricted generally to certain manufactured goods from several developing countries, and all LDCs, means that Korea applies MFN rates on almost all (95%) imports. However, the relevance of MFN rates to Korea's trade may have begun to erode with the recent granting of widespread preferential duties to Chilean imports, based on substantial and varied rules of origin. This trend looks set to continue, with other FTAs in the pipeline, such as those with Singapore and Japan. In 2004, imports from Chile were subject to average (unweighted) tariffs of 6.9%, just over half of Korea's average MFN rate. Most reductions occurred on industrial goods; the average agricultural tariff (WTO definition) on imports from Chile only fell to 49.8%, reflecting minimal liberalization at least to date of farm products under the Korea–Chile FTA.

4. Whereas tariff quotas for beef were replaced by a tariff (currently 40%) from January 2001, rice imports are still subject to quantitative restriction. State-trading enterprises and producer associations still administer tariff quotas affecting many agricultural imports, although greater auctioning of import entitlements has introduced greater market discipline in quota management. Import licensing and prohibitions apply mainly for health, safety or security reasons. Korea has harmonized many voluntary standards and mandatory technical regulations with international norms to improve transparency and reduce unnecessary obstacles to trade, and continues revising food codes and related regulations in line with international requirements. However, significant differences, including in conformity testing, inspection, and acceptance of overseas results, seemingly remain, mainly for pharmaceuticals, cosmetics, and possibly food. Quarantine arrangements, especially for

fruit, and SPS requirements also appear relatively strict, despite Korea's continuing efforts to comply with international norms.

5. Anti-dumping provisions have protected a number of industries from competitive imports. General safeguard measures have been used only for garlic since the last Review. While sector-specific safeguards on textiles have never been used, those on agricultural products are used frequently.

6. A member of the WTO Government Procurement Agreement, Korea has largely computerized its government procurement system, including operating the e-Procurement System since September 2002. This has increased transparency and access by foreign suppliers. However, certain procurement is not covered by Korea's multilateral commitments; for example, procurement from SMEs where private (non-competitive) tendering prevails. Although no domestic price preferences apply, government procurement is still seemingly used as an instrument of economic policy, including regional and industrial development. Procurement has become more decentralized.

7. A range of financial measures are intended to support trade and production, including R&D investment. These include tax incentives and provision of credit and equity, including venture capital, largely channelled through various government-operated funds and state-owned financial institutions. SMEs are major beneficiaries, especially those engaged in information technology activities. Direct export subsidies to reduce marketing costs apply to several agricultural goods, and the sector also benefits from substantial domestic financial support under the WTO Green Box or the de minimis provisions.

8. Although privatization is behind schedule, there has been considerable progress, and the Government remains committed to further divestment, including to foreign interests. Application and enforcement of Korea's extensive competition policy has been strengthened, including extra-territorially, against cartels and other anti-competitive behaviour. Chaebols are subject to special regulation, including ceilings on shareholdings in other domestic firms. Certain collusion by SMEs remains exempt from competition legislation. Korea has continued to strengthen protection of intellectual property through extensions of its comprehensive legislation in line with international developments, and enhanced enforcement. It is currently acceding to the WIPO Copyright Treaty, which is expected to take effect on 24 June 2004.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

9. Korea has streamlined and modernized customs procedures to reduce importers' costs by accelerating import clearances. Customs formalities have been further automated and "e-customs" introduced. Korea Customs Service (KCS) was re-organized to provide a "one-stop" service by integrating import/export clearance operations and cargo management systems. A Customs Ombudsman in each customs house handles complaints. KCS processed 10 million e-customs transactions in June 2003, saving W 2.5 trillion in handling costs annually.

10. Korea acceded to the revised Kyoto Convention in February 2003, subject to certain reservations.¹ The Three Year Master Plan for Intelligence-Oriented Administration (2001-03)

¹ Korea accepted 14 out of the 25 Chapters in Specific Annexes of the Protocol, and maintained reservations on 16 recommended practices, mainly relating to areas unsuitable to Korea's trade environment. It had adopted the core principles of the revised Kyoto Convention in July 1999, and accepted further principles by amending the Customs Act in 2000, 2001 and 2002.

improved the KCS's customs data warehouse (CDW) for managing high-risk transactions, and the customs knowledge management (CKM) system to enhance staff access to information. It has developed a comprehensive risk-management system, and expanded the post-audit system. KCS established an Audit Bureau and a Differentiated Management System by Companies to target suspected "high-risk" importers. A Code of Conduct for the Integrity of Customs Officers took effect in May 2003.

11. In August 2003, the KCS introduced more rigorous customs inspections on agricultural products, including especially peppers, garlic, sesame seeds, onions, carrots, and seasoning powders, to help protect local farmers and producers against increased imports.² The import sample inspected to check prices was also raised to 20%. The authorities indicate that these measures were implemented not to restrict imports, but to prevent illegal importation and duty evasion from under-invoicing, and to meet the need for increased laboratory analysis under paperless customs clearances. The sample size used for analysis was lowered for qualified importers with good compliance records from March 2004.

(a) Registration, documentation, and clearance requirements

12. Only consignors, customs brokers, associations or corporations can make import declarations. Required documentation includes the commercial invoice, price declaration, duplicates of the bill of lading, detailed packing list, import approval document (if applicable), sanitary and phytosanitary certificates for most agricultural goods and processed foods, and certificate of origin for goods subject to tariff preferences. Qualified importers (approved by Customs based on their import record) receive expedited customs clearance and more convenient methods for paying duties.³

13. Import clearance, including declaration procedures, and cargo management systems are fully computerized. The KCS is linked to all 68 agencies responsible for approving certain imports (e.g. Ministry of Health and Welfare and Ministry of Maritime Affairs and Fisheries) to enable import requirements to be electronically verified. The number of tariff items needing such checks has decreased from 5,435 items under 55 laws in April 1999 to 4,810, and is planned to fall below 4,000. The paperless clearance system has expanded. In January 2003, cargo management was 100% paperless and import declarations 75%.

14. In early 2003, declarations were processed on average in 1.3 hours (2.4 hours in 2000). Prior-entry import declarations (up to five days for sea and one day for air) are allowed. Most (90%) imports are cleared after bonded storage; the average clearance times from port entry to their release from bond was 9.6 days (4.6 days for air and 16.2 days for sea cargo) in early 2003. A cargo selectivity system automatically selects high-risk cargo for documentary and possible physical inspection. The KCS operates, on request, an "on-dock" immediate clearance system at the major ports of Busan, Incheon, and Gwangyang, to allow imports of reputable companies to be released before submission of import declarations (required within 10 days). Some 60% of inward cargo uses this system.

15. The Regulatory Review Commission (RRC) selected import and export customs clearance procedures as a strategic priority area of trade-related regulatory reform in 2003. It aims to shorten clearance times from port entry to release of goods to five days, and reduce logistic costs by

² KCS News Release, 11 August 2003, *Agency Tightens Customs Inspection over Agricultural Products*.

³ Benefits include immediate release of goods before submitting the import declaration, paying customs duties and taxes after release of the goods or on a monthly basis, and exemption from collateral deposit requirements.

simplifying clearance procedures. The RRC is working closely with the KCS to introduce measures that would reduce cargo inspection times and lower the number of items covered by inspection from 4,810 to 4,000, and to cut unloading times of vessels in ports from five to three days. These include installing on-dock immediate clearance systems in all major ports, expanding the scope of simplified clearance of express cargo, simplifying trans-shipment procedures, expanding and improving the electronic clearance system, and establishing a "single window" for customs clearances.

16. Korea does not require preshipment inspection of imports.

(b) Customs-free zones

17. These zones provide simplified customs procedures for certain activities (Act on Designation and Management of Customs Free Zones for Fostering International Logistics Centres, 1999). They are exclusive areas outside the national customs boundary, exempt from customs requirements. They facilitate flows of goods and services, including distribution, at busy airports, seaports and storage complexes/cargo terminals. The Minister of Finance and Economy (in consultation with the Customs Free Zone Committee) designates such zones upon request from regional governments. Activities in the zone are exempt from import procedures and customs duties, and receive tax advantages (e.g. no value-added tax (VAT) and reduced income tax). Foreign cargo may enter and leave freely. Simple processing is allowed. Korean goods entering the zone are treated as exports and entitled to tariff drawback. Goods entering or processed in these zones are principally intended for export, but if sold domestically, are subject to import duties and domestic taxes, such as VAT. The main customs free zones are Incheon International Airport, and the ports of Busan, Gwangyang, and Incheon.

(ii) Customs valuation

18. According to the authorities, Korea's customs valuation legislation (sub-section 2 of the Customs Act 1949) complies with the WTO Agreement on Customs Valuation. Imports are valued at their c.i.f. (cost, insurance, freight) price. The main method used is transaction value (based on the "price actually paid or to be paid by the buyer"). When this cannot be used, valuation is determined using, in order, identical goods, similar goods, domestic sales price or computed value.

19. While the KCS may, in principle, set special customs valuation and documentary requirements for used imports (Presidential Decree of the Customs Act), it applies the same customs valuation methods (i.e. transaction value or where impossible in sequence one of the other alternative WTO-consistent valuation methods) for second-hand imports. However, as a last resort, Customs may determine their valuation using "reasonable standards", whereby prices paid are adjusted based on appraised prices from certified appraisal institutes, domestic wholesale prices, or other recognized price lists. To prevent tax evasion, the KCS tightened checks on declared values of imported used cars, including comparisons with reference prices from the Kelley Blue Book.⁴ According to the authorities, however, the transaction value is accepted where significant differences exist, unless there is reason to suspect the authenticity or accuracy of the declared value, when an alternative WTO-consistent valuation method is used. The Kelley Blue Book price would be applied only as a last resort. Documentary requirements were also changed to include a letter of technical inspection from an automobile performance-testing institute.⁵

20. Customs duties (including domestic taxes) must be paid within 15 days from acceptance of the import declaration (where security has been lodged). Late payments are subject to an additional 5% of the amount owed for the first month, and 12% for each month thereafter (up to a maximum of

⁴ KCS News Release, 8 June 2003, *Customs Service Tightens Price Check on Foreign Used Cars*.

⁵ KCS News Release, 12 May 2003, *Documentary Requirements for Import of Used Cars to Change*.

77%). Criminal penalties (up to three years imprisonment or a fine of five times the evaded duty) apply for fraudulent declaration of dutiable value or incorrect tariff classifications. Importers who voluntarily rectify declarations within six months of importation must pay the duty difference plus 5% additional duty (10% after six months). If such under-payments are detected by the KCS, the importer pays the outstanding duty plus an additional 20%.

21. Customs decisions can be appealed to the KCS Commissioner or to the National Tax Tribunal. The Tariff Review Commission assists the Commissioner on appeals and comprises five customs officers and seven (previously six) experts. Decisions can be appealed to the courts.

(iii) Tariffs

22. Korea has reduced tariff rates since its previous Review by implementing WTO commitments. It eliminated tariffs on 98 tariff lines from 1 January 2003 and abolished remaining duties under the ITA. There have been few unilateral reductions or increases in MFN tariffs. Tariffs of 10% were imposed on cigarettes in July 2001 and raised annually, to 40% by 2004.⁶

23. Although tariffs, the key trade policy instrument, provide significant central government revenue (6% of total tax receipts in 2002), there appears to be considerable scope to reform tariffs without eroding government revenue. This is especially the case if allowance is made for likely increases in tariff revenue from more food imports if high, and often prohibitive, agricultural tariffs were lowered.

24. Korea adopted the 2002 version of the Harmonized System of Tariff Classification (HS) from 1 January 2002 (with 11,261 ten-digit tariff lines in 2004). The tariff schedule is set from January to December; most tariff changes are introduced annually. Requests to modify tariff rates are submitted by the relevant ministries and interested parties to the Ministry of Finance and Economy (MOFE), which presents the case to the Customs and Tariff Deliberation Committee.⁷ If accepted by the Committee, it is considered by a meeting of economic ministers, which submits recommendations to the State Council. If approved, the tariff change is implemented by Presidential decree.

25. The tariff comprises several different rates according to the source of imports. These are the MFN tariff from non-preferential sources, and several preferential tariffs, such as duties extended to imports from other members of the Bangkok Agreement and recently to Chile. There are also a number of different MFN rates (e.g. basic/general rate, international cooperation rate, WTO concession (i.e. bound) rate). This adds to the complexity of the tariff schedule.

(a) Applied MFN rate

26. The Korean tariff structure has changed little since the last Review of Korea. The average (unweighted) MFN tariff in 2004 is 12.8% (13.8% in 2000) (Table III.1 and Chart III.1).⁸ Tariff

⁶ Tariffs were introduced when the domestic monopoly was abolished and foreign firms allowed to manufacture cigarettes.

⁷ This consists of academics, customs officials, journalists, and representatives from non-governmental groups, including consumer and business organizations, and from relevant ministries.

⁸ The tariff analysis follows the Secretariat's practice of including out-of-quota duties for tariff quotas (i.e. excluding the in-quota rate) and the *ad valorem* part of specific-type duties when *ad valorem* equivalents are unavailable, as for Korea. As out-of-quota rates are much higher than in-quota rates, this is likely to overstate tariff protection where no out-of-quota imports occur. However, using the *ad valorem* rate of Korea's alternate tariffs, which apply "whichever is the greater" rate, will understate tariff protection when the alternate specific rate is operative. Higher adjustment tariffs are also excluded. Also, the average MFN rate of 12.8% is

protection varies substantially across and within sectors, averaging 52.2% for agricultural products) and 6.7% for industrial goods in 2004 (WTO definitions).⁹ Average tariffs are highest for vegetable products (HS section 2), at 100%. Manufacturing tariffs are highest for footwear and headgear (HS section 12) at 10.2%, and for textiles and articles (HS section 11) at 9.9%. By according varied and substantial levels of protection to selected industries, especially agriculture, tariffs distort competition by favouring some activities over others. Reducing high tariffs (mainly out-of-quota agricultural duties) would therefore improve Korea's resource allocation and national welfare.

Table III.1
Structure of Korean MFN tariffs, 1996 to 2004
(Per cent)

	1996	2000	2004	Final bound ^a
Bound tariff^b				
1. Bound tariff lines (% of all tariff lines)	91.0	91.7	91.5	91.5
2. Simple average bound rate	27.6	20.2	17.2	17.0
Agricultural products (HS01-24)	72.4	65.5	61.1	61.1
Industrial products (HS25-97)	20.0	12.8	10.0	9.7
WTO agricultural products	71.3	65.4	61.1	61.1
WTO non-agricultural products	19.8	12.5	9.7	9.5
Textiles and clothing	28.5	23.1	18.5	18.5
3. Tariff quotas (% of all tariff lines)	1.7	1.7	1.7	1.8
4. Duty free tariff lines (% of all tariff lines)	2.0	7.0	14.2	14.4
5. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	0.9	0.7	1.0	1.0
6. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	0.9	0.7	1.0	1.0
7. "Nuisance" bound rates (% of all tariff lines) ^c	0.6	1.6	2.1	2.1
Applied tariff				
8. Simple average applied rate	14.4	13.8	12.8	..
Agricultural products (HS01-24)	51.8	50.3	47.9	..
Industrial products (HS25-97)	7.7	7.5	6.6	..
WTO agricultural products	56.2	54.8	52.2	..
WTO non-agricultural products	7.7	7.5	6.7	..
Textiles and clothing	7.8	9.8	9.8	..
9. Domestic tariff "spikes" (% of all tariff lines) ^d	2.4	2.3	2.5	..
10. International tariff "spikes" (% of all tariff lines) ^e	8.7	8.7	8.9	..

Table III.1 (cont'd)

substantially above the average rate of customs duty collected on total imports, of about 4% (in 2003). Although this difference is partly explained by the much lower in-quota duties levied on many agricultural and other goods subject to tariff quotas, duty concessions and non-MFN (i.e. preferential) imports, conceptual differences in the two averages also contribute to the discrepancy. The average MFN rate of 12.8% used in this report is unweighted, while the average collected rate is import-weighted. Like all import-weighted tariff averages, it is therefore biased downwards. This is because the import weight is inversely related to the tariff rate (e.g. a high prohibitive tariff will not be reflected in an import-weighted average because there are no imports).

⁹ WTO definition of industrial products used by the Secretariat covers all non-agricultural products i.e. products not covered by the WTO Agreement on Agriculture. "WTO agricultural products" include all processed and unprocessed agricultural commodities (HS Chapters 1 to 24, less fish and fish products, plus some additional HS items).

	1996	2000	2004	Final bound ^a
11. Overall standard deviation (SD) of tariff rates	57.5	54.4	52.0	..
12. Tariff quotas (% of all tariff lines)	1.7	1.7	1.7	..
13. Duty free tariff lines (% of all tariff lines)	2.0	6.7	13.3	..
14. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	0.5	0.5	0.6	..
15. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	0.5	0.5	0.6	..
16. "Nuisance" applied rates (% of all tariff lines) ^c	2.7	3.0	2.7	..

.. Not available.

a Final bound calculations are based on the 2004 tariff schedule.

b Calculations are only based on bound tariff lines.

c "Nuisance" rates are those greater than zero, but less than or equal to 2%.

d Domestic tariff spikes are defined as those exceeding three times the overall simple applied rate (indicator 8).

e International tariff spikes are defined as those exceeding 15%.

