The Republic of Korea

【Risk Warning】

In 2009, Korea issued a series of proposals on technical standards, sanitary and phytosanitary measures covering areas such as product quality, safety criteria, and food hygiene. Once put into effect, these proposals will introduce new requirements on the manufacture, inspection and certification of relevant products.

According to *Amendments to Food Standards and Specifications*, the maximum mold content of grains, beans, peanuts, nuts, cookies, sauces and other foodstuffs is to be modified. Pursuant to *Proposed Amendments to Health Food Standards and Specifications*, 15 raw materials are banned in the use of health food; products such as bee propolis, royal jelly and bee pollens should not contain tetracycline antibiotics; the maximum residue limit (MRL) of cadmium in fermented plant extracts is reduced to 0.5 mg/kg; the MRL of aflatoxin in fermented plant extracts is cut to 15 μg/kg; and the MRL of pheophorbide in fermented plant extracts is lowered to 800 μg/kg. In accordance with *Proposed Amendments to Guidance on the Inspection and Quarantine of Imported Food*, the number of items for stringent pesticide residue tests will be increased from 47 to 49, and the number of items for single component pesticide residue tests will be expanded from 150 to 189.

Chinese enterprises exporting to Korea agricultural products, foodstuffs, sewer systems, bicycles, electrical appliances and digital locks are advised to pay close attention to the latest developments of these proposals and respond promptly so as to avoid any negative impact on their production and export.

1 Bilateral Trade and Investment

According to statistics from China Customs, the total volume of bilateral trade between China and the Republic of Korea in 2009 amounted to US$ 156.23 billion, down 16% over last year, among which China's exports to Korea reported a 27.4% year-over-year decline to reach US$ 53.68 billion, while China's imports from Korea registered a 8.5% decrease to stand at US$ 102.55 billion. China ran a trade deficit of US$ 48.87 billion with Korea. China mainly exported to Korea electronic products, machinery, steel and steel products, mineral fuels, precision instruments, organic chemical products, textiles, vessels, aquatic products, construction materials, and automobiles; and imported from Korea goods such as electronic products, machinery, precision instruments, plastics, organic chemicals, mineral fuels, steel and steel products, automobiles,

copper and copper products.

According to China's Ministry of Commerce (MOFCOM), in 2009, the turnover of completed engineering contracts by Chinese companies in Korea totaled US$ 613 million, and the volume of newly signed engineering contracts reached US$ 159 million; the turnover of completed labor service cooperation contracts stood at US$ 204 million, and the volume of newly signed labor service contracts arrived at US$ 85 million.

Upon the ratification or on the record of MOFCOM, China's non-financial foreign direct investment (FDI) in Korea totaled US$ 43 million in 2009. Korea invested in 1,669 projects in China in 2009, with a contract amount of US$ 9.22 billion and an actual utilization of US$ 2.70 billion.

2 Korea's Trade and Investment Regime

2.1 Trade Administration Regime and Its Recent Developments

2.1.1 Tariff Regime

2.1.1.1 Tariff Administration

The *Customs Act* serves as the basic legislation governing Korea's tariff system. The Ministry of Strategy and Finance (MOSF) formulates tariff policies, which are implemented by the Korea Customs Service (KCS) and its subordinate agencies. According to the *Customs Act*, the MOSF may submit policy recommendations on tariff rates to the Customs and Tariff Deliberation Committee. If accepted by the Committee, any modification is submitted to the State Council. After approval by the State Council, the modification is enacted as part of the *Customs Act* by the National Assembly in the form of an Annex to the Act.

According to modifications made by the MOSF on 22 October 2008, Korea adjusts 360 ten-digit lines in its Harmonized System of Tariff Classification (HS) as from 1 January 2009, removing 88, modifying 32, and adding 240 ten-digit lines. The new tariff schedule consists of 11,881 ten-digit lines, compared with 11,729 ten-digit lines in the previous schedule. The newly added ten-digit lines cover items with dramatic increase in trade such as plasma display panel (PDP) parts or liquid crystal display (LCD) devices; products regulated by environment or agricultural policy such as renewable materials, bio-energy raw materials and mushrooms; articles which reflect

changes in industrial structure such as special gas tungsten used as semiconductor materials, special packaging paper for cosmetics and medicines, print paper and copy paper; beef steak with the largest volume in imports; and glass with varying thickness. Korea imposes two kinds of tariffs, namely, price-based ad valorem duties and volume-based specific duties. In practice, most tariff lines are ad valorem.

Import duties in Korea mainly consist of basic tariffs, temporary tariffs and flexible tariffs. According to trade agreements signed by Korea, basic tariffs include mainly conventional tariffs under the WTO, concessional tariffs applicable to trade with developing countries under the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), concessional tariffs applicable to trade with developing countries under the General Agreement on Tariff and Trade (GATT), preferential tariffs applicable to free trade areas. Temporary tariffs and flexible tariffs are adjusted and levied by the Korean government in light of specific circumstances. Korea's flexible tariffs, which include quota tariffs, adjustment tariffs, anti-dumping tariffs, countervailing tariffs, emergency tariffs, special safeguard tariffs, and price equilibrium tariffs, are vital in regulating imports and exports as well as protecting its domestic industries.

Special safeguard tariffs (SSGs), a protective tariff, are authorized under the *WTO Agreement on Agriculture* and Korea's *Ordinance on Implementing the Customs Act*. In the event of a drastic increase in the quantity or a dramatic decline in the price of a particular product imported into Korea, which has caused or threatened to cause injury to domestic enterprises producing the same or competing product, an additional import duty will be imposed on the product to protect domestic industries. According to relevant regulations, SSGs may be collected in three different ways, namely, volume-based, price-based and both volume- and price-based. The trigger level of volume-based SSGs is calculated as follows: benchmark coefficient × average import volume for the past three years + recent changes in consumption. The benchmark coefficient is determined by the market share of the product for the past three years: The higher the market share, the lower the benchmark coefficient. When the market share is 10% or lower, the benchmark coefficient is 125%; when the market share is greater than 10% but lower than 30%, the benchmark coefficient is 110%; when the market share is larger than 30%, the benchmark coefficient is 105%. Price-based SSGs are triggered when the price of the imported product is less than 90% of the benchmark price. Where both volume-based and price-based SSGs could be triggered, the higher tariff rate or volume shall apply.

During the Uruguay Round of trade negotiations, Korea is allowed to subject 67 agricultural

products including rice and maize to tariff quota restrictions. The Ministry of Strategy and Finance (MOSF) is responsible for the setting of tariff quotas and, when the need arises, their adjustments. On 27 March 2009, the MOSF released its updated quota levels, in-quota tariff rates and out-of-quota tariff rates for 2009. To solve the demand-supply imbalance in farm products in the Korean market, minimum market access (MMA) for 12 agricultural and livestock products is increased, including supplementary feeds (80,000 tons), root vegetables used as feeds (83,500 tons), maize used as seeds (3,700 tons), breeding chickens (561,000), red and green beans (27,600 tons), sesame (74,700 tons), maize (11,158,100), soybeans (1,497,000 tons), potatoes and potato starch (146,000 tons), sweet potato starch (24,400 tons), wheat starch (1,400 tons), and potato flour (600 tons). In-quota tariff rates for the above 12 products range from zero to 40%, whereas above-quota rates range from 9% to 800.3%.

According to the *Customs Act*, in addition to the basic tariff, an adjustment tariff less than 100% is imposed on certain agricultural, forest and aquatic products to protect domestic industries weak in competition from import surges that may disrupt the domestic market, and on products under provisional protection on the grounds of environmental concerns, consumer interests and balanced development of domestic sectors. Adjustment rates and imports subject to the adjustment tariff scheme are revised annually, which shall apply from 1 January to 31 December. According to the notice issued by the MOSF on 23 December 2008, adjustment tariffs shall apply in 2009 to 21 six-digit tariff items covering mainly eels, hairtail (ribbonfish), shrimps and prawns, octopus, mushrooms, certain foods, sauces, plywood, and certain electrical appliances for shipping. Specifically, the adjustment rate for eels (live) is at 27% or KRW (₩) 1,879/kg, whichever is greater; sea breams (live) at 34% or KRW 2,292/kg, whichever is greater; sea bass and croakers at 34%; Alaska Pollack at 30%; saury at 31%; shrimps and prawns (salted or in brine) at 42% or KRW 287/kg, whichever is greater; squid (frozen) at 22%; oak mushrooms at 42% or KRW 1,625/kg, whichever is greater; Chinese vermicelli at 36% or KRW 284/kg, whichever is greater; rice (steamed or boiled) at 50%; sauces, preparations therefore and mixed seasonings at 45%; plywood, veneered panels and similar laminated wood at 10%; surface mount machines for electronic parts of gantry type at 11%.

2.1.1.2 Tariff Rates and Their Adjustments

The 2008 simple average applied MFN tariff was 12.8% in Korea, 49% for agricultural products and 6.6% for industrial goods. According to the third round of negotiations on tariff reductions under the *Asia-Pacific Trade Agreement*, Korea applies, as from 1 September 2006, preferential tariff rates to 1,367 ten-digit lines covering, *inter alia*, agricultural products, mineral products,

chemical products, iron and steel products, and metals, ranging from 30% to 50%.

In 2008, as a result of the surge in the prices of imports such as crude oil and crops, the Korean government decided to implement emergency tariff quotas applicable to a wider range of products in an effort to stabilize prices. As the prices of the imports gradually returned to normal, the Ministry of Strategy and Finance (MOSF) adjusted on 30 June 2009 the list of products subject to emergency tariff quotas and in-quota tariff rates, effective from 1 July 2009 to 31 December 2009. Thirty-two products were exempted from emergency tariff quotas, while 43 products remained to be subject to emergency tariff quotas, including grains such as wheat, wheat flour, barley and oats, coffee beans, lees, and bicycles. The tariff rates for wheat increased from 1% to 1.8%, wheat flour from 2% to 4.2%, alcohol from 5% to 10%, soft hides from 0% to 1%, coffee beans from 0% to 2%, and bicycles from 5% to 8%. In addition, five products were put under tariff quota restrictions, namely, graphite, vinyl sulfone, carbon paste, evaporator (used for OLED), and masks.