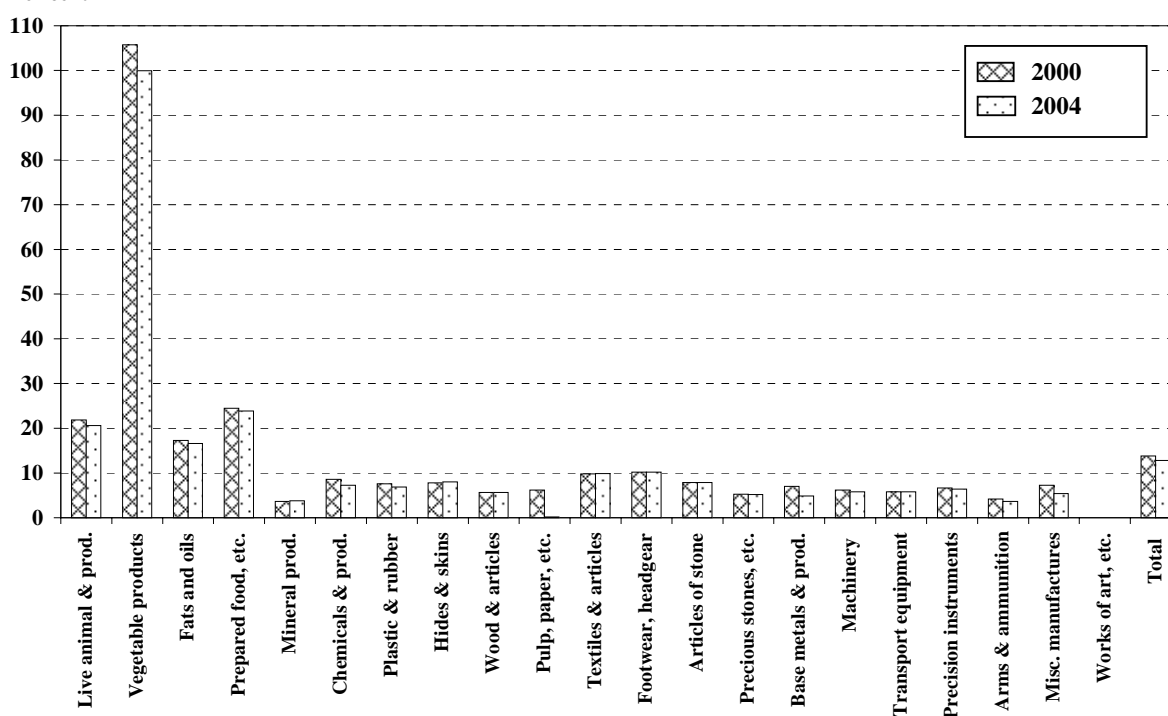
Note: Includes out-of-quota rates for tariff quotas (thereby excluding lower in-quota rates) and the *ad valorem* part of alternate duties. The 1996 and 2000 tariffs are based on 10-digit HS96 nomenclature; the 2004 tariff is based on 10-digit HS02 nomenclature.

Source: WTO Secretariat calculations, based on data provided by the Korean authorities.

Chart III.1

Average (unweighted) applied MFN tariff rates, by HS section, 2000 and 2004

Per cent



Note: Includes out-of-quota rates for tariff quotas (thereby excluding lower in-quota rates) and the *ad valorem* part of alternate duties. The 2000 estimates are based on HS96 nomenclature and 2004 on HS02.

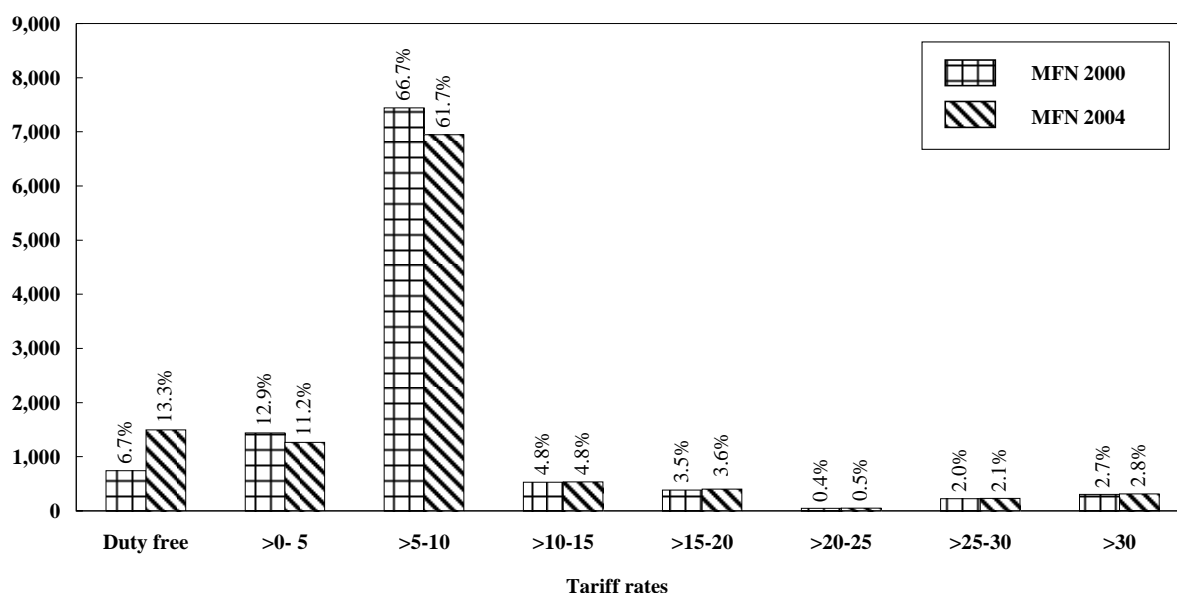
Source: WTO Secretariat calculations, based on data provided by the Korean authorities.

27. Over 99% of tariffs are *ad valorem* duties. This simplifies the tariff structure and improves transparency. However, there are some 90 different rate bands, mainly associated with agricultural tariffs, of which about 40 have decimal duties¹⁰; alternate duties apply to 0.5% of total tariff lines (about 50). Tariff rates range from free to 887.4% (Table AIII.1). Some 86% of rates were 10% or below in 2004 (the same as in 2000); 62% of rates are between 5% and 10%; the modal rate is 8% (Chart III.2). Rates of over 30% apply to 2.8% of tariff items in 2004 (2.7% in 2000); "nuisance" applied MFN rates (2% or less) applied to 2.7% of tariff lines in 2004, and 2.5% of lines had domestic tariff "peaks" (rates over 38.4%). Although the share of duty free tariff lines almost doubled between 2000 and 2004, to 13.3%, scope remains to rationalize the Korean tariff, for example, by reducing the large number of rate bands and removing decimal duties. This too would improve transparency and provide some gains to economic efficiency.

Chart III.2

Distribution of MFN tariff rates, 2000 and 2004

Number of tariff lines



Note: Includes out-of-quota rates for tariff quotas (thereby excluding lower in-quota rates) and the *ad valorem* part of alternate duties. Percentages denote the share of total lines. Totals do not add to 100% as no tariff rates are available for 0.4% (representing specific lines and import restrictions) and 0.1% (import restrictions) for 2000 and 2004, respectively. The 2000 estimates are based on HS96 nomenclature and 2004 on HS02.

Source: WTO Secretariat calculations, based on data provided by the Korean authorities.

28. Non-*ad valorem* tariffs consist of "alternate" duties on several manufacturing tariff items, mainly cinematographic film, diagnostic or laboratory reagents, raw silk, and recorded video tapes (Table AIII.2). These generally apply the greater of an *ad valorem* or a specific duty, whereby the *ad valorem* alternate rate sets a floor import duty rate.¹¹ Alternate duties also apply to a number of

¹⁰ Excluding tariff quotas and alternate tariffs, Korea's tariff rates still range from zero to 72%, and have many different (over 30) bands, often with very small rate differences and decimal rates. For example, there are over 15 *ad valorem* rate bands of 10% or below, and the rate of 6.5% applies to 10% of tariff lines.

¹¹ Tariff protection would be higher if world prices were sufficiently low for the specific duty to become operative. Such duties therefore provide greatest protection when world prices are lowest. Exceptions include cinematographic film and diagnostic or laboratory reagents, where the importer apparently chooses

agricultural tariff items as out-of-quota duties, which also provide very high minimum *ad valorem* rates, generally of well over 100% (exceeding 500% on sesame seeds and oil, Jujubesi and pine nuts). Korea has no plans to replace alternate duties with *ad valorem* rates. Tariff quotas apply to approximately 190 agricultural tariff lines (2% of total items)¹²; where there is no alternate out-of-quota duty the *ad valorem* rate is generally high, frequently exceeding 200% (as high as 887.4% on manioc), and many also having decimal rates.

(b) MFN tariff dispersion and escalation

29. Efficiency losses from tariffs depend not just on the average applied MFN rate, but also on the dispersion of rates across products and sectors. Summary indicators of overall tariff dispersion show relatively wide dispersion in applied MFN tariff rates (ranging from zero to 887.4%), with little narrowing of disparities between 2000 and 2004. While the standard deviation fell from 54.4 to 52.0, the coefficient of variation rose slightly from 3.9 to 4.1 (Table AIII.3). Most tariff cuts since 2000 have seemingly reduced low rates (e.g. eliminating minimal duties). Reducing low tariffs while leaving high rates relatively unchanged risks creating a more distorting tariff structure, even though average tariffs are reduced. Economic efficiency and resource allocation would be improved most if high tariffs were reduced first and fastest.

30. The pattern of tariff escalation has changed little since 2000 (Chart III.3 and Table AIII.3). Tariff escalation remains most pronounced in semi-processed food, beverages and tobacco and throughout all production stages of textiles and leather, basic metal products, and non-metallic mineral products. However, higher tariff protection persisted for semi-manufactures compared to finished items (tariff de-escalation) mainly for food, beverages and tobacco, and fabricated metal products and machinery.

(c) "Flexible" tariffs

31. Korea applies temporarily higher MFN duties, or flexible tariffs, within its WTO bindings. These duties include adjustment, emergency, special emergency, and seasonal rates.¹³

Adjustment duties

32. Adjustment duties protect domestic, including competitively weak, industries from import surges that threaten to disrupt the domestic market (Customs Act). They are set annually by MOFE after "examining the protection of domestic industry, international trade relations and their impact on the national economy as a whole" (Article 70). The Customs and Tariff Deliberation Committee considers MOFE's proposals, and if approved by the State Council, adjustment duties are implemented by Presidential decree.

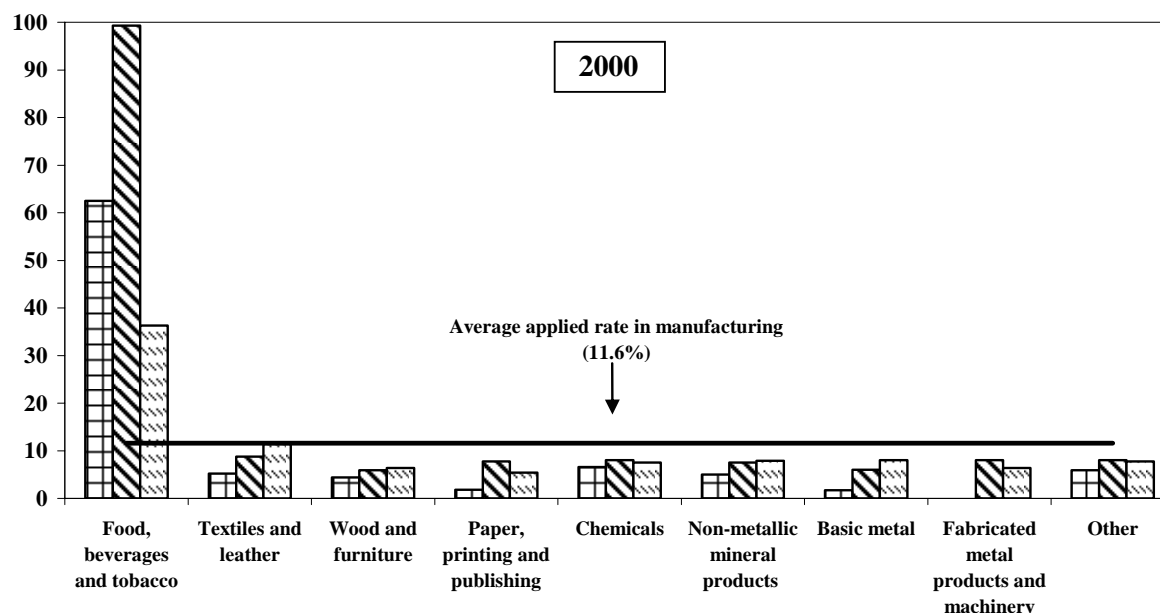
whether to pay a tariff of 6.5% or a specific duty. This means that the tariff rate on such imports is effectively capped at 6.5% since the importer would presumably select the lower of the two duties.

¹² This excludes tariff items for rice, which although grouped by the authorities with tariff quotas, are actually covered by import quotas. Tariff quotas on about ten tariff items (e.g. oranges) effectively operate as tariffs since the in-and out-of-quota rates are the same.

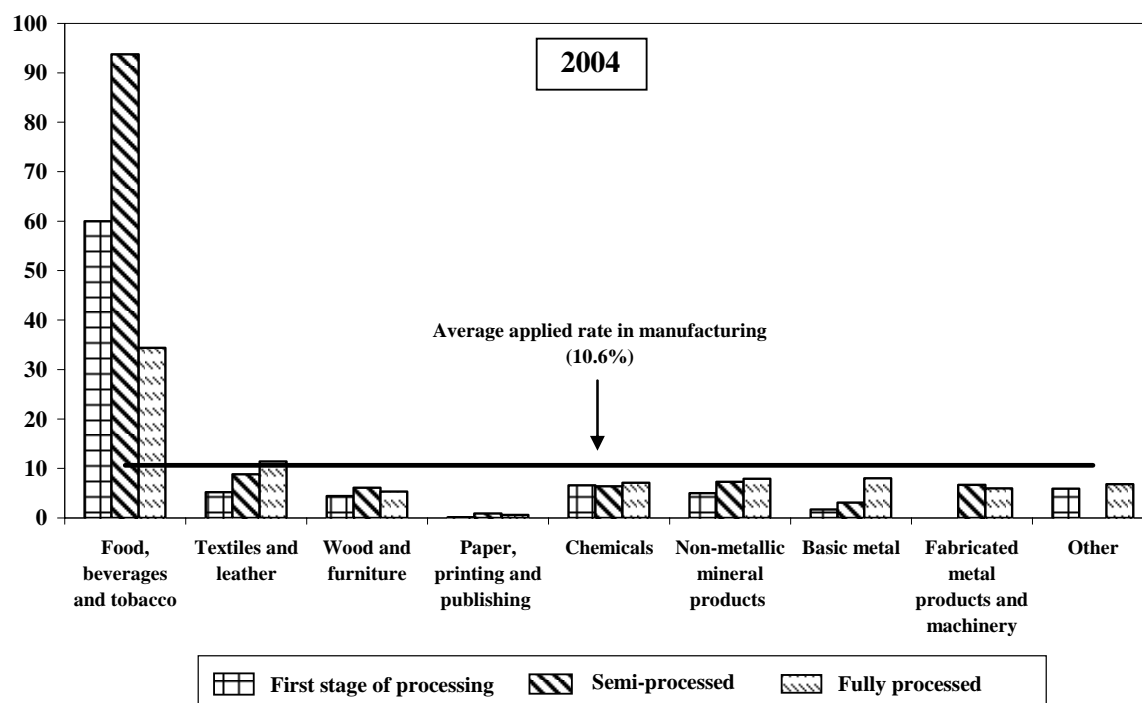
¹³ Autonomous tariff quotas are also referred to as flexible tariffs, and are discussed in section (iv)(b).

Chart III.3
MFN tariff escalation by 2-digit ISIC industry, 2000 and 2004

Per cent



Per cent



Note: Includes out-of-quota rates for tariff quotas (thereby excluding lower in-quota rates) and the ad valorem part of alternate duties. The 2000 estimates are based on HS96 nomenclature and 2004 on HS02.

Source: WTO Secretariat calculations, based on data provided by the Korean authorities.

33. Use of adjustment duties has declined. In 2004, they applied to 13 four-digit tariff items (28 items in 2000), mainly covering certain fish, bananas, rice preparations, sauces, and plywood (Table AIII.4). Goods no longer subject to adjustment duties since the last Review include sugar, wood, bicycles, toys, woven silk, and cotton fabrics. Duties currently range from 13% on plywood to 50% on rice preparations and 70% on certain fish. Alternate duties (e.g. 55% or W 363 per kg, whichever is the greater, on prawns) apply to seven of the four-digit tariff lines. Most products subject to adjustment duties in 2004, such as several fish and plywood items, are unbound. However, for products with bound rates, the imposition of higher MFN adjustment duties within Korea's bindings reflects the significant gap between its applied tariff rates and bound levels (section (d) below).

Special emergency and emergency tariffs

34. Korea's customs legislation allows for special emergency tariffs on agricultural, forestry and livestock products in the event of sharp increases in imports or falls in import prices (Article 68, Customs Act). Korea reserved the right to take emergency safeguard action (SSG) on crop and related products (e.g. grains, potatoes, ginseng, and soybean) under the WTO Agreement on Agriculture. It has never applied special emergency tariffs to forest products, which are not covered by WTO provisions.