According to the 2009 *Special Safeguard Tariff Measures on Agricultural, Forestry and Livestock Products* issued by the MOSF on 28 December 2008, 29 farm products including red ginseng and mung beans were subject to special emergency tariffs, effective for one year as from 1 January 2009. Specifically, volume-based special safeguard tariffs (SSGs) applied to 6 products such as buckwheat, certain dry mung beans, certain dry sainfoins, and peanuts. A tariff rate of 810% and 561% were levied respectively on the imports of certain mung beans and sainfoins over 33,851 tons; 341% on buckwheat over 8,314 tons; and 307% on peanuts over 2,369 tons. Price-based SSGs applied to 18 products including certain mung beans, certain dry sainfoins, wheat starch, peanuts, red ginseng tea, water ginseng (susam), and red ginseng powder. SSGs were imposed on certain dry mung beans when their prices fall below KRW 313/kg (about RMB Yuan 1.66/kg), on certain dry sainfoins below KRW 288/kg (about RMB Yuan 1.51/kg), on wheat flour below KRW 604/kg (about RMB Yuan 3.17/kg), on peanuts below KRW 638/kg (about RMB Yuan 3.35/kg), on water ginseng below KRW 31,017/kg (about RMB Yuan 163/kg), on red ginseng tea and read ginseng powder below KRW 41,583/kg (about RMB Yuan 219/kg). SSGs based on both volume and price applied to 5 products including certain dry mung beans, certain sainfoins, peanuts (in-shell and shelled), and certain processed coix products.

In addition, a 50% tariff reduction was granted in September 2009 to 31 products producing or using new and renewable energy, covering 21 products related to solar energy, 7 products related to wind power, 1 product related to fuel cells, and 2 products related to geothermal power. At the same time, duty-free tariff preferences were withdrawn for 12 solar energy-related products and 2

wind power-related products which can be domestically made. At present, the number of new and renewable energy products enjoying preferential tariff treatment increased from 81 to 98.

2.1.2 Import Administration

The Ministry of Knowledge Economy (MKE) works as the competent authority in Korea for trade and investment, responsible for formulating and implementing trade and investment policies. Other government agencies such as the Ministry for Food, Agriculture, Forestry and Fisheries, the Ministry of Land, Transport and Maritime Affairs, the Ministry of Culture, Sports and Tourism develop and execute sector-specific policies.

In accordance with the *Foreign Trade Act* in Korea, import restrictions, when deemed necessary, may be imposed on certain products to fulfill its commitments of international treaties and international laws or to protect biological resources. Korea prohibits a few imports, mainly to protect public morality, human health, safety, animal and plant life, the environment, or to meet obligations under domestic legislations and international conventions. The Korean government publishes *Import and Export Notice* every year, temporarily restricting certain imports. Products specified in the Notice are subject to import licensing. An application for import license should be submitted to relevant government agencies or trade associations, and only after approval can the products be imported in Korea. In addition, products listed in the *Annual Trade Program* are subject to the ratification of the Minister of Knowledge Economy.

To increase trade facilitation, the MKE issued in 2008 *Notice No. 2008-85*, revising regulations on business and foreign trade and bringing in line with international standards labeling requirements on the origin of imports. Two exceptions to the rules of marking the origin of imports were made: imports whose physical appearances (for example, vegetables or fruits such as durians, oranges and bananas) make it unlikely to misunderstand their origin, and imports that have been approved by customs officials and the MKE.

In accordance with *Safety Policy on Imported Articles* issued on 23 December 2008, the Korea Customs Service (KCS) subjected 7 key imports, comprising foods, medicines, clothing, kitchen appliances, cosmetics, jewelry and toys, to particular safety administration in 2009. In this regard, the KSC also formulated 3 core strategies, that is, taking precautions, strengthening interventions and responding swiftly, and 20 specific countermeasures.

To respond adequately to deteriorating import situations and ensure long-term stable supply of

energy and raw materials, the Korean government published in September 2009 *Draft Amendments to Export Insurance Act*, introducing an import insurance scheme. The state-owned Korea Export Insurance Corporation shall increase their insurance business in import. In the event of non-delivery of products or non-fulfillment of contracts by exporters arising from trade barriers in the exporting countries or credit risks of exporters, the insured importers can claim compensations for their payment of the products. According to the daft amendments, the *Export Insurance Act* is renamed the *Trade Insurance Act*, and the Korea Export Insurance Corporation is renamed the Korea Trade Insurance Corporation. To ensure the supply of six strategic resources such as crude oils and natural gases and to support the development of green growth industries and new growth engine industries, the daft amendments support insurance coverage which "secures overseas resources" and "adjusts export structure" and allow trade insurance funds to issue bonds. To ensure speedy compensation in export insurance in case of unpredictable large-scale trade risks, the draft amendments further clarify the rules on mandatory payment of compensations.

2.1.3 Export Administration

The negative list of prohibited and restricted exports in Korea is published in the *Import and Export Notice*, *Consolidated Notice on Import and Export*, and *Periodical Notice on Import and Export*. Export prohibitions and restrictions are imposed on products strategic to the protection of domestic resources and industries, products banned or restricted from export for the fulfillment of international treaties, products restricted from export as agreed in bilateral agreements, and products posing a threat to human life, health, safety, and the environment. The *Customs Act* expressly bans the import and export of the following items: books, publications, paintings, movies and such products that disrupt the constitutional order or threaten public security and social customs; goods that reveal confidential government information or intelligence activities; counterfeit, forged and duplicated currencies or financial instruments; and products infringing intellectual property rights (IPRs). All commodities may be exported from Korea unless included on the negative list. In addition, Korea periodically restricts or monitors exports of certain products (such as rice) to ensure adequate domestic supplies and renders support to downstream processing industries of these products. Certain agricultural commodities require export authorization from the Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF).

To promote stability in agricultural exports, Korea in 2009 strengthened export credit insurance for its agricultural products, increasing export credit insurance ratio from 80% to 90% to support firms exporting agricultural products, and introducing *Comprehensive Insurance on Agricultural and Marine Products* against various risks such as delays in payment, increases in prices and

quarantine risks in importing countries.

In addition, Korea worked out a trade support program aiming at expanding exports particularly to China. In March 2009, the Ministry of Knowledge Economy (MKE) issued *Measures Expanding Trade with China*, planning to build and improve logistical centers and networks to create opportunities for exports to China, doubling short-term export insurance coverage to reach US$ 14.44 billion to reduce export risks to China, strengthening export insurance support in infrastructure development and investment in China, and encouraging Korean firms to participate in trade fairs held in China.

2.1.4 Trade Remedies

The Korean Trade Commission (KTC) under the Ministry of Knowledge Economy (MKE) administers trade remedy (contingency) measures such as anti-dumping, countervailing and safeguard measures. According to the *Customs Act*, the KTC Trade Investigation Office investigates unfair trade practices disrupting import and export and suggests trade remedy measures. The decision on the imposition of anti-dumping and countervailing duties is taken by the Ministry of Strategy and Finance (MOSF).

Trade remedy measures are authorized under the *Act on the Investigation of Unfair International Trade Practices and Remedy Against Injury to Industry* and its *Enforcement Act*, the *Foreign Trade Act* and its *Enforcement Act*, and the *Customs Act*. In 2001, the KTC published *Rules for the Implementation of Special Safeguard Measures Against China*. In December 2002, the Korean Parliament passed *Amendments to the Customs Act*, introducing special emergency tariffs (special safeguard tariffs) against products originating from specified countries including China. Later, the then Ministry of Finance and Economy promulgated the *Amendments to the Ordinance Implementing the Customs Act*, adding relevant provisions.

In 2008, the MKE modified and clarified the *Act on the Investigation of Unfair International Trade Practices and Remedy Against Injury to Industry*, supplementing and improving the process of investigating unfair trade practices and raising the efficiency of the enforcement of trade remedy measures. To protect the legitimate interests of small and medium-sized enterprises (SMEs) and lighten their burdens, certain prerequisites must be satisfied before provisional trade remedy measures can be taken against SMEs, and when provisional measures are taken, SMEs are allowed to pay only 50% of the guarantee amount. In addition, the KTC is considering streamlining the application process for launching anti-dumping investigations to relieve the burdens on the

applicants. Measures attempting to simplify the application process include reducing the number of application documents and starting to conduct investigation at an earlier date possible. Among the previous 13 required items of documents demonstrating injury to relevant industries, 5 items – employment and salary, cash turnover, productivity, capital maneuverability, and growth – have been changed from mandatory items to optional ones, thus reducing mandatory items to 8. These modifications make it easier for SMEs to understand and use the anti-dumping mechanism to protect their rights and interests.

2.2 Investment Administration Regime and Its Recent Developments

In the wake of Asian financial crisis, the Korean government adopted the policy of liberalization in investment, encouraging inward foreign direct investment (FDI). Major legislations on inward FDI consist of the *Foreign Investment Promotion Act* (FIPA), the *Enforcement Ordinance on the Foreign Investment Promotion Act*, the *Regulation on Foreign Investment and Technology Import*, *Special Act on the Taxation of Foreign Investment*, the *Regulation on Tax Reduction and Exemption for Foreign Investment*, and the *Foreigner's Land Acquisition Act*. The Ministry of Knowledge Economy (MKE) is responsible for FDI inflows, compiling all the relevant measures and policies on foreign investment and publishing them regularly in the *Consolidated Notice of Foreign Investment*. The Commission on Foreign Direct Investment (CFDI), which consists of representatives of various ministries and agencies, such as the MKE and the MOSF, and heads of relevant local and city governments, makes all the major policy decisions on FDI. The Ministry of Strategy and Finance (MOSF) is responsible for outflows of FDI. The Korea Trade Investment Promotion Agency (KOTRA), the official investment promotion agency stimulating and facilitating FDI, helps foreign investors complete necessary administrative procedures and with investment planning, legal and tax matters.

Korea adopts a prior notification system for FDI, administers market access, and monitors the direction of FDI flows. According to the *Regulation on Foreign Investment and Technology Import*, FDI restrictions and prohibitions are published on the *Consolidated Public Notice to Foreign Investors*. FIPA permits all FDI types, which include: establishment of new businesses; purchase of shares in existing businesses; mergers and acquisitions, with at least 10% foreign ownership; and loans of five years or longer from foreign parent or affiliated companies.

According to the 2008 *Consolidated Public Notice to Foreign Investors* issued by the MKE, the number of business sectors under the Korea Standard Industrial Classification has increased from 1,121 to 1,145, out of which 29 (previously 28) business sectors are partially closed to FDI and a

further 3 are fully closed to FDI. The previous FDI restricted sector of power generation is subdivided into 4 sectors, namely, nuclear power generation, hydraulic power generation, thermal power generation, and other electric power generation. The previous FDI restricted sector of nuclear fuel process is split into 2 sectors, i.e., manufacture of other basic inorganic chemicals, and manufacture of smelting, refining and alloys of non-ferrous metals. In addition, a number of related business sectors formerly listed separately under the Korea Standard Industrial Classification have been merged into a single sector, such as coastal and inshore fishing, transmission and distribution of electric power, and wired telecommunications.

To attract and facilitate FDI, Korea continues to provide a range of preferential policies and investment incentives. They include: (1) In addition to cash, machinery and equipment, and industrial property, foreign investors may contribute intellectual property rights, real estate and shares in Korea. (2) Favorable tax treatment is granted to eligible foreigner invested enterprises. Apart from enjoying national treatment, foreign investors in 467 new and high-tech sectors, 111 service sectors which “create high added value and help to greatly boost other sectors such as manufacturing”, and in Foreign Investment Zones may be entitled to special tax reduction and exemption. These include full concessions on corporate tax, income tax and dividend income tax for up to 7 years (5 years since 2005) followed by 50% tax concessions for up to 3 years (2 years since 2005); and similar concessions on various local taxes for up to 15 years as decided by local governments. (3) Foreign investors in Free Trade Zones, Duty-Free Zones (now merged with Free Trade Zones) and Free Economic Zones (including Jeju International Free City) are entitled to full corporate income tax concessions for up to 5 years followed by 50% corporate income tax concessions for up to 2 years. (4) The lease period of land for foreign investors may run up to 50 years and may be extended for another 50 years upon maturity of the lease period. If the leasehold land is owned by the state or local government, foreign investors may be entitled to a reduction in rental ranging from 50% to 100%, depending upon the scale of investment, the nature of the sector and the location of the land. When purchasing land, foreign investors may pay in 20-year installments or enjoy 1-year grace period. (5) The central government provides financial support to local governments to help them attract foreign investment, including the establishment of Foreign Investment Zones, concessions in land-use fees to foreign investors, funds for education and training, and subsidies for employment. (6) Overseas investors in Foreign Investment Zones may be entitled to exemption from the rental of state-held land and other administrative fees. Financial assistance is available for infrastructure such as roads, running water and power supply in factories. Facilities support to build hospital, schools, housing and so on is also available. (7) Procedures for the application and ratification of foreign investment have been simplified to

increase government efficiency. The longest time for the government to process an investment proposal has been cut to 30 days. In the absence of a reply within the 30-day limit, the investment proposal shall be deemed approved.

In July 2009, the 31st State Council Meeting adopted the *Amendments to the Enforcement Ordinance on the Foreign Investment Promotion Act*, which takes effect as from 31 July 2009. According to the amendments, Korea will continue to promote foreign investment in new and high technology and provide financial support to foreign investment which creates employment opportunities. The rent abatement or exemption of leasehold land in Parts and Materials Park will be increased from 75% to 100%. Local governments at various levels will provide support to the building and expanding of international schools.

According to the *Notice of Proposed Amendments to FIPA* issued in October 2009, Korea is planning to ease restrictions in foreign investment in the Seoul metropolitan area, allowing for the first time foreign investment over US$ 30 million (about KRW 35.4 billion) in manufacturing facilities in non-industrial zones in the Seoul metropolitan area and providing greater incentives to foreign investment.

2.3 Trade and Investment Related Administration and Its Recent Developments

2.3. 1 Foreign Exchange Control

Basic legislations governing foreign exchange transactions in Korea chiefly include the *Foreign Exchange Transaction Act*, the *Enforcement Ordinance on the Foreign Exchange Transaction Act*, and various types of foreign exchange control regulations. Other related legislations on foreign exchange transactions consist mostly of the *Foreign Trade Act*, the *Foreign Investment Promotion Act*, the *Bank of Korea Act*, the *Customs Act*, and the *National Tax Act*. The Ministry of Strategy and Finance (MOSF) is responsible for the formulation, modification and implementation of foreign exchange policies in Korea.

Korea has maintained a floating exchange rate, although the authorities have intervened in the market in modest amount to smooth volatility and prevent the Korean won from appreciating too rapidly. Korea has already liberalized its foreign exchange under its current account, and planned to remove the requirements of the approval of capital transactions and the submission of documents on capital earnings and expenditures before 2008. However, in the wake of the global financial crisis, Korea has decided to postpone its liberalization process of foreign exchange under

capital account. At present, major foreign exchange control measures related to capital account in Korea include: (1) Businesses must notify the designated bank before borrowing from foreign countries. In addition, borrowers whose long-term loans exceed US$ 30 million and short-term borrowers whose financial standings fail to meet specified conditions must also notify the Ministry of Strategy and Finance (MOSF). (2) Individuals and not-for-profit legal entities must notify the Bank of Korea (BOK) prior to borrowing from foreign countries. Borrowing requiring guarantees or assurances from third parties are subject to the approval from the BOK. (3) Unless otherwise stipulated by the relevant regulations, foreign currency loans to institutional investors, won currency loans within KRW 1 billion, foreign currency loans within US$ 10 million to *Chaebols* (Korean conglomerates), and foreign currency loans within US$ 0.3 million to legal persons must be reported to the BOK, but all other foreign loans are subject to the ratification of the BOK. (4) Businesses offering debt guarantees to foreign firms must first seek the approval of the BOK.

2.3.2 Intellectual Property Rights Protection Regime

Major legislations on intellectual property rights (IPRs) protection in Korea include the *Patent Act*, the *Trademark Act*, the *Copyright Act*, the *Utility Model Act*, the *Unfair Competition Prevention and Trade Secrets Protection Law*, the *Industrial Design Protection Law*, the *Computer Program Protection Act*, the *Semiconductor Integrated Circuits Layout Design Act*, and the *Act on the Investigation of Unfair International Practices*. Government agencies handling IPR protection include the Korea Patent Office, the Korea Customs Service (KCS) and the Korea Trade Commission (KTC). The Patent Office, the leading authorities on matters of IPRs protection, initiates investigations of unfair trade practices such as the manufacture, sale, import or export of counterfeit products. The KCS is authorized to investigate (ex officio) IPR infringements concerning imports and exports, and will suspend release of counterfeit goods that clearly infringe copyright or trademark rights. The KTC also cracks down IPR violations in imports and exports and can issue orders to stop importing, exporting, selling or manufacturing products in breach of IPRs.

2.4 Trade-Related Technical Measure in 2009

2.4.1 Technical Regulations

2.4.1.1 2009 Product Quality and Distribution Monitoring Program

On 1 March 2009, the Korean Agency for Technology and Standards (KATS) under the Ministry

of Knowledge Economy (MKE) issued the *2009 Product Quality and Distribution Monitoring Program* to strengthen quality control. The program subjects 3,000 products of 116 categories distributed in the market to four types of quality monitoring, namely, special monitoring, intensive monitoring, general monitoring, and random monitoring. Special monitoring, which involves 18 product categories such as toy guns, child's walkers and electric cushions, refers to monitoring product quality and distribution every three months, and when necessary, inspections will be made in production facilities. Intensive monitoring involves 18 categories of products such as cribs, strollers and electronic sterilizers, and is taken half a year. General monitoring refers to annual inspection of 34 product categories such as lighters and digital locks. Random monitoring involves 33 product categories such as false eyelashes, pencil sharpeners, electric rice cookers and electric kettles, and is conducted every year. The products, if found to present safety risks to consumers, will be suspended from distribution and their producers will be subject to penal punishment.

2.4.1.2 Standards on Children's Jewelry and Light Emitting Diodes

In March 2009, Korea issued a public notice, introducing new standards on children's jewelry and light emitting diodes (LEDs), effective as from 1 January 2010. According to the notice, the maximum limit of lead in children's jewelry is changed from 600 mg/kg to 300 mg/kg, lead soldering in the joined parts of children's jewelry is prohibited, and the use of phthalate plasticizers is restricted in plastic jewelry. Three types of LED lighting products, namely, LEDs with built-in converters, LEDs with external converters and LEDs with embedded converters, are subject to KS (Korean Standards) logo certification.

2.4.1.3 Draft Amendments to Bicycle Safety Standards

In July 2009, the Korean Agency for Technology and Standards (KATS) under the Ministry of Knowledge Economy (MKE) issued *Draft Amendments to Bicycle Safety Standards*. The draft amendments significantly raised bicycle safety standards, for example, EN standards on fatigue testing adopted in European countries like Germany and Britain have been introduced, and the use of asbestos in pedals prohibited.

2.4.1.4 Amendments to Safety Standards on Sewer Products

In July 2009, the Korean Agency for Technology and Standards (KATS) under the Ministry of Knowledge Economy (MKE) released a public notice on the *Amendments to Safety Standards on Sewer Products*, which adopted the Japanese JIS standards and substantially raised safety standards on products used for sanitary sewerage such as steel pipes, pipelines and faucets. The maximum seepage of lead in sewer pipes is changed from the current level of 0.005 mg/L to 0.001

mg/L, a five-fold reduction, and the maximum seepage of cadmium is dropped from 0.001 mg/L to 0.0005 mg/L.

2.4.1.5 Draft Amendments to Safety Control of Electrical Appliances

On 6 October 2009, the Korean Agency for Technology and Standards (KATS) under the Ministry of Knowledge Economy (MKE) published *Draft Amendments to Safety Control of Electrical Appliances*, which shall run into force as from 1 January 2010. Conformity certification of electrical appliances has been changed to self-regulatory product safety confirmation system, which requires the manufacturers to voluntarily maintain and enhance safety of electrical appliances.

2.4.1.6 Proposed Amendments to Safety Standards on Digital Door Locks Subject to the Self-Regulatory Safety Confirmation System

On 9 November 2009, Korea issued a public notice, stating that the Korean Agency for Technology and Standards (KATS) under the Ministry of Knowledge Economy (MKE) was proposing to amend standards on digital door locks subject to the self-regulatory safety confirmation system. Major proposals include: The keypad of the manual lock or unlock device must be positioned at above 8 millimeters, safety functionalities and requirements are strengthened, the buttons inside the digital door lock cannot be pressed from the outside, an alarm will be sounded in case of emergency, and safety requirements are added on mechanical strength testing of lock bolts, adhesion testing and impact testing of the digital door lock.