35. Emergency, including provisional, tariffs may also apply to imports that have surged and caused or threaten to cause material injury to domestic producers, where deemed necessary to protect domestic industries (Customs Act). Emergency tariffs apply for up to four years (200 days if provisional), but can be extended by four years subject to a further review.

Seasonal duties

36. Seasonal duties may be levied on goods with fluctuating seasonal prices to protect domestic industries against competing imports that threaten to "disrupt" production. Although not previously used, seasonal duties were recently introduced on grapes imported from Chile under the KCFTA, whereby preferential duties apply only to grapes imported during the Korean off-season (Chapter II).

(d) Bound tariff

37. Korea bound 91% of all tariff lines in the Uruguay Round. Some 99% of agricultural tariff lines (excluding mainly rice) and 90% of industrial tariff lines (WTO definitions) are bound. On a tariff classification basis, 86% of agricultural tariff lines (HS Chapters 01-24) and 93% of industrial lines (HS Chapters 25-97) are bound. The lowest incidence of tariff bindings on this basis (63% of items) is in: live animals and products (HS section 1), which includes substantial unbound tariff items on fish and fish products; wood and articles (HS section 9) (72%); hides and skins (HS section 8) (78%); transport equipment (HS section 17) (81%); and articles of stone (HS section 13) (82%).

38. The simple average bound tariff rate fell from 20.2% in 2000 to 17.2 % in 2004, when Korea made its final Uruguay Round reductions on agriculture (implemented in equal annual instalments from 1995-04) (Table III.1). Following "tariffication" of non-tariff measures, except on rice, very high bound (and applied) tariffs, often seemingly prohibitive, apply to many commodities, such as cereals and dairy products. Korea's average bound rates on agricultural and industrial products were

61.1% and 9.7%, respectively, in 2004 (WTO definitions).¹⁴ Since bound rates on average have fallen more than applied MFN rates (12.8% in 2004), the gap between the two has narrowed. However, since the average bound rate was still about one third higher in 2004, considerable leeway exists to raise applied rates, thereby reducing tariff predictability. Korea uses this scope mainly to raise MFN tariffs annually by applying higher adjustment duties on a number of products to temporarily protect domestic producers.

39. Korea has requested several annual extensions of the waiver granted on its binding obligations to allow it to implement the HS (2002) nomenclature and to subsequently undertake Article XXVIII negotiations (Article II of GATT 1994). The current extension is until end 2004.¹⁵

(e) Duty concessions/exemptions

40. The application of duty concessions and exemptions has not changed greatly since the last Review of Korea. The Minister of Finance and Economy (MOFE) may grant concessional entry of imports to meet national objectives, such as industrial development (Articles 88-109, Customs Act). Examples include: raw materials for the production or repair of aircraft or to manufacture semiconductors; goods used for scientific research, education and training; certain goods used by government agencies; goods for breeding of animals and plants and for seed improvement; necessary machinery, equipment and their parts required for aircraft operations and aviation security and for ground maintenance, not produced domestically; marine products caught by Korean vessels (a) in foreign territorial seas licensed by the foreign government, (b) in cooperation with any foreign fishing boat, (c) catches through a joint venture with any foreigner (exemption); and goods for leading technology (e.g. automation machines). MOFE determines tariff concessions in consultation with relevant ministries. The authorities indicated that revenue forgone from duty concessions was US\$424 million (equivalent to about 5% of tariff revenue) in 2003 (US\$373 million in 2002).

41. Tariff concessions also apply under other legislation. For example, capital goods imported for foreign investment projects located in various zones, such as foreign investment zones, are exempt from customs duties, generally for up to three years (Chapter II). Customs duties on certain imported goods (e.g. machinery) and for certain importers (e.g. SMEs) can be paid in instalments over five years. The Promotion Act for the Development of Aircraft and Space Industries also allows duty-free imports of parts (revenue forgone of W 10.6 billion in 2000).¹⁶

(f) Usage tariff rates

42. Usage tariff rates, which are specified in the tariff schedule as lower provisional duties according to end-use, exempt from tariffs imported inputs for specified end-uses (Article 83, Customs Act). Autonomous tariff quotas also provide lower in-quota duties for certain imported inputs, including those used in specified end-uses (section (2)(iv)(b)). Korea Customs Service is responsible for post-audit monitoring to ensure that imported inputs meet the specified end-use criteria. Full duty is collected on those inputs used for other purposes. Usage tariff rates, autonomous tariff quotas, and to a lesser extent duty concessions on inputs are seemingly an important component of Korea's industrial tariff policy, whereby government encourages certain manufacturing activities.

¹⁴ A few of Korea's Uruguay Round commitments on industrial products are being phased in until 2010. When fully implemented, the average bound tariff on industrial products will fall only marginally to 9.5% (WTO definition) and on all products to 17.0%.

¹⁵ WTO document G/C/W/477, 10 December 2003.

¹⁶ WTO document G/SCM/N/71/KOR, 2 August 2001.

(g) Tariff preferences and rules of origin

Preferences

43. Korea grants limited reciprocal tariff preferences to developing countries under the Global System of Trade Preferences Among Developing Countries (GSTP) and the GATT Protocol Relating to Trade Negotiations Among Developing Countries (TNDC) (Chapter II(5)(iv)). It also provides unilateral (non-reciprocal) tariff preferences to LDCs. Senegal became the 49th eligible LDC from 1 January 2002, and the number of six-digit tariff items covered by the scheme was increased from 80 to 87, although this mainly reflected classification changes following Korea's adoption of HS 2002. The Minister of Finance and Economy may withdraw or modify unilateral trade preferences on either a product or country basis if considered inappropriate taking into account the country's income level, volume of imports, and international competitiveness of the product and country concerned.

44. Korea's reciprocal concessions under the Bangkok Agreement cover 223 six-digit tariff items, with most concessions at either 62% or 78% of the MFN tariff rate. Special concessions apply to Bangladesh on 19 six-digit tariff items, at mainly 80%, 78% or 50% of the MFN duty, and to Lao PDR (on eight tariff items), at mainly 69% and 66% of the MFN rate. Korea lowered its concessional rates in 2002 to maintain preferential margins in line with its reduced MFN duties.

45. Korea's tariff preferences to date have been relatively minor, and have not greatly undermined the transparency of its tariff structure or the relevance of MFN duties. The simple average Korean tariff rate remains at the MFN average of 12.8% for imports from countries receiving preferences under the GSTP, TNDC, and the Bangkok Agreement; it falls slightly to 12.5% for imports from LDC countries. However, this is changing in line with Korea's move towards bilateral and regional free-trade agreements, concluded recently with Chile, and prospectively with at least Japan and Singapore (Chapter II). Widespread tariff preferences applied from 1 April 2004 under the KCFTA (whereby additional duty reductions are being phased in over 16 years) reduced Korea's average (unweighted) tariffs to 6.9%, well below its MFN level. Chile therefore receives much greater preferential access than developing countries (including LDCs). Most tariff reductions affected industrial products; the average tariff on these products (WTO definition) fell from 6.7% to 0.2% in 2004. To the extent that such preferences mainly divert trade by enabling Chilean exports to displace more efficient exporters from the Korean market, Korea's national welfare and that of displaced trading partners will be reduced. Agricultural tariffs for Chile declined marginally, from 52.2% to 49.8% (WTO definition). On a tariff classification basis, Korea's tariffs on Chilean imports are highest for vegetable products (HS section 2).

Rules of origin

46. Korea continues to operate both preferential and non-preferential rules of origin.

47. Preferential rules apply to imports under preferential trading arrangements. For LDCs to receive duty-free access on eligible imports, goods must be either "wholly produced or obtained" in the exporting country, or manufactured from originating materials of at least 50% of the product's f.o.b. price. Vessels catching fish must be registered in the exporting country and have at least 60% domestic equity. Since imports under the Bangkok Agreement are not currently subject to common rules of origin (members are currently discussing the adoption of these based on value-added

transformation rules), Korea applies its non-preferential rules of origin to determine eligibility of these imports to tariff preferences.¹⁷

48. Substantial, and varied, rules of origin apply under KCFTA, based on the "goods wholly obtained" and the "substantial transformation" criterion. Substantial transformation is determined mainly by the tariff shift rule; goods must be sufficiently processed in either Korea or Chile to change tariff classification (chapter, heading, or subheading) for preferential entry. Agricultural products require mainly a change in tariff chapter (CC); a change in tariff heading (CTH) is required for certain foodstuffs, such as cocoa paste and cocoa butter. Changes in tariff heading or tariff subheading (CTSH) are used for industrial products, often combined with a value-added rule or for textiles and clothing a specific process rule. The value-added rule is also applied to selected agricultural and industrial products. It usually stipulates a regional value content of not less than 45% using the build-down method, and of 30% under the build-up method.¹⁸ A number of clothing items are subject to only specific process rules.

49. Korea continues to apply non-preferential rules of origin equally to all other imports, including preferential imports under the Bangkok Agreement. Origin is determined on request by the MOCIE. Korea's non-preferential rules of origin are based on the wholly obtained goods and substantial transformation criterion. The tariff shift rule (change in six-digit HS classification) is applied, except for cameras (value-added rule) and textile articles (processing operation rule). There have been no significant changes in non-preferential rules of origin since the last Review of Korea.

(iv) Tariff quotas

(a) Agricultural tariff quotas

50. Korea applies tariff quotas under its multilateral agricultural market-access commitments on about 60 products (some 180 tariff items) (Table AIII.5).¹⁹ The only change in coverage has been the replacement of the tariff quota on beef with tariffs, currently at 40%, from 1 January 2001.

51. In-quota tariff rates range from zero to 50% in 2004. Above-quota rates are generally very high; many are well over 100%. Many above-quota rates are alternate duties. Some tariff quotas operate, in effect, as quantitative restrictions, whereby seemingly prohibitively high out-of-quota tariffs prevent above quota imports. The average fill rate of tariff quotas is around 70%. In 2003, fill ratios were low for several product groupings, including evaporative milk (0%), whey (15.3%), garlic (71.8%), red-peppers (70.2%) and ginger (47.1%) (Table AIII.6). The consistently large unfilled share of tariff quotas on some items, even with relatively low in-quota duties, suggests that their administration and allocation may be restricting imports.

¹⁷ Members are currently discussing the percentage criteria to apply as common rules of origin under the ongoing third round of negotiations, which are expected to conclude during 2004. The current agreement requires them to provide details of the rules they apply, and provides for common rules to be adopted if found necessary (Annex II).

¹⁸ Several tariff items specify a higher value added of 80% using the build down method. Under the build up method, regional value added is calculated as the value of originating materials used in production as a percentage of the imported goods' f.o.b. value (landed-duty-free value adjusted to exclude transportation, insurance and related expenses). The build down method deducts non-originating materials used in production from the import's value and expresses this amount as a percentage of its value. This method implicitly includes the product's non-material costs, such as labour, as originating materials. Accumulation of originating materials is allowed. De minimis provisions allow goods not undergoing a tariff shift to be considered as originating if non-originating materials do not exceed 8% of their f.o.b. value.

¹⁹ Excludes 16 tariff items for rice, which, although grouped by the authorities as tariff quotas, are actually covered by quota.

52. Tariff quotas, and the import quota on rice, are allocated or operated by designated state-trading enterprises, such as the MAF for rice and barley, or various producer associations, including the National Agricultural Cooperatives Federation and the Korea Feed Ingredients Association. State-trading enterprises impose additional mark-ups on top of the in-quota tariff on certain items.²⁰ Most state-trading enterprises are engaged directly in marketing imports by selling through wholesale markets or distributing directly to final users. State-trading enterprises and producer associations allocate quotas usually on a "first-come first-served" basis taking into account import performance, facilities, and capacity, or by auctioning import entitlements for certain commodities. With the exception of the National Agricultural Cooperative Federation, the National Forestry Cooperation Federation, and the Jeju Citrus Growers' Agricultural Cooperative, producers associations include members that process foodstuffs imported under tariff quota.²¹

53. Since its last Review, Korea has improved tariff quota administration by adopting market-oriented principles to raise efficiency and transparency, including full or partial auctioning of some products, such as: ginger and sesame seed by the Agricultural and Fishery Marketing Cooperation; natural honey and ginseng products by the National Agricultural Cooperative Federation; and oranges and other citrus fruit by the Jeju Citrus Growers' Agricultural Cooperative (Table AIII.7).²²

(b) Autonomous tariff quotas

54. Korea also grants concessional tariffs using autonomous tariff quotas, mainly for raw materials, inputs, semi-processed goods, components, parts, and engines (Table AIII.8). These tariff quotas covered approximately 100 tariff items in 2004 (about 60 in 2000). In-quota tariff rates ranged from zero to 30%. Many items with no quota limits remain on the list; this would facilitate the quick imposition of quotas, which could add to importer uncertainty. Autonomous tariff quotas are intended to: ensure the smooth supply of imports or bolster industrial competitiveness; to stabilize prices of imports undergoing price hikes and of goods made from imported inputs; and to narrow disparities in tariff rates between like products. In practice, they are usually applied to basic raw materials imported due to insufficient domestic supply, or to stabilize rising import prices to cushion the effect on domestic users.

55. Autonomous tariff quotas are revised annually, and administered by the Ministry of Finance and Economy (MOFE).²³ Coverage is based on government agency requests and recommendations from designated industry associations. MOFE submits proposals for review by the Customs and Tariff Deliberation Committee, which are considered by the Economic Ministers' Meeting for approval by the State Council. Autonomous tariff quotas are implemented by Presidential decree, and are often administered through supervised industry associations.

(v) Other levies and charges

56. The levy on salt imports was abolished in December 2001. Korea imposes environmental waste charges on imports of certain products, materials, and containers that contain harmful substances and are difficult to recycle (Act on Promotion of Saving and Recycling of Resources).

²⁰ Recent data on mark-ups of state-trading enterprises are not available. According to the authorities, this information is being updated and will be notified to the WTO when completed, most likely around end 2004.

²¹ According to the authorities, details of the management of agricultural tariff quotas by agencies other than state-trading enterprises are being updated and will be notified to the WTO once completed, probably around end 2004.

²² APEC (2003).

²³ Annual reviews replaced biannual reviews in 2001. According to the authorities, this improved tariff predictability.

Product categories cover: containers of insecticides and poisonous goods; cosmetics in glass bottles; anti-freeze solutions; chewing gum; disposable nappies; cigarettes; and plastic pipes, furniture, toys, lighters, and toothbrushes, as well as plastic used in packaging, construction, and assembly of machinery and equipment. The waste charge is intended to ensure that the manufacturer bears the cost of processing waste. It applies equally to domestic goods.²⁴

57. A surcharge is levied on petroleum imports (Petroleum Business Act, 1977) to provide funds to ensure adequate supply and price stability. Petroleum refiners and oil importers pay the surcharge, currently set at W 14 per litre. The Government also promotes diversification of oil imports away from the Middle East towards other regions, especially the Americas, Africa, and Europe, including Russia. Surcharges on non-Middle East oil imports are to be lowered to offset their higher transport costs. Government policy is to lower Middle East oil dependency from 73.5% to 70%.

58. There are no other additional levies or surcharges applied to imports, apart from domestic indirect taxes, which apply equally to domestically produced goods.

(vi) Import licensing, quotas, and prohibitions

(a) Licensing

59. All commodities can be imported without a licence unless on a negative list of prohibited or restricted items (the Consolidated Public Notice on Guidelines of Exports and Imports, published semi-annually by MOCIE). Import prohibitions or restrictions are to protect public morals, human health, hygiene and sanitation, animal and plant life, environmental conservation or essential security interests in compliance with domestic legislation or international commitments. Import approval and authorization requirements are listed in about 50 separate laws; items covered can be generally imported subject to certification, permission, and type approval.²⁵ Few changes have occurred since the last Review of Korea. Non-tariff measures cover about 1,000 tariff items, including petroleum, LPG, agricultural fertilizers, crop seeds, animals and animal products, nuclear materials, narcotics, foods and food additives, foreign publications, firearms and explosives.

60. According to the authorities, Korea does not operate an import licensing system. Imports are screened or checked in a "fair" manner by the relevant government agency or producer association commissioned by that agency to ensure that the product meets import requirements. Since the agency responsible for checking whether a certain imported product meets these requirements has to produce a confirmation paper, granting this authority to producer associations does not, according to the authorities, disadvantage imports through potential conflict of interest. Health or safety related products, such as pharmaceuticals, require additional testing or certification by designated organizations before clearing customs. Imports that do not comply with standards and/or testing requirements may be banned. MOCIE also approves special items defined in its Annual Trade Plan (firearms, illicit drugs, and endangered species). Korea belongs to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

(b) Quotas

61. Only rice is subject to import quotas. These were negotiated on rice imports under the Uruguay Round as part of Korea's "non-tariffication" of rice, and provided for increased "minimum

²⁴ The same charge is levied on domestic goods and imports (e.g. on insecticides of W 7 per container or W 16 if it exceeds 500 ml), except for plastic goods. It is set at either W 3.8 or W 7.6 per kg. of the plastic or synthetic resin used for domestic goods, and at 0.7% of the imported price for imports.