2.4.2 Sanitary and Phytosanitary Measures

2.4.2.1 Amendments to Food Standards and Specifications

In March 2009, the Korea Food and Drug Administration (KFDA) published the *Amendments to Food Standards and Specifications*. The main contents of the Amendments include: the maximum mold content of grains, beans, peanuts, nuts, cookies, sauces and other foodstuff will be changed from the previous 10 μg/kg for the aflatoxin B1 level to 15 μg/kg for the overall aflatoxin level (the sum total of B1, B2, G1 and G2) and 10 μg/kg for the aflatoxin B1 level; the maximum residue limit (MRL) of melamine in general food is 2.5 mg/kg, but the MRL of melamine in nutritional food for infants and patients, subject to special food safety standards, is zero; methods for melamine detection and testing are also clarified.

In June 2009, the KFDA once again revised the *Amendments to Food Standards and*

Specifications. The MRL of lead in carrots, garlic and leeks is lowered to 0.1 mg/kg; the MRL of cadmium is lowered to 0.1 mg/kg for carrots and garlic and 0.5 mg/kg for leeks; the MRL of fumagillin in food containing corn is lowered to 1 mg/kg; the MRL of ochratoxin A in miso cakes and chili powders is lowered to 20 μg/kg and 7 μg/kg respectively, and the methods of extraction and refining of ochratoxin A are also stipulated; the moisture content in honey and invert sugar is lowered from 21% to 20% and from 65% to 60% respectively; the MRL of ractopamine in animal drug products has been newly added.

2.4.2.2 Proposed Amendments to Health Food Standards and Specifications

In June 2009, the Korea Food and Drug Administration (KFDA) released *Proposed Amendments to Health Food Standards and Specifications*. According to the proposal, the maximum residue limit (MRL) of cadmium in fermented plant extracts is reduced to 0.5 mg/kg; products such as bee propolis, royal jelly and bee pollens should not contain tetracycline antibiotics; the MRL of aflatoxin in fermented plant extracts is reduced to 15 μg/kg; the MRL of pheophorbide in fermented plant extracts is reduced to 800 μg/kg. In August 2009, Korea once again revised its *Proposed Amendments to Health Food Standards and Specifications*, banning the use of 15 raw materials (namely, aristolochia, verbena, cortex moutan, snailseed, manshurian aristolochia stem, rhizome typhonii, pinang, radix clematidis, madder roots, creeping woodsorrel, almond, cortex phellodendri, and centipedes) in health food.

2.4.2.3 Proposed Amendments to the Guidance on the Inspection and Quarantine of Imported Food

In July 2009, the Korea Food and Drug Administration (KFDA) issued a public notice, announcing its intention to amend the *Guidance on the Inspection and Quarantine of Imported Food*. The proposed amendments include: the National Quarantine Service will delegate quarantine controls of imported food to local food and drug administrations; random sampling and testing will target hazardous materials in food, to be specific, the number of items for stringent pesticide residue tests will be increased from 47 to 49, and the number of items for single component pesticide residue tests will be expanded from 150 to 189.

2.4.2.4 Proposed Amendments to Standards and Specifications on Food Additives

In July 2009, the Korea Food and Drug Administration (KFDA) issued the *Proposed Amendments to Standards and Specifications on Food Additives*, setting tolerance for 80 food additives including food acidifiers, colorings, flavorings and dietary supplements. Main amendments include: (1) The maximum residue limit (MRL) of lead in 61 additives used in foodstuff such as

edible oils, butter and salad dressings is lowered to 0.5-5 ppm, the MRL of cadmium in 14 additives is lowered to 1 ppm, and the MRL of mercury in 41 additives is lowered to 1 ppm; (2) The MRL of lead in 18 types of No. 3 green coloring agents in food additives is set at 2-5 ppm, and the MRL of arsenic in 6 food additives is changed from 4 ppm to 1.3-2 ppm; and (3) The MRL of coliform bacteria in ice cream is newly set.

2.4.2.5 Proposed Amendments to Animal By-Product Processing Act

In August 2009, the Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF) drafted the *Proposed Amendments to Animal By-Product Processing Act*. The proposed amendments expanded the scope of certification for Hazard Analysis and Critical Control Point (HACCP), covering the whole process from farm to retailing, particularly egg grading and packing centers and hatchery. A new examination and approval system yet to be published will replace the current system and be implemented by the state and/or provincial governments. When animal by-products are imported for further processing, the importer should declare to the National Veterinary Research and Quarantine Service (NVRQS) matters such as domestic components of the products. Conditions and procedures for the implementation and termination of provisional import bans are clarified: In the event of suspicion or confirmation of risks in animal by-products, a provisional import ban may be placed on products from the countries or regions involved; if it is confirmed through investigation that the source of the risks have been identified, the products no longer present risks to health, and adequate measures have been taken by the exporters or exporting countries, the provisional ban will be lifted. New rules on designated private-run testing laboratories have been established, for example, the 3-year term of validity, restrictions on the re-registration of laboratories whose qualifications have been revoked, the obligations of laboratory staff to participate in annual professional training, and the clarification of government procedures of closure of laboratories. Enterprises that have recalled hazardous livestock products, imported or domestically made, may be exempted from administrative penalties. Relevant authorities may issue notices concerning hazardous animal products and order enterprises involved to make relevant information available to the public.

In November 2009, Korea reviewed the *Proposed Amendments to Animal By-Product Processing Act*. According to the proposal, if livestock products slaughtered, processed, packaged, shipped and exported from particular countries and regions present or are likely to present risks to health, Korean agricultural and food agencies may ban the import and sale of those products. In addition, officials handling quarantine of poultry and meat will take up slaughter inspection training.

3 Barriers to Trade

3.1 Tariff and Tariff Administrative Measures

3.1.1 Tariff Peaks

The 2009 simple average MFN tariff rate in Korea is 12.2%, higher than that of most developed countries. Tariff protection varies substantially across and within sectors, averaging 6.6% for industrial goods and 49% for agricultural products, a difference of 42.4 percentage point.

The Korean tariff schedule ranges from zero to 887%. Korea maintains very high tariff peaks in animal products, dairy products, fruits and vegetables, coffee and tea, grains, oilseeds, sugar and candies, drinks and tobacco, and other agricultural products. The average applied MFN tariff rate is 58% for vegetables, fruits, and plant products, the highest rate reaching as high as 887%; the average applied MFN rate is 133.7% and 800% for grains and their products respectively; the average rate for oilseeds, fat and oil products is 40.3%, the highest being 831%; the average rate for coffee and tea is 53.9%, the highest rate being 514%; the highest applied MFN rate is 270% for beverages and tobacco, 243% for sugar and candies, and 754% for other agricultural products. Among manufactured products, the tariff level is highest for textiles, clothing, leather, footwear and headgear. For example, the average applied MFN tariff rate is 12.6% for clothing, and 16% for leather, footwear and headgear. In addition, it should be noted that zero rate applies to 6.6% of chemical products and the average applied MFN rate is 5.9% for chemicals, but the highest applied rate stands at 405%.

By according varied and substantial levels of protection to selected industries and products, especially agriculture, Korean tariffs distort competition in international trade by favoring some activities. The Chinese side believes that the high level of tariff peaks maintained by Korea, particularly the extensive use of high tariff protection, special safeguard measures, heavy subsidies, and anti-dumping measures, has adversely affected the exports of relevant Chinese products to the Korean market.

3.1.2 Tariff Escalation

Tariff escalation in Korea is particularly evident in the case of products such as food, beverages, tobacco, textiles and leathers, basic metals and fabricated metal products, and nonmetallic mineral products.

In 2009, the average applied tariff rate for Korean manufactured products is 6.6%. However, the rate is 52% for primarily processed products such as food, beverages and tobacco, and the rate is 95% for semi-processed products. In addition, tariff escalation remains most pronounced throughout all production stages of textiles and leathers, basic metal products, and non-metallic mineral products – the level of tariff rates increases with the degree of processing.

The Chinese side believes that the low level of tariff rates on raw materials or primarily processed products helps the Korean manufacturing sector to secure raw materials at a lower price, while high tariffs on value-added products make it difficult for foreign finished products to gain access to the Korean market, thus strengthening the protection of domestic industries.

3.1.3 Tariff Quotas

Most Chinese agricultural exports with a competitive edge are subject to quota restrictions in Korea. In 2009, some adjustments in product categories under quota controls have been made and the quota volume for certain products has been increased, but both in-quota and above-quota rates continue to remain high. Out-of-quota rates for most agricultural products under minimum market access commitments are well over 300%, the highest reaching 800.3%. For wheat starch, the in-quota rate is 8%, and the above-quota rate 800.3%; for potato flour, the in-quota rate is 5.4%, and the above-quota rate 304%; for sweet potato starches, the in-quota rate is 11%, and the above-quota rate 241.2%; for other starches, the in-quota rate is 8%, and the above-quota rate 201.2% to 455%; for soybeans, the in-quota rate is 5%, the above-quota rate 487%; for maize, the in-quota rate is 1.8% to 3%, and the above-quota rate 630%; for sesame, the in-quota rate is 40%, and the above-quota rate 630%; for sainfoins and mung beans, the in-quota rate is 30%, and the above-quota rate 420% to 607.5%; for seed corns, the in-quota rate is zero, and the above-quota rate 328%; for root vegetables for feed use, the in-quota rate is 5%, and the above-quota rate 100.5%; for supplementary feeds, the in-quota rate is 55, and the above-quota rate 50.6%. The Chinese side believes that the large gap between in-quota and out-of-quota rates serves, in effect, to prohibit out-of-quota imports, which runs counter to the WTO principle of eliminating quantitative restrictions.

The distribution of tariff quotas in Korea still leaves much room for improvement. The allocation and administration of tariff quotas and import quotas for rice involve 22 official and semi-official organizations such as government agencies like the Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF), state-trading enterprises and various producer associations. Domestic producers whose goods compete with the imports under tariff quota regime, in fact, run and

control organizations responsible for quota allocation and administration, and these organizations tend to restrict imports through quota allocation. Chinese enterprises complain that quotas for some products have not been filled over many years, which presents an obstacle for these products to enter the Korean market. Although the Korean government indicates that it can supervise the conduct of state-trading enterprises and producer associations authorized to handle quota allocation and administration, it is clear that a credible and reliable import administration regime should not allow an organization with a vested interest to participate in the import management. China expresses great concern over the Korean way of distributing and administering quotas.

The Korea Agro-Fisheries Trade Corporation handles the bidding process of quotas and monopolizes the domestic sale of tender products in Korea. Chinese enterprises report that as the policy-maker and implementer of tendering rules and the participant in the tendering process, the Korea Agro-Fisheries Trade Corporation does all it can to guard its monopolistic interest in the design and enforcement of the tendering system. The unfair tendering practices on the part of the Korea Agro-Fisheries Trade Corporation have greatly restricted the Chinese exports to Korea and resulted in considerable losses for Chinese enterprises.