²⁵ WTO document G/LIC/N/3/KOR/3, 14 June 2002.

access commitments" of from 1% to 4% of domestic consumption during 1995 to 2004. Korea committed to increase the annual rice import quota from 51,307 tonnes (on a milled basis) in 1995 to 205,228 tonnes in 2004. The authorities indicate that Korea met these committed levels of rice imports in all years from 1995 to 2003, and will do so in 2004.²⁶ Since 2000, the Agricultural and Fishery Marketing Corporation has also been mandated by the MAF to import rice, and currently accounts for about 70% of rice imports. Imported rice is purchased through open bidding and on-sold to the MAF at import price. It is not sold directly to consumers but is used for food processing.

(c) Prohibitions

62. Korea prohibits a few imports, mainly to protect health, safety, security, public morality, the environment, and natural resources, and to prevent deceptive practices, in accordance with multilateral trade and other agreements, according to the authorities. Prohibited products include: certain pornographic and other unacceptable material; goods that reveal confidential government information or intelligence activities; and counterfeit currency or financial instruments. Korea does not maintain any trade embargoes with other countries.

(vii) State trading

63. Korea has not updated its WTO notification on state trading since its last Review. It has several designated import agencies to allocate or operate agricultural tariff quotas, such as MAF and the Agricultural and Fishery Marketing Corporation for certain vegetables (Table III.2). A number of products are no longer imported exclusively by the designated agency, but instead are imported by private importers buying quota at agency auctions. The Livestock Products Marketing Organization (LMPO) administered beef quotas until their removal in January 2001.

Table III.2
State trading entities and products

State trading entity	Products
Ministry of Agriculture and Forestry	Rice, rice flour, rice food preparations and barley
Agricultural and Fishery Marketing Corporation	Capsicum, garlic, onions, sesame seeds, groundnuts, soya beans, small green/red beans, buckwheat, ginger, and potatoes
National Livestock Cooperatives Federation	Honey
Jeju Citrus Grower's Agricultural Cooperative	Oranges, mandarins and tangerines
Korea Ginseng Cooperative Federation	All ginseng products
National Forestry Cooperatives Federation	Pine nuts (shelled and unshelled)

Source: WTO document G/STR/N/4/KOR, 10 December 1998; and the Korean authorities.

(viii) Contingency measures

64. The Customs Act and the Act on the Investigation of Unfair International Trade Practices and Remedy Against Injury to Industry (2001) authorize contingency (trade remedy) measures. The independent Korean Trade Commission (within MOCIE) administers these measures in accordance with WTO obligations. In anti-dumping and countervailing cases, the KTC investigates and determines if imports are dumped or subsidized and whether they cause or threaten to cause injury to the domestic industry. KTC investigations under emergency safeguard provisions determine whether imports have caused or threatened to cause "serious" injury to domestic industry.

²⁶ Korea's minimum market access commitments are based on fiscal year while imports are based on crop year (1 November to 30 October of the following year).

65. Korean legislation on contingent protection and KTC's operations have not changed substantially during the period under review.

(a) Anti-dumping and countervailing measures

66. Korea has used anti-dumping provisions to protect certain industries against competitive imports. At end 2003, Korea had final measures (definitive duties and/or price undertakings) on imports from eight countries (Table III.3).²⁷ It has initiated a substantial number of anti-dumping investigations since 2000 (Table AIII.9). Final measures were adopted in most cases, with sizeable dumping margins (of up to 86%) found in some. No dumping or injury was found in only a few cases. In the main, anti-dumping action has affected a relatively small number of products from a few countries, especially China, Indonesia, Japan, and a few EU countries. Korea has taken no countervailing measures since its last Review.

Table III.3
Outstanding anti-dumping measures, 2003

Country	Product	Date of definitive measure
Definitive duties in force		
China	Disposable lighters	23 May 2000
	Alkali Manganese batteries ^a	3 December 2003
	Ferro-silico manganese ^a	3 December 2003
	Uncoated woodfree paper	7 November 2003
Japan	Pre-sensitized printing plate	14 march 2002
	Polyvinyl alcohol	3 December 2003
	Alkali manganese batteries ^a	3 December 2003
	Aluminium hydroxide ^a	18 July 2003
Germany	Carbonless self copy paper ^a	21 August 2001
Indonesia	Disposable lighters	9 September 2003
	Uncoated woodfree paper	7 November 2003
Russian Federation	H-beam	3 July 2002
Chinese Taipei	CD_R (compact disc recordable)	21 May 2002
Price undertakings in force		
China	Ferro-silicon manganese ^b	3 December 2003
	Alkali manganese batteries ^b	3 December 2003
Germany	Carbonless self copy paper ^b	21 August 2001
Japan	Compound sizing agent	18 January 2000
	Aluminium hydroxide ^b	18 July 2003
Netherlands	Pre-sensitized printing plate	18 January 2000
Singapore	Alkali manganese batteries ^b	3 December 2003
Chinese Taipei	Ethylene-vinyl acetate	15 January 2003

a Price undertakings also apply.

b Anti-dumping measures also apply.

Source: WTO notifications (document G/ADP/N/112/KOR, 24 February 2004).

67. KTC independently decides whether to initiate an anti-dumping investigation following an application from the affected domestic industry or a request from the ministry responsible for the

²⁷ Includes final anti-dumping measures (mainly definitive duties) levied on a few products imported from China, Indonesia, and Japan in 2003, mainly as a result of investigations as part of a review of existing anti-dumping measures or following allegations of breached undertakings.

affected industry, including MOCIE. KTC presents to MOFE the results of the preliminary and main investigations and recommendations on whether to impose anti-dumping, including provisional, measures. MOFE alone makes this decision. It is legally required to take into account the competitiveness of the relevant industry, price stability, and the promotion of trade cooperation with trading partners when considering a KTC recommendation. This is seemingly a type of "public interest" test to assess whether the recommended measures may have negative effects, such as weakening competition, creating a monopoly or raising prices. Public interest considerations may result in less severe measures being applied than those recommended by the KTC.

68. An interested party (domestic producer, importer, consumer or foreign exporter) may appeal dumping decisions (dumping margins, anti-dumping procedures, injury determination, and imposition of duties) using the administrative procedures of the Customs Act (Article 119). Appeals can be made to the National Tax Tribunal, which has independent status, and to the judicial system.²⁸

(b) Safeguards

General

69. Safeguard measures include tariff adjustments, import quotas or other measures to remedy injury to a domestic industry or to facilitate structural adjustment. Financial assistance, such as relocation and re-training assistance for workers and technological support, may be provided. While Korea's legislation contains a specific provision allowing safeguard measures on services where foreign suppliers have caused or threatened to cause serious injury to the domestic industry (Article 22, The Act on the Investigation of Unfair International Trade Practices and Remedy Against Injury to Industry), it is inoperative and cannot be used, pending the outcome of the WTO negotiations on extending safeguard measures to services under GATS. The legislation was revised in January 2004 to separate into different provisions the mid-term review of the application of such measures and the need for another investigation to extend them beyond the four-year "sunset" provisions, in accordance with WTO requirements.²⁹

70. Korea has used emergency safeguards sparingly to protect domestic industries. They have been applied to only one product, garlic, since 2000, in the form of additional alternate tariffs for three years from 1 June 2000.³⁰ The KTC investigation found that increased garlic imports, especially of frozen and prepared or preserved by vinegar or acetic acid, had caused serious injury to the domestic industry.³¹ The mid-term review of the measures, initiated on 10 February 2001, recommended that safeguard duties remain so that the Korean industry could compete with imports from China, which had a comparative advantage in supply capacity and price competitiveness.³² It also urged the acceleration of the Comprehensive Plan for Restructuring the Domestic Garlic Industry to improve Korea's productivity and to reduce production and distribution costs.

²⁸ In a case currently before the Seoul Administrative Court on appeal from the National Tax Tribunal, an Indonesian exporter is attempting to overturn a decision to impose anti-dumping duties on uncoated wood-free paper.

²⁹ Other changes relate to the creation of special safeguard measures against China, as negotiated under its WTO accession, and investigation procedures for safeguard measures under free-trade agreements with other countries.

³⁰ Three years and 45 days from application of the provisional measures on 18 November 1999. A bilateral safeguard measure on garlic imports from China that was applied before China's WTO accession was eliminated at end 2002.

³¹ WTO document G/SG/N/8/KOR/3, 21 February 2000.

³² It found in 2000, after safeguards were implemented that market share of imports had fallen to 5.9% (72% drop in imports), production had declined by 1.9%, farmgate prices had declined by 26%, and the number of garlic farm households had continued to fall by 8% (6% in 1999).

71. Substantial MFN tariff protection for domestic garlic producers was increased temporarily through the importation of high additional tariffs as safeguard measures. Safeguard measures on garlic imports were terminated from 2003.

72. The KTC makes recommendations on safeguard measures to various ministries depending upon the type of remedy proposed. Additional import tariffs are recommended to MOFE, and import quotas to MOCIE. Other restructuring matters are referred to the ministry responsible for the industry, such as MOCIE.

Sector-specific

73. Korean legislation permits two sector-specific safeguard mechanisms in accordance with WTO Agreements. These are on textiles and clothing, and agricultural commodities.

74. The KTC conducts safeguard investigations on textiles and clothing to determine whether imports have caused or threatened to cause serious injury to the domestic industry, in line with the WTO transitional safeguard mechanism as part of the phase-out of the Multi-Fibre Agreement by 2005. These investigations follow standard safeguard procedures. KTC makes recommendations on the imposition of import quotas to MOCIE, which makes a decision after examining how this would affect the national economy. Korea has not imposed such safeguard measures to date.

75. Korea frequently uses the special safeguard provisions (SSG) of the WTO Agreement on Agriculture. Additional duties (of up to one third of the "ordinary applied tariff") can be levied on agricultural imports if their prices (or quantities) fall below (rise above) specified trigger levels. The decision to implement such measures is made annually by MOFE through a ministerial ordinance, at the request of the MAF.

76. While Korea reserved the right to apply SSG provisions to 121 agricultural ten-digit tariff items, they are in practice applied to a small sub-set of items. Nevertheless, the number of tariff lines subject to special safeguards increased substantially from 6 to 17 in 2000, according to Korea's latest WTO notification.³³ Several products (especially beans, buckwheat, sweet potato starch, and ground nuts) have been covered continually; additional products in 2000 included cereal meal, wheat starch, soybeans, and certain ginseng products. Volume-based or price-based action exclusively was implemented on nine and four tariff lines, respectively in 2000; both measures were taken on four items (two types of beans, buckwheat and wheat starch). The authorities indicate that price-based measures operated in 2003 on beans (including small red beans), buckwheat, flour starch, sweet potato starch, peanuts and soybeans, and on a quantity basis for ginseng, peanuts, small green and red beans, bone and meat mill.

(ix) Standards and other technical requirements

(a) Standards, testing, and certification

77. The Korean Agency for Technology and Standards (KATS) is the nation's standardization agency. It sets, administers, and disseminates voluntary Korean Industrial Standards (KS) based on the National Standardization Act of 1999 and the Industrial Standardization Act. KATS is affiliated with MOCIE, which applies the Industrial Standardization Act and sets policies on standards. KATS represents Korea at international bodies, such as the International Electrotechnical Commission (IEC) and the International Organization for Standardization (ISO), in which Korea participates. It is the official enquiry point on industrial products under the WTO Agreement on Technical Barriers to

³³ WTO document G/AG/N/KOR/35, 5 June 2002.

Trade, and has accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3, WTO Agreement). Several private bodies perform standardization-related tasks. Other bodies designated by KATS to perform standards-related work include the private Korea Research Institute of Standards and Science (responsible for metrology standards and measurement).

78. MOCIE's five-year National Standards Plan (2000-04) requires KATS, as a key policy goal, to revise and harmonize national industrial standards with international norms, especially ISO/IEC standards. Regulatory authorities are to adopt, where possible, international standards when setting up or modifying technical or voluntary standards. The National Standards Council (chaired by the Prime Minister) reviews all standards and coordinates domestic and international standards.

79. The Korean standardization system has a dual structure, consisting of technical regulations (mandatory standards) developed by ministries and government agencies, and voluntary standards (KS) set by KATS. The number of Korean standards (KS) increased from 10,845 in 2000 to 18,014 in late 2003. As of December 2002, KATS had harmonized 7,318 of 7,804 Korean standards that had corresponding ISO/IEC standards. Non-harmonized standards are either those that are unique to Korea, with no corresponding international norm, such as for kimchi, or cannot be harmonized because of their link to other domestic regulations. Another 3,500 Korean standards are to be harmonized in 2003-04.

80. All Korean standards are voluntary unless cited in technical regulations. According to authorities, mandatory technical regulations are used only to meet legitimate objectives, such as national security requirements, preventing deceptive practices, protecting human, animal, and plant health and safety, and preserving the environment, under relevant domestic laws. A total of 1,813 KS are used as mandatory technical regulations by various ministries under 42 regulations. Mandatory KS apply to 231 electrical goods, for example, and to 15 manufactured products, for human safety.³⁴ Mandatory certification affecting industrial products, including electrical appliances, gas appliances, motor vehicles, and telecommunications equipment is contained in many acts.³⁵ Ministries operate KS as mandatory technical regulations under their own specific regulations. For example, responsibility for establishing standards and technical regulations for telecommunications rests with the Ministry of Information and Communication.

81. Priority areas for standards harmonization are electrical and electronic appliances, food labelling, machinery, and rubber products. Korea's six standards on machinery were harmonized by end 2002. Electrical and electronic machinery standards were to be harmonized by end 2003 (requiring harmonization of five out of 20 standards); 693 safety criteria for electrical equipment were aligned with international (mainly IEC) standards during 1999-03. KATS reviews standards every five years, or earlier if required. New or revised standards are published in the *Official Gazette*. Additional priorities for standards harmonization are new technology products, including IT, and services.

82. Reforms have addressed criticisms from trading partners that Korea's standardization and conformity testing procedures impede trade. Lack of transparency and insufficient coordination had generated a rather complex standardization and certification system, whereby competencies of some ministries or agencies often overlapped for some products. Korea is promoting uniform standards among ministries to overcome inconsistencies and to improve efficiency, and is currently trying to remove differences on 1,813 products.

³⁴ The authorities indicate that all the standards on electrical goods and 50% on manufactured products were harmonized with international norms.

³⁵ OECD (2000), p. 23.

Food and other non-industrial products

83. Legislative responsibility for regulating food safety and quality is diversified and overlaps with several ministries, which often perform similar activities. Responsibility for food safety, pharmaceuticals and cosmetics rests with the Ministry of Health and Welfare (MHW) and its agency, the Korean Food and Drug Administration (KFDA).³⁶ KFDA ensures that domestic and imported food products (except meat, dairy and egg products, which are handled by the MAF) are sanitarly safe and correctly labelled. The Ministry of Maritime Affairs and Fisheries (MMAF) is responsible for fish products, and its National Fisheries and Products Inspection System inspects fish imports (and exports). MOCIE regulates domestic and imported salts, except for table salt, which is inspected by KFDA. It also inspects imported alcoholic beverages. The Ministry of the Environment is responsible for the safety of bottled water. The MHW is the enquiry point under the WTO TBT Agreement for pharmaceuticals, medical devices, cosmetics, and processed foods. Other enquiry points are the MAF on agricultural products, and the MMAF on fish products.

84. The main laws affecting food standards are the Food Sanitation Act of 1986, the Food Code and the Food Additive Code. KFDA is committed to aligning Korean food standards to international norms, especially CODEX. To facilitate harmonization, the Food Code and the Food Additives Code have been modified significantly, and further changes are expected. All food additives require pre-approval. Korea's Food Code is claimed to fall short of international standards, especially relating to food additives.³⁷ For example, Korea seemingly prohibits certain ingredients, food colours, dyes, and food manufacturing processes that are considered safe by international (e.g. CODEX) standards.

85. Environmental risk assessments on biotechnology crops, due to become mandatory when Korea ratifies the Cartagena Bio-safety Protocol, are currently enforced under temporary regulations. KFDA has authority to conduct mandatory safety assessments to evaluate genetically modified organisms (GMOs) in products used for human consumption.

86. Pharmaceuticals require pre-approval from the KFDA, often involving extensive clinical testing and other requirements. Manufacturers must submit detailed data on certain active pharmaceutical ingredients under the KFDA's Drug Master File, implemented in June 2002. A KFDA task force examined claims by foreign manufacturers that these requirements were excessive and delayed market access.³⁸ KFDA may require foreign drug companies to duplicate overseas clinical tests in Korea to obtain local test data. Specific concerns have also been raised over KFDA's Pharmaceutical Equivalence Testing (PET) requirements.³⁹ In addition, KFDA's requirements for a Bridging Study to register a new product are also claimed to be inconsistent with international practices.⁴⁰

87. According to Korean authorities, KFDA has improved its regulations on clinical tests and their harmonization with international (ICH) standards. In December 2002, KFDA adopted the "IND" system to facilitate multinational clinical trials, and has substantially reduced its documentary requirements and review time to 30 days. Pharmaceuticals imports must be inspected by the Research

³⁶ The Food Safety Bureau develops general policies on food safety management and provides guidance to food-related businesses. It supervises the overall food hygiene according to CODEX provisions, and manages import and export inspection and certification systems.

³⁷ USTR (2003), p. 243-245.

³⁸ The Task Force was dissolved in July 2003, but revised guidelines have not yet been announced. KFDA was supposed to extend the Drug Master File to 99 active pharmaceutical ingredients by mid-2004, but this is currently unclear (EU Chamber of Commerce in Korea, 2004, p. 200).

³⁹ EU Chamber of Commerce in Korea (2004), p. 202.

⁴⁰ EU Chamber of Commerce in Korea (2004), p. 197-98.

Institute of Public Health. Subsequent imports of the same product from the same manufacturer, or of different products where KDFA recognizes the manufacturers' certified quality certificate, do not require inspection.

88. KFDA administers pre-approval testing and registration requirements on imported and domestically produced "functional" cosmetics. All cosmetics sold in Korea, including imports, must pass quality tests set for each product type by KFDA. New regulations were introduced on so-called "cosmeceuticals" (e.g. sunscreen lotion) in 2000 (Korean Cosmetic Products Act). Documentary requirements and procedures were substantially simplified in January 2003 (revisions to the Regulation on Screening of Functional Cosmetics). Korea is moving to a system of self-regulation. Quality testing results submitted by overseas manufacturers with internationally accepted quality standards are accepted without any need for additional quality testing in Korea. Moreover, Korea no longer requires foreign cosmetics when first imported to undergo government testing, such as by the Regional Research Institute. Instead, quality inspection by the importer according to batch numbers is required.

Conformity assessment

89. KATS is responsible for conformity assessment, certification, registration or testing of industrial products for voluntary (KS) standards. It runs the Korea Accreditation System (KAS) to provide independent accreditation of product certification inspection bodies and laboratories (the Korea Laboratory Accreditation Scheme or KOLAS). Accreditation accords with internationally recognized standards. There are currently 182 accredited testing laboratories, 164 calibration laboratories and 22 inspection bodies. KOLAS was recognized by the International Laboratory Accreditation Cooperation (ILAC) in March 2002. MOCIE also runs a number of official testing institutions, such as the Korea Chemical Industry Testing and Research Institute. The relevant regulatory authority processes certification for technical regulations using test reports from government-designated laboratories.⁴¹ The Korean Accreditation Board (KAB), a non-profit private organization, is the national accreditation body for programmes and certification of quality (ISO 9000) and environmental management systems (ISO 14000). It has accredited 34 certification bodies for Quality Management Systems (QMS) and 25 for Environmental Management Systems (EMS).

90. KATS operates a comprehensive system of marks based on detailed testing by appointed "reliability assessment centres", or specialist research institutes. Marks include the new technology certification (NT mark) and the quality certification for excellent machine, mechanism and materials (EM mark). Mark holders receive various government privileges, such as: priority in procurement by government and public organizations; technological support from the Korea Technology Credit Guarantee Fund; and access to governmental loans. Only domestically owned companies are eligible for such marks. Most are given to SMEs.

91. Certification authorities are encouraged to negotiate mutual recognition arrangements (MRAs) with foreign counterparts. KATS has MRAs with 44 accreditation bodies from 35 countries. KAB signed a Memorandum of Understanding with Japan and China on uniform application requirements for various certification and registration systems in April 2002. Korea also has an extensive network of MRAs, especially with APEC economies. KAS joined the Pacific Accreditation System (PAC) in 2001. KAB signed the International Accreditation Forum (IAF) Multilateral Recognition Arrangement (MLA) for Quality Management Systems in 1999, and is expected to join the IAF MLA for Environmental Management Systems (EMS) in 2004. Korea is also a member of

⁴¹ 11 ministries run government-designated testing laboratories under 40 regulations.

the APEC MRA on Conformity Assessment of Telecommunications Equipment (Phase I) and of Part I of the APEC Electrical MRA. It is considering whether to participate in Parts II and III.

92. Korea has a bilateral MRA with Canada on test results for telecommunications equipment and electromagnetic compatibility. It is negotiating MRAs in the proposed FTAs with Singapore and Japan. KATS promotes the acceptance of test data from accredited, including overseas, laboratories. It is actively encouraging ministries to accept the KOLAS recognition system when designating testing laboratories, and the acceptance of test results pursuant to the ILAC MRA.

93. A self-certification scheme on motor vehicles replaced type approval from 1 January 2003. Korea joined the Global Agreement, in October 2000, aimed at encouraging the international harmonization of motor vehicle standards.

94. KFDA has facilitated food imports through two systems: "authorized overseas inspection agencies", introduced in 1996, has been extended to include 45 agencies in eight countries. Certified imports from these agencies are not inspected in Korea. The "pre-confirmation-based registration system of imported foods" was introduced in August 2002. Foodstuffs pre-approved and registered based on advanced test certification and pre-inspection at the exporter's premises are exempt from import inspections. Such approval is provided on a product-by-product basis; non-processed products are excluded. According to the authorities, overseas test results submitted by foreign inspection agencies are accepted by KFDA for imported food, which is therefore exempt from KFDA testing. Korea has not joined the APEC MRA on Conformity Assessment of Foods and Food Products.

95. The Pharmaceutical Affairs Act regulates animal medicaments, such as antibiotics and vaccines. Korea permits animal drugs to be imported if production is certified to be in accordance with the exporting country's Good Manufacturing Practice (GMP) or international standards (e.g. WHO recommendations). "Biological animal drugs", such as preventive drugs, must also be examined prior to sale, whether imported or produced domestically. The National Veterinary Research and Quarantine Service conducts these examinations based on the manufacturers' test results.

96. KFDA plans to reform the inspection system for food imports by reducing inspections. The quantity of imports inspected is to be eventually reduced by applying sophisticated selective inspections.⁴² Imports are to be categorized to simplify inspections. Imports with no past record of inspection violations, such as liquors and coffee beans, will only require notification, while other items will be subject to only simplified "sensor" inspections, mainly to determine freshness. A random monitoring inspection process is also to be applied to agricultural chemicals, and an "Information Strategy Plan" to modernize import inspection is being implemented from 2004-06.

(b) Quarantine regulations

97. Korea is a member of the FAO/WHO Codex Alimentarius Commission (CODEX), the Office International des Epizooties (OIE), and the FAO International Plant Convention (IPPC); it applies animal and plant quarantine requirements based on these international standards. Its main laws on quarantine requirements for imports (and exports) are the Plant Protection Act and the Act for Prevention of Livestock Epidemics. Plant quarantine and phytosanitary controls are handled by the National Plant Quarantine Service (NPQS); the National Veterinary Research and Quarantine Service (NVRQS) conducts animal quarantine and sanitary regulations. Both agencies are under MAF.

⁴² KOIS, 14 January 2004.

98. NPQS inspects imported plants or plant products. Imports must have a phytosanitary certificate issued by the competent authority in the exporting country. Imports of soil, plants with soil, and plants with quarantine-controlled pests are prohibited. Certain other plant imports are either prohibited or "restricted". Imports of rice in the husk, chaff, rice straw and their processed products (except for unhulled rice) are prohibited from all countries, except Japan and Chinese Taipei, for pest reasons. Plants for planting are also prohibited or restricted from most countries, except Japan and Chinese Taipei. NPQS also conducts post-entry quarantine inspection for imported seedlings of fruit trees, seed and sweet potatoes and flower bulbs by growing them under strict supervision in isolated areas.

99. Imports of fresh fruit (excluding coconut palm, pineapple and immature banana) are generally prohibited or restricted to certain countries, for disease or pest reasons (Table AIII.10). For example, imports of persimmons, oranges and lemons are prohibited unless from the United States (except from Hawaii, Texas, and Florida), Japan (except oranges and lemons from Kyushu Island and southwards) and New Zealand; durian unless from Thailand; strawberries unless from Japan; and limes unless from the United States (except Hawaii, Texas, and Florida). Some prohibited fruit imports are allowed subject to specific conditions, for example, mangoes from Chinese Taipei and the Philippines that undergo vapour heat treatment and pass pre-clearance inspection before being exported.⁴³

100. Korea has guidelines on the marketing of genetically modified agricultural products (GMAPs), such as seeds and grains (Guidelines for Environmental Risk Assessment of Genetically Modified Agricultural Products, 2002). They apply equally to domestic and imported GMAPs. The Administrator of Rural Development Administration must approve importation/production based on the applicant's environment risk assessment, which must provide supporting scientific and risk assessment data. The Government will also conduct its own environment risk assessment, and confined field trials in Korea may be also required. To date, Korea has not allowed any GMAP production or imports. Quarantine funding has been increased substantially to detect GMAPs.

101. NVRQS is responsible for preventing animal diseases and ensuring safety of food of animal origin. Live animals are subject to mandatory quarantine arrangements, and an animal import plan must be submitted prior to importation. Health and vaccination certificates issued by the competent authority in the exporting country are also required. On-board inspections are conducted prior to unloading. Animal and animal products are subject to laboratory (microbiological, seriological and pathological) testing and epidemiological investigations to verify they are not from disease infected import-prohibited regions. Korea bans imports, for example, of live cattle, sheep and goats, and certain products from countries where BSE and foot and mouth diseases are known to occur. It also extended bans on imports of poultry and related products to China and Thailand following the outbreak of bird flu in January 2004. According to authorities, Korea applies the same quarantine measures to domestic and imported products. For example, while Korea's SPS measures on BSE are more stringent than international requirements, the measures are applied equally to domestic and imported beef.

(c) Marking and labelling

102. KFDA is responsible for food labelling and associated packaging standards (Food Sanitation Act). The National Agricultural Products Quality Management Service is responsible for origin labelling (Agricultural Products Quality Control Act). False or misleading labelling is prohibited. Origin labelling requirements are applied equally to imported and domestic goods. Korea changed certain food labelling standards to better conform with international standards and to improve

⁴³ NPQS, *List of import-prohibited commodities that can be imported under specific conditions* [Online]. Available at: http://www.npqqs.go.kr/english/import_10.html.

transparency in July 2000 (operative January 2002). Minor changes were also made in 2003.⁴⁴ KDFA is further reviewing food labelling standards to update them to better reflect international requirements. Mandatory product type labelling in Korean was relaxed (except for mainly tea, beverages and special nutritional food) to allow foreign languages. Origin labelling is mandatory for food and many other imports (covering 650 four-digit tariffs). Food items must display ingredients. Labelling using Chinese characters or a foreign language "together or written in tandem" with Korean is acceptable. According to the authorities, Korea has no remaining restrictions on the use of foreign language labelling.

103. Food packaging standards to reduce domestic waste apply equally to domestic and imported products (Regulation on the Standards of the Packaging Materials and Methods for Products, 1993). For example, empty space of packages is limited to 10 to 35% of the container, and the use of PVC packaging on certain food products prohibited. Regulated shelf-life limits on livestock products (including milk) were abolished from July 2003, and are now decided by processors.

104. Mandatory biotechnology labelling requirements for genetically modified corn and soybeans were introduced in March 2001. They were extended to processed foods containing such products, including soybean sprouts, in July 2001 and to fresh potatoes in March 2002. Requirements apply equally to domestic and imported goods, according to authorities. In September 2002, Korea began accepting a notarized self-declaration instead of requiring full documentation to certify those products exempt from biotechnology requirements. Importers or manufacturers must keep records for up to two years to prove that unlabelled foods subject to GMO labelling requirements are GMO free.

(x) Government procurement

105. Korea's government procurement market is about 12% of GDP. Korea operates international tendering and other government procurement procedures in accordance with its multilateral commitments under the WTO Plurilateral Agreement on Government Procurement (GPA). Although government procurement is directed at achieving "value for money", it also focuses on promoting SMEs and regional development. Korea's international tendering system is based on open competitive tendering. Restricted tendering is rarely used according to authorities.⁴⁵ For GPA-covered entities, contracts subject to Korea's commitments represented about half of their total procurement in 2002.⁴⁶ About 6% (by value) of these contracts were awarded using restricted (limited) tendering. Procurement by GPA-covered entities represented just over half of Korea's total procurement (excluding defence equipment) in 2002.

106. The main government procurement legislation (Act on Contracts to which the State is a Party, 1995) has not changed substantially during the review period. It covers international and domestic procurement of goods and services (including construction) by prescribed government agencies. The legislation specifically excludes agricultural, fisheries and livestock products (under the Food Grain Management Act, the Marketing and Price Stabilization of Agricultural and Fishery Products Act, and the Livestock Industry Act, respectively). Also procurement covered by other legislation is generally excluded. Procurement of sub-central authorities and SOEs, for example, falls mainly under the Local Financing Act and the Government-Enterprise Accounting Regulations; some SOEs are, however, covered because they are "prescribed agencies".

⁴⁴ WTO document G/TBT/N/KOR/48, 20 March 2003.

⁴⁵ This consists of limited (by invitation) or nominated (by nomination) competitive bidding and private contracts where a specific supplier is used.

⁴⁶ WTO document GPA/76/Add.1, 7 January 2004.

107. Government procurement, administered by the Public Procurement Service (PPS), has become more decentralized.⁴⁷ Central-government agencies and local governments must use the PPS to procure goods and services above W 70 million (foreign goods and services US\$100,000). Thresholds were raised to these levels from W 50 million and US\$50,000 in April 2004. All other public institutions, including SOEs, can procure goods and services directly, but may choose to use the PPS. Its five main functions are to: supply goods and services for government use; contract and manage public works; stockpile 22 items of raw materials, such as aluminium, salt and construction materials, to secure price stability⁴⁸; coordinate and audit government property management; and manage and operate the Government's e-procurement system (GePS), launched in September 2002 as part of the e-Government plan (G2B). This system has digitalized the entire purchasing process, including registration, public notice, bidding, contracts and payment. PPS's total annual procurement averages some W 20 trillion (US\$16.6 billion), of which W 12 million (US\$10 billion) is on public works construction. This is about one third of the total procurement market (excluding defence equipment), estimated at W 67 trillion in 2003. Some two thirds of Korea's procurement market therefore involves procurement directly by public institutions. Foreign supplies accounted for about 3% of PPS's total business receipts in 2002.⁴⁹

108. The GePS system has enhanced procurement transparency, efficiency and accessibility, including by foreign suppliers. The Procurement Administration Reform Committee oversees reforms, including strengthening of control functions. PPS uses a "multiple basic price system" for competitive bidding on the Internet that discloses basic prices.⁵⁰ The evaluation of restricted contracts has been tightened and their use reduced in favour of open competitive tenders. An integrity pact system dissuades companies and officials from bribery, and a Clean Procurement Committee (comprising members from non-government organizations, academics, and public organizations) has curbed corruption. Korea's public procurement system was found consistent with APEC's Non-Binding Principles in 2002.⁵¹

109. All bidders must register with PPS to submit bids. It evaluates bids of less than W 50 billion (reduced from W 100 billion in December 2003) using an "eligible screening system" to score bids based on factors such as past performance, including record in meeting previous contracts, technical capability, financial status, adequacy of management plans, and price. "Abnormally low" tenders are rejected.⁵² For contracts exceeding W 50 billion, PPS uses the lowest bid award system after conducting a pre-qualification evaluation.⁵³ A pre-qualification system is also used to determine eligible bidders for large-scale and complex construction projects (exceeding W 10 billion or involving over 22 trades, e.g. bridges, tunnels, and subways). Separate pre-qualification lists are

⁴⁷ PPS was called the Supply Administration of the Republic of Korea (SAROK) until 2000.

⁴⁸ The Minister of Finance and Economy specifies annually essential materials that are highly dependent on imports. In 2004, 16 materials are being stockpiled. They are purchased by the PPS using international competitive tenders funded by its Revolving Fund, and sold to private end-users.

⁴⁹ PPS (2002), p. 81.

⁵⁰ Based on announced basic prices, PPS prepares 15 preliminary prices, which are disclosed on bidding according to set criteria. Bidders must select two of these 15 prices. PPS then calculates an estimated price based on the average of the four most common prices selected by bidders.

⁵¹ APEC (2002).

⁵² Bids are evaluated based on estimated prices prepared by the ordering office. Those that exceed these estimates are precluded, as are bids that fall below a certain level, such as less than a certain percentage of the estimated price.

⁵³ To exclude low tenders, PPS divides each project into about 30 work categories and calculates for each an average bid price. Low bids are considered to be less than 80% of each category's average bid price. Any bidder that has low bids for more than one-tenth of the work categories is excluded from the tender.

maintained for each construction project, based on objective criteria.⁵⁴ Bid results, including scoring criteria, tenders, pre-qualification evaluation, and contract awards are released on the Internet.⁵⁵ To facilitate "value for money" tendering, accounting policies were revised to strengthen evaluation in July 2003. Entities procuring directly also conduct pre-qualification reviews to determine tender eligibility based on similar criteria used by PPS.⁵⁶ According to the authorities, there are no special pre-qualification requirements or restrictions imposed on foreign suppliers.