3.1.3.1 Restrictive Stipulations on the Eligibility of Tenderers

According to the stipulations of the Korea Agro-Fisheries Trade Corporation, foreign enterprises cannot submit tenders for quotas directly. Instead, Chinese enterprises must submit their tenders through a Korean agent, and as a result, have to pay a large sum of agent fees, and bear other risks and losses.

3.1.3.2 Lack of Transparency in Bidding Information

Since September 2008, the Korea Agro-Fisheries Trade Corporation has continued to publish tender offers and contracts in English on its website, but its contents are subject to frequent changes without any formal textual explanations. Korean domestic agents are briefed on such information which is not made available to overseas suppliers. This clearly indicates that the bidding process lacks transparency. In addition, the Korea Agro-Fisheries Trade Corporation fixes internal and confidential conditions of tender. For example, if the tender price of garlic exceeds the target price set internally by the Korea Agro-Fisheries Trade Corporation, the tender results will be deemed invalid and will not be accepted. The Chinese side believes that such a practice in the tendering process represents a serious violation of the basic principle of fairness and openness in tender, and hurts the importers as well as the exporters.

3.1.3.3 High Bid Bond

The Korea Agro-Fisheries Trade Corporation collects a 10% bid bond from bidders, 5% paid by domestic importers and 5% paid by foreign exporters. However, in 2008, the Korea Agro-Fisheries Trade Corporation has increased the share of bond from foreign exporters to 7%, and domestic importers only pays 3%. According to relevant stipulations by the Korea Agro-Fisheries Trade Corporation, the refunding of the bid bond may take up to four months. What's more, at the end of the bidding process, the Korea Agro-Fisheries Trade Corporation often withholds the bid bond under various pretexts. Because of demanding tender stipulations and testing methods, the bid bond of many Chinese enterprises bidding for Korean quotas of agricultural products often fail to be fully refunded. The Chinese side believes that the high amount, the unpunctual refunding and the unreasonable withholding of bid bond takes up a lot of capital and exerts unnecessary pressure on the funds of foreign bidders, which negatively impacts their business operations.

3.1.3.4 Abuse of Dominance and Noncompliance with International Practices

The Korea Agro-Fisheries Trade Corporation unilaterally draws up all the import and export contracts involved in the quota regime, whereas foreign exporting enterprises, having no say in contract preparation, cannot negotiate and modify harsh contract terms. The terms of price in the invitation to bid are CFR-based. According to INCOTERMS 2000, under CFR, the buyer shall bear all the risks of loss or damage to the goods passing the ship's rail at the port of shipping. However, despite the fact that Chinese enterprises have weighed the goods before loading them onboard and provided the weight certificate issued by the Chinese Port Commodity Inspection Bureau, the Korea Agro-Fisheries Trade Corporation still demands Chinese exporters to entertain claims resulting from short-weight, and refuses the request of Chinese exporters to modify trade terms and leave insurance to be covered by Korean buyers.

3.1.3.5 Repeated and Arbitrary Inspections

According to the export contract prepared by the Korea Agro-Fisheries Trade Corporation, the costs of pre-shipment inspection are usually borne by Chinese exporters, but the inspection must be carried out under the supervision of a Japanese inspection agency designated by the Korea Agro-Fisheries Trade Corporation, the costs of which are high and paid by Chinese exporters. Moreover, upon arrival of the goods in Korea, whether or not Chinese exporters can receive their payment of the shipment depends on another inspection made by the Korean authorities. Therefore, the Korean side often uses various excuses to refuse to pay, which leads to considerable loss to Chinese exporters. In addition, inspection conducted by the Korea Agro-Fisheries Trade

Corporation lacks transparency and supervision, giving rising to possible manipulation and arbitrary judgments. Many Chinese exporters complain that even if their goods have been weighed and exceeded the weight as stipulated in the contract, the Korean side still claims that the goods are found upon arrival to be short-loaded.

3.1.3.5 Harsh Inspection Standards

The stringent inspection standards applied by the Korea Agro-Fisheries Trade Corporation are unjustified. In particular, the requirements on the size, specifications and fumigation of garlic and the new impurity standards on sesame fail to take into account characteristic features of these products, which results in great losses to Chinese exporters. In addition, demur on the part of Chinese exporters has no effect on the final decision, reflecting a serious imbalance in the rights and obligations of the two parties and a lack of fairness. Moreover, the lengthy inspection process often causes the products to be stranded at the Korean ports for as long as 20 days, far exceeding the usual 3 to 5 days for customs clearance. All the delay will not only sharply increase the relevant costs, which will be deducted from the tender bond of the Chinese exporters, but also seriously affect the quality of the products.

The Chinese side thinks that Korea is a leading market for Chinese agricultural exports, but the Korean import tender system for agricultural products subject to tariff quotas smacks of strong trade protectionism, clearly discriminates against Chinese exporters, increases the risks of Chinese exporters who participate in the tender, and creates unnecessary and heavy burdens on Chinese exporters. All this does no good to the development of normal trade relations and the reduction of huge trade deficit between the countries. China urges Korea to improve their practices in order to help develop a healthy bilateral trade. Chinese exporters to Korea are advised to handle the entire process of export prudently so as to avoid any losses.

3.1.4 Adjustment Tariffs

Out of concerns of environmental protection, consumer interests and balanced development of domestic industries, Korea retains the right to impose adjustment tariffs in addition to basic tariffs. However, in practice, adjustment tariffs have been used to restrict imports which compete with home products for the purpose of sheltering relevant domestic sectors. In 2008, Korea lowered adjustment tariffs of 7 products, the level of reduction ranging from 3% to 5%. Nonetheless, according to the list of adjusted tariff rates in 2009 published by the Ministry of Strategy and Finance (MOSF), 21 six-digit tariff items covering mainly eels, hairtail (ribbonfish), shrimps and prawns, octopus, mushrooms, certain foods, sauces, plywood, and certain electrical

appliances for shipping are still subjected to adjustment tariffs.

According to trade statistics released by the Korean authorities, half of the imports subject to adjustment tariffs originate from China. Therefore, the adjustment tariff regime and its implementation have a particularly damaging effect on Chinese products. China hopes that the Korean side will adopt effective measures to gradually lower adjustment rates and narrow the scope of products affected by adjustment rates so as to maintain the stability of tariff policy and to promote the healthy development of Sino-Korean trade.

3.1.5 Special Safeguard Tariffs on Agricultural Products

For years, Korea has been imposing contingency tariffs (special safeguard tariffs or SSG tariffs) on certain agricultural imports to protect domestic industries from falling prices as a result of surges in imports of agricultural, forest and livestock products. In 2006, Korea levies SSG tariffs on 44 products; in 2007, Korea removed SSG tariff regime on 14 products such as processed grains and sweet potato starches with insignificant volume of imports or no longer produced domestically, as well as 30 products such as mung beans and ginseng. According to the *2009 Enforcement Plan of Special Safeguard Tariffs* on Agricultural, Forestry and Livestock Products, Korea still applies in 2009 SSG tariffs to 29 products such as buckwheat, water ginseng, red ginseng, red ginseng powder, ginseng seeds, red ginseng tea, mung beans, sainfoins, and wheat flour. SSG rates for imports of sainfoins and mung beans run as high as 810% and 561% respectively; SSG rates for imported buckwheat and peanuts are well over 300%.

China believes that as many products subject to SSG rates such as sainfoins, mung beans and peanuts are leading exports from China to Korea, high SSG rates seriously distort the comparative edge of Chinese exports and negatively impede normal trade in the relevant products. China hopes that Korea will take adequate measures to improve its market access for agricultural products.

3.2 Import Restrictions

In recent years, Korea have adopted restrictive measures on many Chinese products with competitive edge, including garlic, ginseng, kimchi, sauces with red pigments, aquaculture products, Chinese herbal medicines and fresh fruits.

Korea subjects various kinds of medicines including traditional Chinese medicine patent prescriptions to licensing. As Korea is currently a leading market for the export of traditional

Chinese medicines, licensing regime on medicines and medicinal materials increases the costs of Chinese exporters and presents a barrier to the Korean market.

During the Uruguay Round of trade negotiations, Korea is allowed to subject rice to quantitative restrictions for a period of 10 years. When the validity of the measure expired in 2004, in order to continue to protect farmers in the country, Korea notified the WTO and reached an understanding with its leading trade partners such as China and the US, which permitted the continuation of quota restrictions on rice with a growing minimum market access (MMA) commitments over another 10-year period (i.e., until 2014). Under the re-negotiated arrangement, Korea is obliged to double its total rice imports over the ten years, increasing the MMA quota from 226,000 tonnes to 409,000 tonnes in 2014. Under the revised arrangement, rice imports available for table consumption should increase from 10% of the quota in 2005 to no less than 30% by 2010. Rice for consumer use imported through open bidding in 2009 stood at approximately 19,000 tonnes, account for about 15% of the import target in 2014.

3.3 Barriers to Customs Clearance

The number of preferential arrangements between Korea and its trading partners is growing, but the country of origin requirements under various arrangements differ greatly, leading to complexity in customs clearance. Inspections like sampling tests and tax clearance check conducted by government agencies such as the Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF) and the Korea Customs Service (KCS) often result in delays in customs clearance, and these inspections themselves also lack transparency. Customs clearance procedures in Korea hinder the export of Chinese products, particularly agricultural and marine products.

According to the *Safety Policy on Imported Articles* issued in December 2008, the Korea Customs Service (KCS) subjected 7 key imports, consisting of foods, medicines, garments, kitchen appliances, cosmetics, jewelry and toys, to particular safety surveillance in 2009. For this purpose, the KSC formulated 3 core strategies, that is, taking precautions, strengthening interventions and responding swiftly, and 20 specific countermeasures. The KCS is also planning to revise relevant regulations so that in case of detection of hazardous imports, 47 customs offices throughout the country may suspend customs clearance of the products involved. Sanitary standards on bonded warehouses have become obligatory, and penalty will be imposed on enterprises in violation of sanitary standards. In addition, the KSC is considering introducing new rules of origin marking and prior registration of product components in an attempt to standardize origin marking; in the event of infringement, corrective measures will have to be taken and the enterprises involved will

be fined. As many products under particular safety surveillance are leading Chinese exports to Korea, Chinese enterprises are strongly advised to pay close attention to this measure and its developments so that they may ensure safety and quality of their products and comply with the new Korean standards on origin marking and prior registration of product components.