110. Contracts are awarded through open competitive tender, unless there are reasons of "purpose, nature, size, etc. of a contract" for awarding by restricted tender. Negotiated contract (restricted or private) is allowed in some, according to authorities, rare cases. Although defence procurement is covered by the procurement legislation (but not by Korea's WTO procurement obligations) and in principle conducted by open competition, procurement procedures tend to follow defence acquisition management practices, whereby restricted and private tendering is often used. Similarly, while procurement from SMEs in accordance with the operations of the Small and Medium Business Administration (the Facilitation of Purchase of Small and Medium Enterprise Manufactured Products Act) is covered by the procurement legislation (but not by Korea's WTO obligations), private contracts are mainly used to purchase products of up to W 30 million (W 100 million for construction work).⁵⁷ The PPS handles most procurement from SMEs and other socially weak sectors, such as regional companies and female-owned businesses.⁵⁸ Procurement of goods manufactured by SMEs account for about two thirds of PPS's total procurement of supplies (excluding construction).⁵⁹ The Small and Medium Business Administration publishes an annual list of products to be procured from SMEs.⁶⁰ PPS's "competitive bidding system restricted by region" and "compulsory joint sub-contracting and single source contracting system" has expanded regional opportunities.⁶¹

111. The International Contract Dispute Mediation Committee (ICDMC), established under MOFE, handles disputes on Korea's international tendering procedures and other GPA commitments. The Ministry of Construction and Transportation operates the Construction Dispute Mediation Committee for contractual disputes. The Electronic Commerce Disputes Advisory Committee at the Korean Institute for Electronic Commerce under the MOCIE also assists in resolving disagreements among parties. The Government Procurement Dispute Advisory Committee, formed to handle government procurement disputes, including under GePS, was terminated at end 2003 due to lack of effectiveness. The Government plans to develop a National Contract Disputes Decision Committee.⁶²

⁵⁴ Bidding is only open to suppliers that receive a certain pass score in a comprehensive evaluation based on experience, technical capacity, financial status, and credibility.

⁵⁵ Korean e-Procurement System G2B at: <http://www.g2b.go.kr>.

⁵⁶ Both PPS and agencies procuring directly use pre-qualification criteria based on MOFE criteria.

⁵⁷ W 70 million for specialized constructions under the Framework Act on the Construction Industry, W 50 million or less for electrical construction under the Electrical Construction Business Act and for information and communication work under the Information and Communications Work Business Act or fire-fighting works under the Fire Services Act.

⁵⁸ SMEs employ less than 300 persons and have assets under W 80 billion.

⁵⁹ PPS (2004).

⁶⁰ The Government reduced the number of items covered by small business "cartels" in government procurement to 154 in 2000, but plans to lower this to 103 were rejected by the National Assembly (OECD, 2004a, p. 118).

⁶¹ The competitive bidding system applies to projects valued up to W 5 billion, and allows companies located in the construction region to participate in the open competitive tender. The compulsory joint venture system requires a bidder to form a joint venture with a company located in the construction region.

⁶² PPS (2002), p. 51.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration, documentation, and clearance

112. An exporter or agent must submit an export declaration, and supporting documents where designated (5% of cases). These are generally accepted automatically without examination (unless requiring supporting documents). Goods must be exported within 30 days of lodging the declaration. Electronic applications have expanded and paperless export clearances cover 95% of export shipments: clearance time is under two minutes on average.

(ii) Export prohibitions, restrictions, and licensing

113. All commodities may be exported from Korea unless included on the negative list. Export prohibitions or restrictions are imposed to ensure enforcement of quality and sanitary controls or to meet international commitments with respect to security, e.g. on nuclear products, arms, missile technology (Wassenaar Arrangement), chemical weapons (Chemical Weapons Convention), conservation of wildlife (CITES), and environmental protection.

(a) Export prohibitions

114. The negative list of banned exports has not changed during the period under review. Export prohibitions, affecting 13 six-digit HS items, protect animal rights (dog furskins and their products), endangered species (whale meat and its products), and preserve natural resources (uncut pieces of natural granite stones).

(b) Export licensing and restrictions

115. Most restricted items relate to Korean bilateral export quotas (mainly with the EU, Canada, Turkey, and the United States) on textiles and clothing under the WTO Agreement on Textiles and Clothing, and on certain passenger motor vehicles exported to Chinese Taipei.⁶³ Other restricted items cover sand and gravel, to protect natural resources.⁶⁴ Korea's export quota on silk waste to Japan, due to Japanese import restrictions, is to be abolished in 2005.

116. Korea periodically restricts exports of certain products to ensure adequate domestic supplies. In March 2004, MOCIE restricted exports of scrap iron and steel bars (until end-September) to help alleviate the domestic shortage of steel for processing, and to curb escalating scrap prices that were reducing Korean steel mill competitiveness.⁶⁵ The authorities indicated, however, that its purpose was not to restrict but to monitor exports by collecting data. Certain agricultural commodities require export authorization e.g. MAF must approve rice and non-beer barley exports.

(iii) Export subsidies

117. Korea maintains export subsidies for certain farm products. In 2001, these totalled W 25.95 billion, and covered fruit (W 7.73 million), flowers (W 6.97 million), vegetables (W 8.59 million), kimchi (W 1.77 billion), ginseng (W 0.73 billion) and livestock (W 0.16 billion).

⁶³ The quota is to be maintained for ten years under the terms of Chinese Taipei's WTO accession.

⁶⁴ Exports of some sand and gravel items have to be approved by the Korean Aggregate Association. Export quotas for sand are allocated based on applicants' production capacity. Only gravel that is a by-product of raw ore processing is approved for export.

⁶⁵ KOIS, 3 March 2004.

The subsidies were used to reduce exporters' marketing costs, and are exempt from WTO reduction commitments.

(iv) Duty and tax concessions

118. Imported raw materials used in exports are exempt from customs duties. A customs drawback scheme provides refunds, including of internal taxes (Act on Special Cases Concerning the Drawback of Customs Duties and Other Taxes Levied on Raw materials for Export). The scheme also covers supplies to vessels and aircraft operating internationally and to pelagic fishing vessels. It was modified in 2003 to introduce a Real Time Electronic Treasury Transfer System to allow the Bank of Korea to make electronic refunds to exporters. The method used to calculate the amount of drawback has not changed since the last Review of Korea. Refunds totalled US\$1,827 million in 2003, equivalent to about one quarter of tariff revenue. Substantial duty drawback refunds reflect the sizeable share (two thirds) of imports used in exports.

(v) Export finance, guarantees, and insurance

119. The government-owned Export-Import Bank of Korea (EXIM-Bank) provides export and trade finance to Korean (including foreign-owned) firms and foreign buyers. Guarantees are also provided to foreign buyers against exporters' failure to meet contractual arrangements.⁶⁶ The Government ensures its solvency by covering any net losses beyond reserves. Direct loans to foreign buyers and export loans to Korean firms, its primary activities, cover mainly capital goods, such as industrial plant, machinery and ships. Export loans of up to 100% of the contract value (less any required cash payment) is available provided the "minimum foreign exchange earnings ratio" is 25%. Export credits are subject to the minimum Commercial Interest Reference Rate (CIRR) and other terms, such as maximum repayment periods, specified in the OECD Arrangement on Officially Supported Export Credits.⁶⁷ EXIM-Bank support for ship exports meets the OECD's revised "Sector Understanding on Export Credits for Ships". The 8% fixed interest rate was changed to the CIRR and the repayment period raised from 8.5 to 12 years in April 2002.

120. The state-owned Korea Export Insurance Corporation (KEIC) provides export credit insurance against non-payment risks (Export Insurance Act, 1968). It promotes exports by insuring against political and commercial risks that are not privately insurable, and according to authorities assists exporters to compete on a level playing field with competitors assisted by government-supported foreign export credits. KEIC supplies export insurance against losses from failure to export or non-payment by buyers due to political and commercial risks. In 2002, the maximum coverage for medium and long term export insurance was raised from 95% to 100% of the contract value (less any required cash payment) as per OECD Guidelines on Officially Supported Export Credits. Most beneficiaries are exporters of capital goods (e.g. industrial plants, machinery and vessels). Total exports underwritten rose by 13% to W 42 trillion (almost one-fifth of total exports) in 2002 (80% covered short term insurance).

(vi) Export promotion and marketing

121. Korean exporters benefit from the promotional activities of the state-owned Korea Trade and Investment Promotion Agency (KOTRA). It operates a "business matchmaking" service introducing foreign importers to Korean businesses. KOTRA also organizes or assists with trade missions and exhibitions domestically and overseas to help exporters promote products and penetrate foreign

⁶⁶ The Export-Import Bank of Korea online information. Available at: http://www.koreaexim.go.kr/web/eng/about/MO2/m2_0...

⁶⁷ Korea fully implemented the Guidelines by 31 March 2002 when transitional arrangements expired.

markets. MOCIE also operates 11 export centres to provide SMEs with export-related information and consulting services. In 2003, total government promotional expenditure on exports was W 56.0 billion; most financed overseas trade missions and exhibitions.

122. The Government helps companies develop so-called "world class products" under a scheme introduced in 2001, mainly by assisting with R&D and overseas marketing activities. The aim is to have 1,000 world class products by 2010 that rank within the top five according to global market share.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Taxation

123. Total taxes as a share of GDP remain relatively low (20.4% in 2003). National taxes accounted for about 80% of total tax revenue in 2002. Indirect (consumption) taxes, such as the value-added tax (VAT), account for more than half of the Central Government's tax revenue (56.3% in 2003). The Office of Tax and Customs at the MOFE plans and formulates tax policies. The National Tax Service administers taxes.

(a) Indirect taxation

124. Korea still has a relatively complex national indirect tax structure. The broad-based VAT is complemented by special excise taxes and other taxes levied on liquor, property transactions (stamp tax), and securities transactions. There are also three national "earmarked" taxes; the transportation tax, education tax, and the special tax on rural development. The VAT is levied on top of other taxes, including import duties, where applicable. Exports are generally exempt from indirect taxes, except mainly for special excise and transportation taxes applied to inputs of petroleum products used in their production. For example, exports are zero-rated for VAT, and VAT paid on inputs by exporters and other users is fully rebated. According to the authorities, all indirect taxes levied by national and sub-governments apply equally to imported and domestically produced goods.⁶⁸

125. The value-added tax of 10% applies to most goods and services; exemptions cover unprocessed foodstuffs, social welfare services, books, educational services, and financial and insurance services.

126. Special excise taxes at various rates apply to a wide range of goods, including luxury products. Rates are: 20% (e.g. motorboats, yachts, video cameras and luxury jewellery, cameras, watches, carpets (over W 2 million) and furniture (over W 5 million)); 8% on projection televisions; 7% (e.g. perfumes and colognes); 10% or 5% on motor cars, depending on whether engine capacity exceeds 800cc; and 5% on motor cycles. Special excise duties also apply in principle to petroleum products, such as petrol (W 559 per litre) and diesel oil (W 255 per litre).⁶⁹ Until 2006, transportation tax is levied on gasoline and diesel oil instead of the special excise tax. Excise tax also applies to certain entertainment services, such as casinos (W 35,000 per person), and nightclubs (10%).

127. A special liquor tax applies to alcoholic beverages. *Ad valorem* rates are: 5% on Takju; 30% on Yakyu, Cheongju, and fruit wine; 72% on distilled and diluted soju, whisky, brandy, general distilled spirits, and liquors; and 100% on beer. Spirits (alcohol content 95% or more) are dutiable at a specific rate of W 57,000 per kl (W 600 to be added for every additional 1% of alcohol).

⁶⁸ The tax base for imports is the c.i.f. price plus customs duties and other taxes, where applicable.

⁶⁹ Other products taxed are kerosene (W 131 per litre), natural gas (W 40 per litre), fuel oil (W 9 per litre), LPG-butane (W 297 per kg.) and LPG-propane (W 40 per kg.).

128. The securities transaction tax is levied on transfers of shares or of a business entity, such as a listed corporation. The tax rate is 0.3% of the value of securities transferred. Transfers of foreign-listed shares are exempt from the tax.

129. "Earmarked" taxes are levied to raise revenue to fund specific services. The transportation tax on petrol and diesel oil was to have been eliminated in 2004, but was extended until 2006. Conditional exemptions apply to petrol and diesel used in the manufacture of medical goods, fertilizers and petro-chemicals. The education tax is levied on banking and insurance services, and all goods subject to the special excise tax, the transportation tax and the liquor tax (excluding spirits, Takyu, and Yakju). The tax rates are: 0.5% of gross receipts for banking and insurance (includes commissions, interest, dividends, and insurance premiums); 30% of the excise tax; 15% of the transportation tax; and 10% of the liquor tax (30% for liquors taxed at over 70%).

130. The special tax for rural development funds various programmes to support rural communities and the agriculture sector faced with reduced protection. It is a surtax, authorized under various pieces of legislation, levied on the amount of income exempted from company and personal tax and on the value of customs duty concessions, and on the amount of special excise tax and securities transaction tax.⁷⁰ It therefore has a trade-restricting impact, being applied to the value of custom duty exemptions. The tax rate varies, including from 0.15% for the amount of the securities transaction tax, 10% or 30% for the special excise tax, and 20% for exemptions of company and income taxes as well as customs duties. The tax was extended for ten years from end-June 2004.

Sub-national taxes

131. Local and city governments apply a range of indirect taxes, including an acquisition tax, to purchases of real estate, motor vehicles, heavy equipment, and boats. A registration tax is levied on property and motor vehicles, boats, aircraft, and construction machines, as well as certain business registrations and intangible assets, such as transfers of mining, fishing, and intellectual property rights. An automobile tax applies to passenger vehicles, depending upon engine size, buses, and trucks (depending upon carrying capacity). A tobacco consumption tax is levied at various specific rates.

(b) Direct taxation

132. Company and personal income tax are the second and third largest single sources of revenue after VAT. The company tax rate was reduced in 2002 from 16% to 15% for income under W 100 million, and from 28% to 27% for higher income (to be further lowered to 25% in 2005). Such changes reflect recent initial reforms aimed at broadening the tax base, including reduced use of tax incentives, to achieve a more neutral and less distorting company tax system. Progressive personal income tax rates rise from 9% (income of W 10 million or less) up to 36% (over W 80 million). Certain types of foreign workers (e.g. engineers) employed in Korea are exempt from income tax.

(c) Tax incentives

133. Tax incentives are used extensively as an instrument of industrial policy to encourage investment, especially from overseas, and production of certain goods, including by SMEs (Special Tax Treatment Control Law 1999). Although sunset clauses on tax incentives were due to expire

⁷⁰ It includes exemptions specified under the Tax Exemption and Reduction Control Law, the Local Tax Law, and the Customs Law. Exemptions under the Company Tax Law, Income Tax Law, and the Foreign Investment Promotion Law are excluded.

automatically at end 2003, many were extended until end 2006. They cover a range of activities, and include income tax exemptions, concessions or credits (special income tax deductions), and commodity tax concessions (such as VAT exemptions and zero-rating). Tax incentives undermine fiscal transparency and public accountability, especially as information on their cost in terms of revenue forgone is not routinely available in Korea from tax expenditure estimates. Their effectiveness, both in terms of meeting specific objectives and impact on the economy's overall efficiency, also needs to be regularly reviewed. According to the authorities, the Government is improving the effectiveness of tax incentives by removing ineffective incentives, and is preparing the legal framework for preparing tax expenditure estimates as part of the annual budget.⁷¹

134. SMEs still benefit substantially from tax incentives, despite recent changes (e.g. abolishing tax deductibility of investment reserves set aside for losses and lowering special income tax concessions from end 2003). Incentives include: tax credits of 3% of investments in machinery and equipment; and an income tax holiday (half the rate for six years) for new SMEs located outside the Seoul metropolitan area (property tax on business assets is also reduced by half for five years and the acquisition and registration taxes abolished for two years). Special income tax incentives of a 15% rate reduction (10% if located in metropolitan areas) also apply to SMEs in many activities, including manufacturing, fishing, tourism, stock raising, and telecommunications. SMEs in wholesale, retail, medical services, or auto repairs located in non-metropolitan areas receive a 5% rate reduction. SMEs also receive larger tax incentives generally available to all activities. For example, they receive much larger tax credits for certain investment, such as in technology and human resource development.

135. Tax incentives also apply to R&D and human resources development. Tax credits apply to investment in technology and human resources development, and 50% of income from technology transfers is exempt. Income tax holidays also promote balanced development by encouraging firms to re-locate outside metropolitan areas, such as Seoul. A concessional income tax rate of 12% applies to certain activities to enhance social welfare, including fisheries cooperative associations and the tobacco production association. There is a 50% tax exemption for forestry income. Interest income (up to W 20 million) and partnership dividends (up to W 10 million) are non-taxable for farmers and fishermen. Primary producers also benefit from zero-rating for VAT on machinery, fertilizer and pesticides, and fishing gear, including nets, and exemption of taxes on petroleum products used in agriculture and fishing.

(ii) Financial assistance

(a) Loans, guarantees, and other financial measures

136. State-owned financial institutions play a major role aimed at assisting Korea's industrial development. State intervention dominates the large venture capital market, which benefits mainly SMEs and is heavily concentrated (two thirds) in information and communications technology. Venture capital is invested through venture capital firms (VCFs) and limited partnership funds (LPFs).⁷² In addition to tax incentives, government provides equity directly and indirectly through generous guarantees for private equity.⁷³ VCFs have benefited from low-interest government loans

⁷¹ The number of tax incentives was reduced from 269 to 254 in 2003. However, OECD estimates indicate that tax expenditure (i.e. revenue forgone from tax incentives) as a share of related tax revenues increased slightly from 13.3% to 13.6% in 2003 (13.8% in 2000). This was largely attributed to tax incentives extended to SMEs, investment, and R&D (OECD, 2004a, p. 53).

⁷² VCFs are companies that provide capital primarily to start-ups, while LPFs are pooled funds in which each investor benefits in proportion to the amount invested. VCFs, which have established and operate most LPFs, supply over two-thirds venture capital.

⁷³ OECD (2003a), p. 79.

and equity funding, accounting for about half their equity, and 30% to 40% of LPF's resources. Total accumulated government funding to LPFs at end 2003 was W 2.7 trillion (annual funding in 2003 was W 0.6 trillion). The authorities indicate that no loans or equity funding have been provided to VCFs since 1999. The Small and Medium Business Fund (SMBF), administered by the Small and Medium Business Administration, mainly directs government equity funding, including providing seed money to promising "start ups". The SMBF also invests substantially in LPFs, which are also assisted from various special funds, such as the Investment Promotion Fund. These arrangements are to continue until 2007. The authorities indicate that "temporary" government funding is needed since the venture capital market has declined, with the number of VCFs falling from 147 at end 2000 to 117 at end 2003.

137. Two major public institutions, the Industrial Bank of Korea (IBK) and the Korean Development Bank (KDB), play a substantial role in industrial development. Although they are run commercially, the Government, while having no direct control over their lending programmes, influences their management, operations and policies, and tends to use them as an arm of industry policy.⁷⁴ Government guarantees any losses. Following the Asian financial crisis, both banks received substantial government capital injections to boost their capital adequacy ratios (IBK of W 1.7 trillion in October 1998 and of W 100 billion in January 1999, and KDB of W 3.050 trillion in 2001).

138. The IBK supports SMEs mainly through loans for working capital, constructing facilities or buying plant and machinery. It also provides concessional loans to SMEs from the national budget in line with government policy, such as to support technology development, productivity improvements or automation. At end-2002, outstanding policy loans amounted to W 4.5 trillion. They are mainly financed from the Government's SME Start-up and Promotion Fund.⁷⁵ IBK does not maximize profits given its public policy role; its financial performance is directly influenced by government policies.⁷⁶ KDB provides a broad range of industrial capital, including loans to finance tangible and intangible (e.g. R&D) investments, underwrite corporate mergers and acquisitions, and as operating capital.

139. Other state-owned entities providing concessional credit facilities include the Korea Credit Guarantee Fund (KCGF) and the Korea Technology Credit Guarantee Fund (KTCGF). Both provide credit guarantees to enable emerging firms, especially SMEs, to gain access to finance. They are commercially run and set their own guarantees pursuant to relevant laws and regulations and subject to government supervision. Their operations are conducted according to market principles, although the Government would cover any losses. Its operations are funded by bank and government contributions (W 525 billion in 2002). The KTCGF operates the Technology Credit Guarantee System, the Technology Preferential Guarantee System, and the Special Guarantee System for Technology-Intensive Companies. KTCGF also conducts technology appraisals of firms for selecting beneficiaries of various government funds, such as the SME and Venture Start-Up Fund of the Small and Medium Business Administration; the Science and Technology Promotion Fund of the Ministry of Science; and the Information Promotion Fund of the Ministry of Information and Communication.

⁷⁴ For example, each fiscal year during the work approval process, the Government regulates the financing and scale of their lending programmes.

⁷⁵ Other government funds include the Local Industry Restructuring Fund, the Industrial Formation Fund, the Industrial Technology Fund, and the Information Facility Promotion Fund.

⁷⁶ Industrial Bank of Korea (2001), p. 20.

(b) Subsidies

140. Korea has no laws specifically limiting subsidy programmes that may be anti-competitive.⁷⁷ No government agency comprehensively controls subsidies, and they have received little attention from the Korea Fair Trade Commission.⁷⁸ Subsidies are subject to the Act on the Budgeting and Management of Subsidies and are examined by the Subsidy Review Committee (under the Ministry of Planning and Budget).

141. Korea has notified several direct support programmes to the WTO (Committee on Subsidies and Countervailing Measures). Its latest notification, of August 2001, indicated there were 19 subsidy schemes. Fifteen provided grants, tax concessions or concessional loans to assist a range of agricultural, forestry, fishing and manufacturing activities.⁷⁹ Four subsidy schemes funded R&D activities, mainly by research institutions.

142. Korea devotes a relatively large share of GDP (3% in 2001) to R&D investment, with the IT sector accounting for over half of total manufacturing R&D. Public R&D investment is to be boosted in 2004 as part of the Government's objective of raising such outlays to 5% of total government spending.⁸⁰ A blueprint of 50 futuristic technologies, including robotics, multi-media, and optical fibres, is being finalized in 2004. Products are supported by public research and development funds. The Government is also to invest W 2 trillion by 2010 in a public-private sector partnership to develop annually 50 core components and materials to boost exports in the strategic areas, including information communications, and machinery.⁸¹ The Government invested W 69.5 billion in 2001 to revitalize the Busan footwear industry, which has had difficulties competing with lower-cost producers, especially China. The funding was to develop new products; provide a comprehensive service centre and a business "incubation" centre to support existing start-up firms; design footwear; and enhance the technological capabilities of producers.

143. Korea heavily subsidizes agriculture, especially rice (Chapter IV). The importance of direct government payments to specific agricultural commodities has increased, provisionally estimated by the OECD at almost W 1.8 trillion in 2003 (W 1.5 trillion in 2002 and W 1.2 trillion in 2001). These relate mainly to overall farming income, area planted or animal numbers, and input use.

144. Korea's WTO commitments limited domestic agricultural support (Aggregate Measure of Support, AMS) to W 1.49 trillion in 2004 (down from W 2.183 trillion in 1995). According to Korea's latest WTO notification, of June 2002, total AMS in accordance with WTO provisions was W 1.691 trillion in 2000 (substantially below the bound level of W 1.798 trillion). It consisted mainly of market price support for rice (W 1.647 trillion) and barley (W 41.8 billion). Total domestic agricultural support notified by Korea (including green box, development programmes subject to special and differential treatment and de minimis support not subject to reduction commitments) was W 7.32 trillion in 2000 (W 2.215 trillion excluding green box and S&D assistance (Table AIII.11). De minimis support included: additional market price support (e.g. on garlic, pigmeat, and soybean) totalling W 49.82 billion; other product-specific assistance (e.g. beef subsidy of W 15.7 billion); and non-product specific support of W 412.75 billion (mainly concessional loans and subsidized inputs and irrigation facilities). Korea's WTO commitments to date have provided only limited disciplines on domestic agricultural support, especially when allowing for substantial green box and de minimis

⁷⁷ OECD (2001), p. 5.

⁷⁸ OECD (2001), p. 2.

⁷⁹ WTO document G/SCM/N/71/KOR, 2 August 2001.

⁸⁰ OECD (2004a), p. 20.

⁸¹ KOIS, 9 August 2001.

support that is exempt from reduction commitments. In 2000, green box assistance more than doubled Korea's total product and non-product specific AMS.

145. A subsidized voluntary crop insurance scheme against natural disasters was introduced in 2001. In 2002, 18% of eligible fruit growers targeted by the Government were covered. Coverage is to be extended from apples and pears to include grapes, persimmons, peaches, and oranges in 2004. The Government subsidizes 50% of the farmer's premium and 70% of the operating expenses of the scheme, which is run by the National Agricultural Cooperative Federation. The total government subsidy was W 16.22 billion in 2003 (W 8.59 billion in 2002). Substantial payouts were made to fruit growers in 2002 due to typhoon damage. In 2002, the scheme's budget allocation was increased to W 8.9 billion (W 4.6 billion in 2001). The Government also provides natural-disaster relief to crop and livestock farmers. These payments amounted to W 790.6 billion in 2003 (W 372.8 billion in 2002).

(iii) State-owned enterprises and privatization

146. Although the State participates in a wide-range of activities, privatization of state-owned enterprises (SOEs) has continued during the period under review (Table III.4). Eight of the 11 SOEs planned for privatization (including Korea Telecom (KT)) have been fully privatized.⁸² Korea General Chemical Corporation was closed, and the remaining three SOEs, Korea Electric Power Corporation (KEPCO), Korea Gas Corporation (KOGAS), and the Korea District Heating Corporation, are being privatized, albeit subject to delay (Chapter IV).⁸³ The partial privatization of Incheon International Airport (to divest at least 51% of shares by 2002) and the Housing Guarantee (from 2002) were added to the priority list in 2000.⁸⁴ Also, 51 of the 77 SOE subsidiaries planned for privatization were either partially or fully privatized, and ten were in progress at end 2003; 16 were closed or merged with their parent SOE. The total number of SOEs has fallen since 2000 from about 90 to 34 at end 2003 (19 parent and 15 subsidiaries). Total number of SOE employees fell from 186,000 to 81,000. Privatization receipts total W 24.3 trillion (including US\$11 billion in foreign currency).

147. The Privatization Steering Committee, chaired by the Prime Minister, coordinates the privatization programme. It is the final decision-making authority on privatization (Privatization Act, 1997). Priorities are to privatize immediately SOEs engaged in commercial businesses, and to restructure and progressively privatize other entities unsuitable for immediate divestment. Foreign investment is sought, and domestic and foreign investors participate equally in privatization sales. Substantial foreign ownership exists, for example, in KT, POSCO and KT&G. Maximum aggregate foreign equity limits apply to KT&G, KT, KEPCO and KOGAS for national security reasons. These limits were raised from 25% to 35% for KT&G (March 2001), 33% to 49% for KT (January 2001), and from 30% to 40% for KEPCO (November 2000).⁸⁵ KOGAS's limit has remained at 30%. Individual shareholder limits are applied uniformly to domestic and foreign investors.⁸⁶

148. Although privatization has lagged original plans, the Government remains committed, but at a flexible pace reflecting general economic and stock market conditions, financial factors, and political circumstances. It has tried to maintain a systematic approach, despite some strong resistance (e.g. from labour unions), and has introduced employment guarantees in privatized SOEs and employee

⁸² Originally 11 out of 26 SOEs were to be privatized, five immediately and six progressively.

⁸³ Ministry of Planning and Budget (2003), p. 65.

⁸⁴ Ministry of Planning and Budget (2003).

⁸⁵ The aggregate foreign ownership limit on POSCO was abolished when it was privatized in 2000.

⁸⁶ The ceilings on individual shareholdings are 3% for KEPCO, 15% for KT, 7% for KT&G, and 15% for KOGAS. The 3% limit for POSCO was removed in 2000 when it was privatized.

share allocation schemes. The Government believes privatization coupled with regulatory reforms will enhance national competition and efficiency, thereby lowering prices to consumers and producers. Performance of privatized state enterprises (e.g. Hanjung and POSCO) has improved greatly.⁸⁷

Table III.4
Progress in meeting original privatization plan of 1998

Category	State owned enterprise	1998 plan	Current status and plans
Complete privatization	National Textbook Co Ltd	Sell through competitive bidding	Privatized in 1998; government equity was 86.5%
Complete privatization	Korea Technology Banking Corp (KTB)	Sell government shares through competitive bidding	Privatized in January 1999; government equity was 10.2%
Complete privatization	Pohang Iron and Steel Company (POSCO)	Sell government and industrial bank shares to domestic and foreign investors	Privatized in October 2000; government equity was 26.6%
Complete privatization	Korea Heavy Industries and Construction Co Ltd (Hanjung)	Full privatization through sale of shares	Privatized in December 2000; government equity was 60%
Complete privatization	Korea General Chemistry Corp (KGCC)	Liquidate after asset sales	Liquidated in December 2001
Phased privatization	Daehan Oil Pipeline Corp (DOPCO)	Divest Government's equity share after upstream merger	Fully privatized in April 2000; government equity was 36.8%
Phased privatization	Korea Telecom Corp (KT)	Phased privatization until market becomes competitive	Fully privatized in May 2002; government equity was 59.0%
Phased privatization	Korea Tobacco and Ginseng Corp (KT&G)	Sell government and state banks' shares	Fully privatized in October 2002; government equity was 53.0% (18% stake sold through initial public offering in 1999)
Phased privatization	Korea gas Corp (KOGAS)	Phased privatization after capital increase	Privatization process to be started after enactment of Gas Industry Restructuring Act
Phased privatization	Korea Electric Power Corp (KEPCO)	Separate power generation from distribution and begin with privatization of generation	Sale planned for one of the five thermal power generation companies
Phased privatization	Korea District Heating Corp (KDHC)	Transfer control to private sector through sale of shares	Controlling shares to be sold in competitive bidding after initial public offering

Source: Ministry of Planning and Budget, *How Korea Reformed the Public Sector 1998-2002*, p.66; and OECD, *Progress Report by the Korean Authorities*, Committee on Capital Movements and Invisible Transactions, DAF/INV/IME/RD(2001)4, 26 September 2001.

(iv) Competition and consumer policy

(a) Competition policy

Framework

149. Responsibility for competition policy rests primarily with the independent Korea Fair Trade Commission (the Monopoly Regulation and Fair Trade Act 1980, last amended in 2002). Competition law covers all sectors. State entities are covered, including public utilities with their own regulatory regime, and the scope of exemptions from competition law is now limited.⁸⁸ Exemptions include SMEs and liner shipping conferences. Voluntary associations established to aid small-scale enterprises, such as agricultural, forestry, and livestock industries, that meet certain conditions may also be exempt from competition law, unless engaging in "unfair trade practices or price hikes by

⁸⁷ Ministry of Planning and Budget, Press Release, 30 March 2002, *Four Years of Privatization Program Achieves Significant Results*.

⁸⁸ OECD (2004a), p. 118.

unfairly restricting competition".⁸⁹ Statutory authority was eliminated for 17 cartels in 1999, thereby prohibiting collusive fee-setting arrangements in nine professional services. However, several of these changes were delayed, and other exemptions from competition law introduced to allow cartel activity.⁹⁰ The KFTC indicated that (unlike in the 1980s) it no longer encouraged tariff cuts to increase foreign competition because of the relative openness of the Korean market.

150. Legislation covers all principal competition areas, including horizontal constraints (cartels and collusion⁹¹), vertical constraints, abuse of dominant market position, and mergers. Prohibited are: unfair collaborative acts (e.g. price fixing) and unfair trade practices (e.g. excluding competitors or discriminating against a trading partner); resale price maintenance, unless exempt by the KFTC; and abuse of market-dominating positions by specified abusive acts (e.g. setting unreasonable prices or controlling sales).⁹² An enterprise is presumed to be market-dominating if its total annual sales exceed W 1 billion, and its market share is at least 50% or where the share of the largest three firms is at least 75%.⁹³ Enterprises are also prohibited from entering into certain types of international contracts, such as on import distribution, franchises, joint ventures, and intellectual property, that contain unfair collaborative acts, trade practices or resale price maintenance, unless exempted by the KFTC.

151. Mergers to "practically suppress competition" are prohibited, unless parties can prove to the KFTC that efficiency gains will exceed the negative anti-competitive effects (or the acquired firm is insolvent and no alternative, less anti-competitive outcome is available to maintain production).⁹⁴ The KFTC may approve a merger subject to certain conditional corrective measures being met to address anti-competitive concerns, such as limiting the scope of the merged firm's operations. Competition is presumed suppressed if the merged firm would become a market-dominating enterprise and its combined market share exceeded the market share of the second largest corporation by more than 25% of the merged parties' market share.⁹⁵ Parties must notify proposed mergers to the KFTC if assets or turnover of any party exceeds W 100 billion. Mergers of a "large-scale enterprise" (assets or turnover above W 2 trillion) must be notified within 30 days of adoption by shareholders, and wait a further 30 days for the KFTC to decide on approval.⁹⁶ Other mergers need only be notified within 30 days of completion. KFTC has monitored mergers (and acquisitions) between foreign enterprises exporting to Korea since July 2003.⁹⁷ They are to be notified if total assets or turnover of at least one

⁸⁹ Conditions include having a goal of mutual cooperation and benefits for small businesses and consumers, and that members are free to enter and exit, and have equal voting rights.

⁹⁰ OECD (2004a), p. 10.

⁹¹ "Hard core" cartels (as defined by the OECD, namely price fixing, restriction of production, market allocation and bid-rigging) are illegal *per se*.

⁹² An amendment in 2002 included as an abusive act the "refusal or limitation on the use of or access to essential facilities".

⁹³ Also taken into account is whether and to what extent entry barriers exist in the market, the relative size of competitors, and the existence of imitation products or adjacent markets.

⁹⁴ "Practically suppressing competition" means practices that impact or threaten to impact on the determination of price, quantity, quality, or other terms and conditions of trading, because of reduced competition in a particular business area (Article (2)8-2). This is similar to "substantially lessening competition". KFTC considers various factors to decide on the competitive effects of mergers, including: market concentration and changes in concentration levels; import competition, including openness of the domestic market, tariff rates, and planned tariff cuts; possibility of new entrants; and likelihood of concerted behaviour.

⁹⁵ In the case of mergers involving large-scale enterprises in markets where designated SMEs have a market share exceeding two thirds, competition is presumed suppressed if the merged enterprise's market share would be above 5%.

⁹⁶ The KFTC may extend this period by 60 days.

⁹⁷ 17 cases have been reported (KFTC, 2004, p. 12).

of the merging parties exceeds W 100 billion and where each party has Korean sales exceeding W 3 billion. Parties to a merger may appeal a decision within 30 days to the KFTC, which has 60 days (extendable to 90 days) to decide. KFTC decisions can also be challenged in the courts within 30 days. The KFTC may apply to the courts to nullify unapproved mergers.