In addition, China expresses particular concerns over the following measures in customs clearance and their negative impact on trade:

3.3.1 Unreasonable Tariff Classifications

The Korean Customs Service (KCS) usually subjects "blended products" (those made up of various different components) to tariff rates based on their "main ingredients" and even "the purpose of importing". Such a practice often leads to the imposition of unreasonably high tariff rates. These blended products include potato chips and soy bran tablets.

In addition, the KCS often classifies primarily processed farm products as products under quota administration regime, thus reducing the utilization of quotas and achieving the objective of protecting domestic sectors.

China believes that the above-said practice on the part of the KCS does not conform to the *WTO Agreement on Customs Valuation*. It is hoped that Korea will correct such a practice.

3.3.2 Arbitrary Customs Valuation

In the Korean market, trade in agricultural products is subject to margin and benchmark price regime. Under the customs benchmark price regime, taxation is based not on the invoice value, but on the computed price, of the products. Under the margin regime, products whose declared price is below the benchmark price are subject to a margin. In 2006, Korea substantially increased its benchmark price, on which taxation is based. According to reports from Chinese exporters, the margin and benchmark price regime seriously affects Chinese exports of azuki beans to Korea. In 2009, Korea still maintained its benchmark price scheme for azuki beans at US$ 496/ton. When the declared price is lower than the benchmark price, a margin (difference between declared price and benchmark price × 420.8% × 1.1) will be collected, and a decision will be made by the customs authorities within 3 months to determine whether the declared price is reasonable. If the declared price is found to be unjustified, the margin will not be refunded.

China believes that the benchmark price, set at too high a level, does not accord with the market

mechanism, and that the method to calculate the benchmark price has never been announced. The margin and benchmark price regime poses a barrier to trade. Korea not only subjects azuki beans to out-of-quota tariff at 420.8%, but also restricts the price of Chinese azuki beans through the margin and benchmark price regime. As a result, the volume of Chinese exports of azuki beans has been restricted. According to the *WTO Agreement on Customs Valuation*, the duty-paid price should be deemed the transaction price, and not be determined by the minimum price fixed by the customs, arbitrary price or computed price. Korea sets a minimum benchmark price for azuki beans, and the grounds on which the price is based are not made known. China closely monitors the compatibility between the Korean margin and benchmark price regime and its unreasonable practice on the one hand and the *WTO Agreement on Customs Valuation* and Article XI "general elimination of quantitative restriction" as contained in the *General Agreement on Tariff and Trade* (GATT) 1994 on the other hand.

3.3.3 Pre-Customs-Clearance Tax Check

On the grounds of preventing evasions of customs duties through undervalued declaration, the Korean Customs Service (KCS) subjects certain agricultural products to tax check prior to customs clearance. Since 2003, the KCS has further strengthened the tax check regime, extending the scope of product categories under the regime to 18, including sesame, fructus perillae, dry sainfoins, dry mung beans, peanut flavors, soy beans for sprouting, onions, barley, sweet potato starches, frozen chili, frozen garlic, garlic pickles, fresh and frozen garlic, temporarily immersed garlic, dry garlic and carrots. At the same time, sampling rate has been increased from 5% to 20%. Korea announced in 2007 that it no longer subjected products like dry garlic, velvet, velvet fur, and precious stones to pre-customs-clearance tax check. However, in 2009 Korea still required over 10 products to be put under tax check prior to customs clearance. In addition, the way to conduct tax check changes frequently and arbitrarily.

Although seemingly the implementation of pre-customs-clearance tax check does not vary with the country of origin of the products, trade statistics released by the Korean authorities indicate that most products come from China. In practice, this constitutes a discrimination against Chinese exports. The enforcement of tax check adds to the time of customs clearance and obstructs the export of Chinese products to Korea. China is very concerned with pre-customs-clearance tax check in general, the rationality, transparency and fairness of its taxation method in particular, and its compatibility with the *WTO Agreement on Customs Valuation*.

3.3.4 Early Warning System Against Undervalued Declaration of Agricultural, Forest and

Fisheries Products

In August 2007, Korea established SIREN, an early warning system to block undervalued imports of agricultural, plants, and fisheries goods. SIREN is designed to screen out undervalued products by calculating the proper import prices of the products and comparing the prices with the declared prices. Based on the result, undervalued products go through audit, while normal products are cleared promptly. To be specific, SIREN works this way: the Korean Customs Service (KCS) collects price information through the Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF), the Korea Agro-Fisheries Trade Corporation and other relevant companies, compares on the base of SIREN the prices of imports with the prices of identical or similar products, and determines the proper import prices of relevant imports. The operation of SIREN seems, inevitably, to have had an import substitution effect.

China believes that the above practice is arbitrary, lacks transparency and justification, and imposes an unreasonable burden on exporters, because the Korean customs authorities determine the fair prices of specific imports solely on the base of Korean official information on prices and without investigation of production costs in relevant exporting countries. Since the launching of SIREN, the Korean government has not produced any quantitative analysis regarding the validity of the system. While reserving anti-dumping and tax check measures, Korea operates SIREN targeting agricultural, forest and aquatic products. Such a move is not based on any reasonable grounds and constitutes overprotection of its domestic sectors. China expresses great concern, hoping that the Korean side will simplify and streamline its customs clearance procedures to promote healthy development of trade between the two countries.

3.4 Technical Barriers to Trade

The Korean government has put in place complicated technical regulations, standards and certification procedures for a wide range of products, including agricultural products, animal products, fisheries products, cosmetics, food, pharmaceuticals, medical appliances, electronic and electric appliances, chemicals, toys, and miscellaneous manufactured articles.

3.4.1 Complex and Changing Technical Standards

Korea subjects many products to complicated inspection standards and often arbitrarily raises these standards. In 2009, Korea set and revised or proposed to set and revise some 10 technical standards, thus placing a heavy burden on relevant exporters. To be specific, Korea published in 2009 *Product Quality and Distribution Monitoring Program* covering over 300 products, *Amendments to Safety Control of Electrical Appliances*, *Safety Standards on Digital Door Locks*,

Standards on Children's Jewelry and Light Emitting Diodes, *Draft Amendments to Bicycle Safety Standards*, and *Safety Standards on Sewer Products*, all of which substantially enhance the inspection standards of related products and greatly increase the inspection costs of the exporters.

3.4.2 Lack of Stability in Labeling Rules

Korea's complex and opaque labeling requirements have substantially increased the burden on the exporters. For example, labeling standards on alcoholic beverages have been constantly modified, which greatly adds to the costs of foreign exporters. The new labeling rules on garments require that the name of the domestic manufacturers or the importer to figure on some form of label or hangtag on every garment, which adds to the workload and production costs of the exporters. Shifting labeling requirements made by the Korean Food and Drug Administration (KFDA) have caused a great deal of inconvenience to the relevant enterprises. The FKDA requires that drugs be attached with permanent labels indicating product information such as daily in-take and that non-permanent labels such as sticky tags be prohibited. Therefore, pharmaceutical enterprises must change all the product labels to comply with this requirement.

3.4.3 Safety Testing and Inspection Agency Certification

Korea recognizes inspection certificates and accreditation issued by properly equipped and qualified Korean non-government inspection agencies, but not inspection agencies from other countries. Chinese enterprises complain that exports already passing inspection in China are still subjected to testing and certification in Korea, which increases the testing costs and consumes too much time.

In addition, actively involved in the development of domestic telecommunications sector, the Korean government indirectly participates in matters of standardization in telecommunications by setting conditions for franchise, implementing mandatory standards and technical regulations, or by way of industry associations and government-affiliated research institutes. According to licensing requirements, telecommunications equipment is subject to mandatory standards, and Korean enterprises are asked to adopt particular technology by industry associations and quasi-official organizations. The Chinese side is very concerned about the impact of such practices.

3.4.4 Unreasonable Origin Labeling Requirements

The Korean government continues to update and strengthen the administration of country of origin marking, but some of its requirements are far from reasonable. The *Foreign Trade Act* as amended

in April 2009 stipulates that as from October 2009, the penalty of fines for falsification of origin marking would be increased from KRW 3 million to KRW 300 million. The *Proposed Amendments to the Korean Industrial Marking Standards* published in June 2009 provides that as from June 2010, every reinforcing bar should be marked with its origin and manufacturer, and steels at the interval of less than 1.5 meters be attached on its surface with a label. According to Article 2.1 in the *WTO Agreement on Technical Barriers to Trade* (*TBT Agreement*), "Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country." The Chinese side believes that the requirement to mark every reinforcing bar with its origin and producer goes beyond any reasonable management of origin, creates unnecessary burdens on the enterprises, and restricts the export of steel products to Korea, all of which runs against Article II in the *TBT Agreement*.

3.5 Sanitary and Phytosanitary Measures

Chinese products significantly affected by Korea's sanitary and phytosanitary measures mainly include agricultural goods, aquatic products, livestock products, food and food additives, pharmaceuticals and medicinal materials.

3.5.1 Import Quarantine System

Korea subjects agricultural imports to harsh control through quarantine measures and health standards. Imported agricultural and livestock products have to pass through divergent and complicated quarantine and health inspections, while quarantine rules are complex and change frequently. In 2009, Korea updated its standards and specification of food, functional food, and food additives, once again substantially raising quarantine standards. In May 2009, to improve its precaution and control of food quality, the Korean Food and Drug Administration (KFDA) significantly raised quarantine standards regarding hazardous substances in food, including wheat, rye, barley, maize and its processed products, maize flour, roasted coffee and instant coffee.

Sampling and testing procedures for imports are very cumbersome, and some quarantine standards are far more complicated than international standards. According to reports from Chinese exporters, the number of laboratory testing items for Chinese products runs into over 100. In addition, goods upon arrival are often arbitrarily subjected to testing items not stipulated in the contract, and additional duties will be imposed if the test result indicates failure of conformity. For example, it is often required without obvious reasons that moisture content of Chinese frozen red peppers reach 80%, and if found otherwise in the inspection, those products are levied additional

duties, which often results in great losses to the Chinese exporters. Furthermore, Korea tends in practice to apply the strictest testing standards to Chinese exports. Testing methods in Korea fall into three categories: sensory testing, sampling and full testing. Generally, while sensory testing applies to agricultural products originating from countries such as the US, Brazil and Thailand, Chinese agricultural products are subjected to full testing. The Chinese side is very concerned with Korea's discriminatory practice against Chinese exports in quarantine inspection.

In 2009, Korea increased the overall ratio of precision inspection of imports. The ratio of precision inspection (1% to 100%) varies with the risks of imports and frequency of failure of compliance, and the overall precision inspection ratio is increased from 23% in 2008 to 30% in 2009. If hazardous substances are detected in the products, provisional import restrictions will be adopted until the cause has been determined and corrective measures taken.

The Chinese side also notes that Korea applies very harsh requirements on wood packaging in imports. A system of import and export plant fumigation service providers has been established; only qualified fumigation service providers can handle fumigation of wood packaging in import and export; plant products subject to quarantine must be sealed and insulated during transport and storage.

3.5.2 Plant and Animal Disease Regionalization

Regarding plant and animal disease regionalization, Korea always regards the entire territory of China as a single entity; if a disease or pest is known to occur in a particular region in China, the same products from disease-free regions in China are also banned from importing into Korea. According to reports from Chinese exporters, the Korean quarantine agency refuses to conduct certification of origin inspection on the pretext that China is disease-infected, thus making it impossible for Chinese products to be exported to Korea. Such a practice runs counter to the principle of disease regionalization as contained in Article XI of the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures* (*SPS Agreement*).

According to the *Guidelines on Import Risk Analysis for Animals and Animal Products* effective as from 27 August 2008, Korea may determine whether a particular region is disease- or pest-infected based on import risk analysis. China welcomes Korea's attempt to deal with the issue of disease regionalization through legislation, keeps a close watch over the implementation effect of the law, and advises relevant Chinese enterprises to note the changes in Korea's quarantine policy and to take proactive measures to promote their export to Korea.

3.5.3 Agricultural Products

Korea demands that 7 types of fruits (pumpkins, bananas, oranges, pineapples, sweet melons, water melons, and durians) be marked with the country of origin on the surface of each. This rule is no doubt exceedingly demanding. The Chinese side believes that origin marking needs only to be put on the surface of each container of fruits. The requirement to label each fruit will place unnecessary burdens on producers.

3.5.4 Genetically Modified Food

According to the *Proposed Amendments to Labeling Standards on Genetically Modified Food* submitted to the WTO by the Korea Food and Drug Administration (KFDA) in October 2008, Korea extends the scope of products subject to mandatory labeling requirements for genetically modified or engineered food. The Chinese side believes that the definition of "genetically modified crops" in the proposal lacks clarity; for example, supposing that finished food products do not contain genetically modified components but have used genetically modified products during the stage of processing, it remains unclear whether such products should be labeled as genetically modified. In addition, the proposal stipulates that labeling requirements on genetically modified food do not apply to products with genetically modified components below a certain limit, but the limit itself is not specifically set. Reportedly, Korea will further extend the scope of labeling rules for genetically modified organism (GMO).

In 2009, citing concerns over GMO, the Korean authorities still insisted that Chinese rice imported into Korea under its minimum market access (MMA) undertakings be issued with a non-GMO certificate from the Chinese government, certified as non-GMO prior to shipment by an accredited international inspection agency designated by the Korean Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF), and subjected to GMO inspection upon arrival by the Korean Food and Drug Administration (KFDA) in accordance with the *Food Sanitary Act*. Since Korea is a leading market for Chinese rice exports, China expresses grave concerns over the repetitive GMO inspections of Chinese rice by the Korean authorities, and advises Chinese rice exporters to pay close attention to labeling requirements for GMO.

3.5.5 Fisheries Products

Apart from specific requirements as to physical appearances, specifications and freshness, Korea maintains strict standards on hormones, pesticide residues, heavy metals, food poisoning bacteria, and other hazardous substances in imported fisheries products.

According to the *Fisheries Product Quality Control Act*, imports of fisheries products for use of transplant are subject to approval by the Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF); to ensure safety and quality of fisheries products, the MIFAFF shall conduct inspections on the presence of heavy metals, shellfish toxins, food poisoning bacteria, antibiotic residues, and other hazardous substances in fisheries products during production stage and in fishing waters, fishing areas and fishing equipment; according to *Food Safety Act* and other relevant laws, the MIFAFF shall conduct laboratory inspections of residue limits in fisheries products during packaging stage and before being placed on the market; the MIFAFF will, upon requests from the applicants, inspect quality, specifications, composition, and residue limits of fisheries products; and according to the *Foreign Trade Act*, fisheries products (excluding imported live fish) should be certified as to its origin, and if genetically modified, subjected to GMO labeling requirements.

In 2008, the Korean Food and Drug Administration (KFDA) revised its *Food Standards and Specifications*, adjusting maximum residue limits (MRLs) of lead, cadmium, malachite green, crystal violet and other hazardous substances in imported fisheries products. The revision has raised the threshold of market access to Korea.

In 2009, the Korean authorities expressed their intention to further strengthen inspections and quarantine measures on fisheries products in 2010. The sampling rate of fisheries products during the process of customs clearance will be increased from the current level of 28% to 30%, and items of antibiotics subject to laboratory testing will be increased from the current number of 32 to 44. At the same time, if the presence of hazardous substances is detected in fisheries products in or outside of Korea, the Korean authorities will swiftly conduct inspections on relevant products. In addition, Korea will intensify inspection efforts of production facilities of fisheries products in China, Thailand, Vietnam and Indonesia.

The Chinese side notes that on the grounds of food safety and protection of human beings from plant and animal pests, the Korean authorities have frequently revised its standards and rules on food, health food, food contact materials, food additives, livestock processing. Most of the new standards and requirements fail to take into reference international standards, guidelines and recommendations, and most notices announcing proposed amendments do not indicate when they are to be ratified and run into force. All this confuses Chinese exporters, who face great uncertainty in production plans and export strategies. China understands that the Korean side is

genuinely trying to set reasonable and scientifically-based food standards and specifications, in order to ensure food safety, animal health, plant preservation, and freedom of human beings from risks presented by plant and animal diseases. However, China expresses concerns over frequent changes in Korea's sanitary and phystosanitary measures, lack of scientific grounds, and uncertainty of the enforcement of the new laws. China also hopes that the Korean authorities will make an effort to bring the relevant measures in line with the WTO rules so as to promote healthy development of bilateral trade relations.

3.6 Trade Remedy Measures

In 2009, Korea did not launch any new trade remedy investigations against China. Till the end of 2009, Korea has initiated a total of 29 trade remedy investigations against Chinese exports, including 2 safeguard investigations and 27 anti-dumping investigations.

3.7 Government Procurement

In accordance with its commitments to the *WTO Plurilateral Agreement on Government Procurement* (GPA), GPA applies to 44 central government agencies, 15 local government bodies, and 23 enterprises affiliated with central and local government agencies. It covers government procurement in goods, services and construction. The threshold volume of procurement of goods and services for central government agencies is 13,000 SDR (special drawing rights), and that of procurement of construction is 5 million SDR; the starting value of procurement of goods and services for local government agencies is 200,000 SDR, and that of procurement of construction is 15 million SDR; the threshold volume of procurement of goods for enterprises affiliated with central and local government bodies is 450,000 SDR, and that of procurement of construction is 15 million SDR. Because Korea set the threshold value of construction procurement at a very high level when it signed the GPA, this makes it very difficult for foreign enterprises to participate in most of tenders for construction in Korea.

The number of GPA-covered entities in Korea is relatively small. As is indicated from the 2004 data released by the WTO Secretariat, procurement by GPA-covered entities represented less than half of Korea's total procurement. In addition, a number of exceptions to GPA commitments have been made by Korea; for example, procurement from a single source as provided for by law, procurement from small and medium-sized enterprises (SMEs), procurement of agricultural, fisheries and livestock products, national defense procurement, and procurement of all the other services not covered by GPA do not involve open international tenders.

3.8 Subsidies

Korea subsidizes in various ways agriculture, forestry, fishery, and certain manufacturing sectors.

3.8.1 Subsidies to Agriculture, Forestry and Fishery

Korea provides substantial subsidies to farmers in the country. For example, in the name of ensuring the supply of ample staple food and sufficient food stock, Korea maintains heavy subsidies for farm products through government procurement. Korea also provides agricultural sectors with sizable subsidies to improve the quality of agricultural and animal products and to lower distribution costs. Heavily subsidized agricultural products include, *inter alia*, rice, wheat, maize, soy beans, garlic, fruits, fresh flowers, kimchi, vegetables, cattle, and Korean ginseng. According to Article 9.4 in the *Agreement on Agriculture*, Korea also provides export subsidies to agricultural products such as fruits, flowers, vegetables, kimchi, ginseng and livestock in order to reduce marketing costs of exporters.

The total subsidies provided by Korea to its agricultural sectors arrived at US$ 29.6 billion in 2007 and US$ 21.5 billion in 2008, accounting for 3.05% and 2.43% of its GDP respectively. Most agricultural subsidies serve as producer assistance, standing at US$ 26.0 billion in 2007 and US$ 18.4 billion in 2008, and accounting for 87.44% and 85.58% of total agricultural subsidies respectively. Among the total producer assistance, output subsidies account for approximately 87.41%, input subsidies make up around 4.86%, and subsidies based on total farming income, cultivated land or number of livestock account for about 8.85%. In 2007, the producer nominal assistance coefficient (NAC) of Korea's agricultural subsidies was 2.68, the nominal protection coefficient (NPC) was 1.94; and in 2008, NAC and NPC reached 2.86 and 2.07 respectively.

In March 2009, the Korean authorities increased credit insurance to support the export of agricultural products through the Korea Agro-Fisheries Trade Corporation and the Korean Export Insurance Corporation, raising the ratio of export credit insurance from the current level of 80% to 90%, and intensified marketing efforts for agricultural products in new emerging overseas markets, encouraging through government subsidies agricultural exporters to participate in foreign agricultural shows.

China believes that Korea's agricultural subsidy schemes stimulate its domestic agricultural production and distort trade in agricultural products. As all the heavily subsidized products such as rice, maize and wheat are leading exports of China to Korea, China is very concerned with Korea's agricultural subsidies and their negative impact on trade in agriculture.

In addition, Korea also subsidizes forestry and fishery in the form of loans and appropriations. For example, Korea provides subsidies through low-interest loans to producers of plywood and board, individuals or enterprises running timber mills, deep-sea fishing companies, overseas resources development companies, and fishermen. Through appropriations and low-interest loans, Korea subsidizes companies and individuals handling, warehousing and processing fisheries products, as well as aquaculture fishermen. As China is the largest exporter of fisheries products to Korea, the Chinese side shows great concern over Korea's policy of subsidizing its fishery.