152. Regulating chaebols is a major KFTC function. Extensive legislative provisions exist on corporate and financial structures to control possible anti-competitive effects from concentrated economic power. Chaebol-related policies include a ceiling on the total amount of shareholdings of other domestic companies outside the conglomerate, and bans on cross-shareholding and cross-debt guarantees for affiliated companies. From 2002, KFTC introduced differential controls on chaebols according to their financial situation. Chaebol subsidiaries with assets of W 5 trillion or more are prohibited from investing more than 25% of their assets in other companies, including subsidiaries.⁹⁸ The threshold asset level for regulating cross-shareholdings and debt guarantees was set at W 2 trillion. Voting rights for a finance or insurance company belonging to a chaebol were also allowed of up to 30% of its shares in a domestic affiliated company in certain cases, such as management appointment or dismissal, and take-over or merger.⁹⁹

Policy and operational developments

153. Monopoly power has decreased steadily, but market concentration remains relatively high.¹⁰⁰ The market concentration ratio of the top three leading manufacturing companies fell from 52.8% in 1990 to 43.4% in 2001.

154. The Clean Market Project, started in 2001, changed the KFTC's operations from a piecemeal approach to competition policy, whereby it mainly undertook ex post corrective measures in response to anti-competitive complaints, to a pro-active, comprehensive approach, in which it initiated such investigations in targeted sectors. Initial investigations examined six major sectors: construction, medical and pharmaceuticals, wedding and funeral services, newspapers and broadcasting, IT, and school uniforms. A further 11 activities in six more industries are currently being targeted (including private educational institutions, LNG, LPG, credit cards, non-life insurance, real estate agents, housing maintenance, TV home shopping, and membership-based leisure activities). KFTC introduced a Code of Conduct for Corporate Compliance Program in 2001; 70 companies were operating such programmes by end 2002.

155. KFTC also introduced its "Three-Year Market Reform Roadmap" in December 2003. Its major goals are to: make business more accountable and transparent; improve corporate ownership and governance structure of large business conglomerates (such as greater disclosure requirements on corporate ownership and improved regulations on total equity investments); enhancing market competition (streamlining anti-competitive regulations, including abolishing certain cartels; and strengthen notification and examination of mergers and acquisitions. Provisions to permit private (class action) lawsuits for damages in antitrust cases are due to be legislated in 2004. Allowing public interest lawsuits by the Government on behalf of consumers in anti-competitive cases is also being

⁹⁸ Certain exemptions apply, such as for subsidiaries in which foreign investors have at least a 10% stake or where foreign investors have a say in management, such as right to name some executives. Subsidiary investments in certain private investment companies, a public company to be privatized, a company in the same or similar industry, and a company more than 30% government owned are also exempt from controls.

⁹⁹ The KFTC has prepared a draft bill for Cabinet consideration aimed at weakening chaebol owners' control, including narrowing the range of foreign-invested companies excluded from investment and other restrictions placed on conglomerates, and lowering the 30% voting ceiling to 15% (*JoongAng Daily*, 7 May 2004, "Trade agency asks more power and investment curbs", p. 3).

¹⁰⁰ KFTC (2004), p.3.

considered. KFTC is also considering exempting chaebol affiliates that meet certain requirements from various controls, especially ceilings on shareholdings of other domestic companies.

156. KFTC operates a permanent monitoring system for detecting and preventing bid-rigging in the public sector. Bidders, including eight public companies, must submit material to KFTC on public projects exceeding W 10 billion. Strict penalties are imposed on bid-riggers, such as fines of up to 5% of related revenue and criminal prosecutions.

Enforcement

157. Korea's weak enforcement of competition policy appears to have greatly improved. The KFTC has become increasingly active in competition cases and pursuing illegal practices (Table AIII.12). It can issue warnings or corrective measures, impose surcharges and fines, and request criminal prosecutions. It appears that the KFTC deals with a large number of repeat offenders, which may suggest that current legal deterrents are insufficient.¹⁰¹ KFTC referred 84 cases for prosecution from 1998 to 2002. In 2003, KFTC levied total surcharges of W 147,994 million (W 87,931 million in 2002); most were imposed on cartel members (W 108,120 in 2003), including in the steel, concrete, and cement industries. KFTC intends to raise the upper limit on surcharges for illegal cartels from 5% to 10% of relevant turnover (or from W 1 billion to W 2 billion if there is no relevant turnover) in 2004. In 2003, KFTC imposed 313 sanctions for anti-competitive behaviour, mainly covering unfair business practices, prohibited activities of trade associations, mergers, and cartels.

158. Extra-territorial application of competition policy to pursue international cartels exporting to Korea has been extended. In 2002, KFTC ordered corrective measures and levied surcharges of US\$7 million on international cartel members exporting graphite electrodes to Korea. In 2003, it ordered corrective measures and imposed surcharges of US\$3 million on members from five jurisdictions of an international vitamin cartel exporting to Korea. However, these surcharges appear small relative to the gains from such illegal activity. To assist international efforts, KFTC has promoted bilateral cooperation with competition authorities from other countries, and has signed a bilateral cooperation agreement with Mexico, and is doing likewise with the United States. KFTC has not applied the competition legislation to Korean import or export cartels as there have been no recognized or notified cases so far.

(v) Intellectual property rights

159. Korea's extensive range of intellectual property legislation has been further revised, since its last Review, in line with international standards and to take account of changing technology. It joined the Madrid Protocol on 10 April 2003 and the Trademark Law Treaty on 25 February 2003. Korea participates in ten out of 21 treaties administered by the World Intellectual Property Organization (WIPO). It also accepted the Amendment to Article 9(3) of the WIPO Convention on 20 April 2000 and is a signatory to the Patent Law Treaty. Korea has implemented IPR legislation that the authorities believe complies fully with the WTO TRIPS Agreement. The TRIPS Council reviewed Korea's IPR legislation in 2000. Korea's accession to the WIPO Copyright Treaty is expected to take effect on 24 June 2004.

(a) Industrial property

160. The Korea Intellectual Property Office (KIPO), an agent of MOCIE, handles industrial intellectual property protection. It examines and registers patents, utility models, industrial designs,

¹⁰¹ APEC (2003), p. 41.

trade marks (including service marks) and semi-conductor chip layout designs, and develops policies to protect trade secrets. It resolves IPR disputes through "trial decisions" (administrative judgements) of the Intellectual Property Tribunal. Tribunal decisions on patents, utility models and trade marks can be appealed to the Patent Court and subsequently to the Supreme Court. Ordinary courts generally handle civil and criminal prosecutions. Korea generally bans all parallel imports.

161. Penal provisions apply against right infringements of patents, utility models, trade marks and industrial designs. Imprisonment of up to seven years or a fine of up to W 100 million applies, or up to three years or W 20 million for falsely indicating such a right or fraudulently obtaining one. Civil remedies include injunctions against further infringement and damages.

Patent and utility models

162. Revisions in 2001 to the Patent Act of 1947 strengthened the application process, and covered disclosure of patents by electronic means (e.g. the Internet). KIPO may grant on request a compulsory non-exclusive licence to work a patent if the holder has not worked it for more than three consecutive years.¹⁰² To date, no compulsory licences have been issued. Patent protection is for 20 years from the date of filing (extendable for up to five years for pharmaceuticals and agricultural chemicals undergoing certain market-approval procedures). Both product and process patents may be granted.

163. The Utility Model Act (1961, last amended in 2001 to expand the scope of utility models) protects utility models for ten years from the date of filing the application. Commercial acts of manufacturing, assigning, leasing or importing are deemed to infringe the exclusive right of the registered or licensed holder.

Trade marks

164. The Trademark Act (1949) protects trade marks on goods and services initially for ten years upon registration (renewable indefinitely for further ten-year periods). Legislation was last changed in 2001 (effective 1 July) to reflect the Madrid Protocol and the Trademark Law Treaty. These revisions affected the procedures for transforming an international registered trade mark into a national application, and simplified the formalities for preparing requests and submitting various petitions and certificates.

165. The Unfair Competition Protection and Trade Secret Protection Law prohibits unfairly tarnishing a well-known mark or causing confusion with another person's goods by using a similar or identical mark, including distributing, importing or exporting such goods. Civil remedies are an injunction stopping improper use, and damages. Penal provisions are up to three years' imprisonment or a fine (up to W 30 million).

Industrial designs and lay-out designs of integrated circuits (topographies)

166. The Design Law (1961), last amended in 2001 to cover partial designs, protects designs for 15 years from registration date. The registered owner has the exclusive right to work a registered design commercially and industrially. The design registration system is based on substantial examination. Examinations of textile designs with short life cycles are accelerated.

¹⁰² Except for semi-conductor technology, this is only possible after four years of the patent period, and when consultations with the patent holder or exclusive licensee were not impossible or enabled no agreement.

167. Semi-conductor integrated circuits (topographies) are protected (under the Act on Lay-out Designs of Semi-conductor Integrated Circuits, 1992). The registered owner has exclusive right of the lay-out design for business use. Protection is for ten years from the registration date (subject to not exceeding ten years from initial commercial use or 15 years from creation date). Civil remedies include "cease and desist" orders, destruction of offending circuits, damages, and royalties. Penal provisions also apply: up to three years imprisonment and/or a fine of up to W 50 million, for right infringements; and up to one year or W 3 million for falsely marking a circuit as registered or obtaining registration fraudulently.

(b) Copyright and related rights

168. The Ministry of Culture and Tourism (MOCT) handles copyright protection (Copyright Act, 1957). Recent changes (the latest effective 1 July 2003) have mainly incorporated internet and digital technology developments. The production or provision of devices or services for circumventing copy control technology was prohibited, and a "notice and takedown system" was introduced to provide legal incentives for online service providers to promptly close down infringing materials at the right-holders' request. Non-original databases also became protected *sui generis*. Legislative amendments are intended shortly to provide performers and phonogram producers with interactive transmission rights in accordance with the WIPO Performances and Phonogram Producers Treaty.

169. Copyright protection for authors is life plus 50 years. Neighbouring rights are also extended for 50 years for performances, sound recordings, and broadcasts. Databases, including compilation of data in machine-readable form, can be protected by copyright. Compulsory licences may be granted under strict procedural conditions: five (one on foreign works) have been granted. Copyright also applies to "interactive transmissions" for authors.¹⁰³ The Online Digital Contents Industry Development Act, passed in 2002, protects intellectual property rights on online digital material.

170. Computer programs are protected under separate legislation (the Computer Program Protection Act of 1986, administered by the Ministry of Information and Communication (MIC)). Transmission rights were introduced in December 1998. Revisions from 1 July 2003 tightened liability of internet service providers for copyright infringements. The right holder has the exclusive right to copy computer programs, excluding temporary copies. Protection of programs is for 50 years from the year following its publication. Minimum reproduction is allowed if it does not infringe seriously the right holder's economic interests; this test is applied to both foreign and domestic works. Compulsory statutory licences, although only implied and not expressly provided for in the legislation, may be granted (e.g. where the right holder cannot be identified or traced, subject to certain procedural requirements). No such licences have been granted.

171. Ordinary courts handle copyright cases. Civil remedies against copyright infringements (including computer programs) include injunctions, destruction of counterfeit products, and damages. Penal provisions of up to five years imprisonment or a fine of up to W 50 million also apply for copyright infringements (up to five years or W 70 million for repeated computer program infringements).

172. Amendments to the Sound Records, Video Products and Game Software Act in January 2004 eliminated loopholes concerning illegal importation and distribution of videos by requiring applicants for rate classification to present documentary evidence of the due right to produce or distribute videos.

¹⁰³ The Copyright Act is to be amended in 2004 to extend this right to performers and phonogram producers.

(c) Trade secrets

173. The Unfair Competition Prevention and Trade Secrets Protection Act (1961) protects trade secrets. These are infringed when such information is acquired by an "act of improper acquisition" (e.g. theft, deception or coercion), or subsequently used or disclosed. Injunctions against disclosure may be obtained, and damages awarded for infringement. Criminal penalties of up to five years imprisonment or fines of up to W 50 million (seven years or W 100 million if disclosed information is used overseas) apply to employees disclosing trade secrets. Legislative amendments in 2003 introduced compensation payments to the aggrieved party of two to ten times the unfairly gained profit; broadened the scope of trade secrets to include operational secrets (e.g. business strategies); and extended the coverage to include not only individuals but also relevant organizations and businesses that infringe trade secrets.

174. Confidential data submitted to authorities for marketing approval of pharmaceuticals and agricultural chemicals are prohibited from public disclosure unless the authorities see such a need (Agrochemicals Control Act and the Pharmaceuticals Affairs Act). Penalties are up to three years imprisonment or fines of up to W 10 million for pharmaceuticals and W 15 million for agrochemicals. Unfair commercial use of such data is also prohibited.

175. Officials involved in registering lay-out designs for semi-conductor integrated circuits must maintain confidentiality (Act on Lay-out Designs of Semi-conductor Integrated Circuits). Imprisonment of up to two years or fines of up to W 5 million apply.

(d) Other intellectual property protection

176. Plant variety protection is administered by the MAF (Seed Industry Law, 1997). Korea joined the International Convention for the Protection of New Varieties of Plants (UPOV) in 2002. No legislative changes were necessary, since the Seed Industry Law already conformed. Korea protects breeders' rights on plant varieties for 20 years from the registration date (25 years for ornamental and fruit trees).

177. Korea protects geographical indications (GIs). The Unfair Competition Prevention and Trade Secrets Protection Act prohibits, as unfair competition, use of marks identical or similar to another person's name, trade name, emblem or any other well known mark, including selling, distributing, importing or exporting goods so marked, that would mislead the public on the place of production. The Fair Labelling and Advertising Act also prevents deceptive labelling and advertising, including any vague or false labelling or advertising that may mislead consumers on the product's origin. Trade marks legislation prevents registration of trade marks consisting of a "conspicuous geographical name". Imports or exports with false origin indications or infringing GIs are prohibited (Foreign Trade Act).

178. The Agro-Fisheries Product Quality Management Act (1999) specifies GIs for agricultural and fish products. These must be registered with the Geographical Indication Registration Council of the National Agricultural Products Quality Management Service or of the National Fishery Products Quality Management Service. Foreign GIs registered according to the same procedures and criteria as for domestic goods are protected in Korea under several laws, such as the Trademarks Act and the Unfair Competition Prevention and Trade Secrets Protection Act. Using a false mark of a registered GI on agricultural or fishery products is subject to imprisonment of up to three years or a maximum fine of W 30 million.

179. Any trade mark containing geographical indications for wines or spirits originating in any WTO Member cannot be registered (Trademark Act, Article 7(1)(xiv)). The use of GIs to identify

wines or spirits that do not originate in the place indicated by the GI is prohibited, even if the true origin is given or the GI uses expressions like "kind", "type", "style", or "imitation".

(e) Enforcement

180. The level of piracy in Korea was estimated at 20% in 2003 on video movies, records, and music (20% in 1999), and 50% in 2002 on business application software (50% in 1999).¹⁰⁴ Piracy of entertainment software, however, was estimated to have fallen substantially, to 36% in 2003 (63% in 1999). Piracy of books is thought to be significant.

181. Most IPR prosecutions, with the notable exception of trade marks, require a complaint from the right holder. KIPO can initiate investigations of unfair competition, such as the manufacture, sale, import or export of counterfeit goods (Unfair Competition Prevention and Trade Secrets Protection Act). Customs is authorized to investigate IPR infringements concerning imports and exports. It can initiate investigations, including of criminal activity, and will suspend release of counterfeit goods that clearly infringe copyright or trade mark rights (Customs Act, Foreign Trade Act, and Customs Clearance Regulation of Counterfeit Goods). Right holders may request Customs to suspend the release of suspected counterfeit goods, on payment of collateral of 120% of the dutiable value of the goods. Suspension is for ten days, in which time the applicant must initiate legal action. Only KIPO or the Korean Trade Commission can request Customs to prevent imports violating patents.

182. Standing Inspection Teams (SITs) were established by MIC to investigate counterfeit of computer software, and by MOCT for sound recordings and video movies, including by on-line activities. However, only the MIC's SIT investigating computer program piracy has judicial police authority, following legislative revisions in October 2003 (Act on a Person with Judicial Police Authority and the Scope of the Right). MIC may collect, delete or destroy illegally acquired computer programs, and can instruct internet service providers to reject, suspend or limit pirated products and services. To improve criminal prosecutions, an IP Right Violation Crimes Investigation Headquarters was established in the Supreme Public Prosecutor's Office. Nationwide crackdown committees have been formed. In 2002, over 33,000 IPR cases, involving over 40,000 persons, were prosecuted, with almost 1,000 arrests. KIPO and Customs also continue to actively pursue counterfeit goods. In 2003, KIPO uncovered 549 cases of counterfeiting, with criminal charges filed in 332 cases.

183. The Publication and Printing Business Promotion Act, effective February 2003, provides MOCT administrative authority to inspect business establishments and to seize and order disposal of illegally copied publications. Relatively small fines, of up to W 3 million, may be levied for refusal to obey such orders. It is enforced mainly by the private entity Korea Reprographic and Transmission Rights Centre (under the auspices of MOCT).

¹⁰⁴ International Intellectual Property Alliance (2004), p. 208.