3.8.2 Subsidies to Manufacturing

Aside from agriculture, forestry and fishery, Korea, through its industrial policy and its banking system, provides manufacturing sectors like electronics, shipbuilding and machinery with subsides such as bank loans, bank guarantees, debt relief, debt reduction, interest relief, tax concessions, and cash allocation.

In March 2009, Korea decided to set up a Structural Adjustment Fund and provided it with capital support by issuing secured bonds. Through purchasing nonperforming loans of enterprises extended by financial institutions such as banks, the Fund is expected to help manufacturing businesses promote restructuring process.

In addition, China has observed that to relieve the tax burden on ships of international voyage, deep-sea and coastal fishing vessels, Korea continued to offer relief of local taxes to the builders and purchasers of such vessels in 1997, although such incentives should have expired by 2006.

The heavily subsidized manufacturing industries in Korea, particularly electronics and shipbuilding, compete directly with relevant Chinese industries. The Chinese side will continue to watch closely Korea's subsidy policy and the impact of its implementation.

3.8.3 Other Subsidies

To stimulate domestic demand, Korea provided subsidies to those who scrap their old vehicles in 2009. To trade in one's old car for a new one, a person is entitled to a reduction in individual consumption tax and vehicle registration tax by 70%. At the same time, as the subsidy policy of granting a 70% tax relief for hybrid electric vehicles (HEVs) is expected to end by 2009, the Korean government is contemplating providing consumption subsidies for HEVs in 2010. Moreover, the Korean authorities provide technological and fund support to domestic automobile

makers in order to expand the production of HEVs and alternative fuel vehicles.

3.9 Barriers to Trade in Services

Korea continues to ban or block foreign investment in certain services sectors through ownership limits and other restrictive measures.

3.9.1 Legal Services

The Korean authorities are planning to open up legal services market in Korea in three phases. In the first phase, foreign lawyers are allowed to enter into Korean legal services market and provide advisory and consultancy services; in the second phase, foreign and Korean law firms are permitted to carry out operational cooperation; and in the third phase, foreign and Korean law firms may form joint venture law firms, provide legal services in Korea, and employing Korean lawyers.

In March 2009, the Korean National Assembly enacted the *Foreign Law Consultants Act*, which takes effect as from September 2009. The Act starts the first-phase opening up of the Korean legal services market. According to the Act, lawyers from the 14 countries which have concluded a *Free Trade Agreement* with Korea such as Switzerland and Singapore are allowed to enter into the Korean legal services market and provide consultancy and advisory services regarding laws of foreign countries. Law firms in countries having concluded a *Free Trade Agreement* with Korea can set up in Korea a branch offering consulting services on foreign laws, and dispatch or employ their lawyers to provide Korean individuals and enterprises with consultancy services on foreign laws. Foreign law consultants can also offer their services in Korean law firms.

However, the Chinese side notes that the open-up of Korean legal services market is far from satisfactory. First of all, the market is open only to the 14 countries which have entered into a *Free Trade Agreement* with Korea, excluding a great many other WTO members such as China. Secondly, it still does not allow foreign lawyers to provide legal services by setting up an independently-run law firm. Thirdly, law firms from countries other than those 14 countries having signed a *Free Trade Agreement* with Korea cannot enter into legal services market in Korea, even if their countries have concluded a *Free Trade Agreement* with those 14 countries.

China welcomes the plan of Korean to open up its legal services market, but many restrictive measures still prevent the Chinese side from offering legal services in Korea. It is hoped that Korea will take effective measures within a multilateral framework to further liberalize its legal

services market.

3.9.2 Insurance and Banking

In 2009, trade barriers to insurance and banking remain largely unchanged in Korea. Although the current Korean legislations and regulations allow foreign insurance, banking and financial services providers to establish a subsidiary or branch in Korea, restrictions exist on cross-border supply of financial services. Major trade barriers present in Korea's insurance and banking sectors include: (1) As the Korea Postal Service, the Korea Union of Agricultural Associations and the Korea Union of Fishery Associations are not subject to the supervision of the Korea Financial Supervisory Commission or the Korea Financial Supervisory and Service Bureau, they enjoy greater advantage compared with other insurance service providers; (2) The reports of the Korea Insurance Consumers' Complaints Mechanism often prejudice Korean consumers to take out insurance from large local insurance companies; and (3) The financial management system in Korea lacks transparency, and a Foreign Bank in Korea intending to set up another branch will have to go through all the procedures as if it were setting up the first branch, which are more complicated and tedious than those for local Korean banks.

3.9.3 Entertainment and Cultural Services

In order to protect local motion picture industry and local employment, Korea subjects movies and radio and television programs to quota restrictions. According to the relevant regulations, at least 73 days per year should be reserved for Korean cinematographic works for each screen in the Korean movie theaters, the time for screening movies originating in foreign countries should not exceed 75%, and the time for showing movies produced by the same foreign country should not exceed 60%. Television and radio transmission time should not exceed 20% for foreign programs, 55% for foreign animated cartoons, and 40% for popular music. Transmission time for foreign-produced programs should not exceed 50% for each channel in a satellite television station.

China notes that quota management in Korea restricts the market share of movies and television and radio programs produced in other countries including China. China urges Korea to further open up its market of telecasting and audiovisual services.

3.9.4 Telecommunications

The Korea government requires that foreign satellite service providers should set up a company in Korea before being allowed to provide their services to the end-users in Korea. However, the

many restrictions placed on foreign investment in the Korean telecommunications sector make it nearly impossible for foreign satellite service providers to compete with their local rivals. Concerned with the market barriers in the Korean telecommunications industry, China hopes that Korea will take effective measures to promote the open-up of its market.

3.10 Intellectual Property Rights Protection

Inadequate intellectual property rights (IPRs) protection in Korea has led to heavy losses for Chinese firms. According to reports from Chinese companies, brand-jacking and cyber-squatting of Chinese well-know trademarks are not uncommon in Korea. For example, Chinese name brands of liquor such as “Wuliangye” and “Jiugui” have been maliciously registered in Korea, and some 50 Chinese famous tea brands and their domain names such as “Tuocha”, “Biluochun”, “Dahongpao”, “Longjin”, “Tieguanyin”, “Pu’ercha”, “Lu’an Guapian”, “Zhucha”, and “Xinyang Maojian” have been willfully registered by Korean tea dealers, which seriously affects the export of Chinese tea to Korea.

Trademark legislations in Korea stipulate that application for trademark registration with a malicious intent should be rejected. However, some enterprises and individuals in Korea have maliciously applied for and been granted IPRs protection, without offering any compensation for the right holders in China. For example, “Duanwujie” (aka Mid-Autumn Festival), a traditional Chinese festival, has been registered as a domain name by a Korean company; “Niuhuang Qingxin Wan” (bolus of cow-bezoar for clearing heart-fire), a traditional Chinese medicine patent prescription, has been successfully patented by a Korean enterprise as a kind of oral liquid and microcapsule, which exerts a negative impact on the manufacture and export of relevant Chinese products.

Gravely concerned about the consistency between Korea’s IPR policy and its commitments under international treaties on IPR protection signed by Korea, China hopes that Korea’s IPR legislation and enforcement will respect the legitimate Chinese right holders.

4 Barriers to Investment

Barriers to foreign direct investment (FDI) still remain in Korea and restrictions continue to be placed on inward FDI as to the fields allowed to be invested and the operation of foreign-capital invested companies, although a wide range of incentive policies designed to promote FDI have been adopted by Korea in accordance with the 2007 amended *Foreign Investment Promotion Act* (FIPA), including tariff concessions for imported machinery, cash grant for high-tech investment,

and preferential treatment for regional headquarters of multinational corporations.

As of 2009, in addition to banning foreign investment in sectors such as the central bank, mutual aid funds, state executive administration, academic research, education, the arts, social organizations and religious organizations, Korea restricts FDI in industries such as postal services, stock exchange, television and radio broadcasting. Korea also places restrictions on FDI in 27 industries such as publishing of newspapers, publishing of magazines and periodicals, coastal and inshore fishing, growing of cereal crops and other crops for food, farming of beef cattle, power generation, transmission and distribution of electric power, wholesale of meat, coastal water passenger transport, coastal water freight transport, scheduled air transport, non-scheduled air transport, wired telecommunications, wireless telecommunications, telecommunications equipment leasing, other telecommunications, wireless paging, domestic commercial banking, trust companies, audiovisual services, integrated cable and other cable telecommunications, satellite telecommunications, news agency activities, and radioactive waste disposal. For most of the afore-said business sectors, restrictions are in place as to ceilings on foreign ownership, forms of investment and largest shareholder demands; and certain subsectors are fully closed to foreign investment such as rice and barley growing, the supply of nuclear power fuels, domestic commercial banking other than local banks.

Moreover, regulations in areas such as taxation and labor pose as obstacles to the running of foreigner invested businesses.

4.1 Taxation

The unsound tax regime in Korea has become a primary deterrent to global inward FDI. According to the Korean tax laws, a progressive tax system applies to corporate income: 15% for companies with a profit below KRW 100 million and 25% for those with a profit over KRW 100 million. In addition, the unreasonably lengthy period of tax investigation and arbitrary practices of investigators place a great burden on the normal operation of foreign invested companies in Korea. China hopes that Korea will improve its taxation regime so as to enhance its efficiency and transparency.

4.2 Labor

Korea subjects foreign labor to quota restrictions. According to the decision made by the Korean authorities in March 2009, the quota for foreign workers fell from 100,000 in 2008 to 34,000 in 2009: 23,000 for manufacturing and 11,000 for construction, services, agricultural, livestock and

fisheries industries. China believes that the administration of quota on foreign employment in Korea makes it hard for foreign invested enterprises to recruit much-needed talent from abroad and hinders their business operations.

4.3 Others

For several times in recent years, Chinese invested companies in Korea have been illegally searched by the Korea judiciary department, and their employees have been issued a judicial summons and even arrested without a due process, which has seriously impacted on their normal business operations and dampened enthusiasm of Chinese enterprises to invest in Korea. China hopes that Korea will make an effort to provide a healthy and sound environment for foreign investors.

Furthermore, according to the *Agreement on Provisional Measures on Reciprocal Exemption of Old-Age Insurance Premiums* concluded between Korea and China, Chinese private business people and Chinese nationals employed by Chinese invested companies, offices and other organizations in Korea, after submitting relevant supporting documents, do not need to contribute to the National Pension Fund and national pension premiums already paid before 23 May 2003 will be refunded. However, only premiums paid by Chinese enterprises between 1 January and 23 May 2003 have been returned so far. China is now holding talks with Korea on the reimbursement of premiums paid by Chinese enterprises before 2003.