

PART III. Scope of the JKFTA

Investment

110. The Joint Study Group recognized that the JKBIT, which came into effect on January 1, 2003, is one of the most advanced BITs concluded to date and stipulates not only the protection but also the liberalization of investments between the two countries at the highest level covering most of the business sectors.

111. The Joint Study Group noted that the JKBIT included following elements in order to increase bilateral investment by building a institutional framework.

- a. Principles of National Treatment (NT) and Most Favored Nation (MFN) treatment both in pre-establishment and post-establishment
- b. Provisions to prohibit performance requirements which are likely to have distorting effects on business activities
- c. Provisions on transparency
- d. Provisions on expropriation and compensation with a view to preventing indiscriminate expropriation and/or unfair compensation of foreign investment
- e. Provisions on free transfer of payments
- f. Provisions on settlement of disputes between a Party and an investor of the other Party through consultation, negotiation and arbitration mechanisms

112. The Joint Study Group noted that it should be determined whether the JKBIT would be included as a part of the JKFTA or not. In addition, the Korean side mentioned that the possibility of further liberalization of bilateral investment between the two countries should be examined in the negotiations for the FTA.

113. The Joint Study Group observed that there is great room for improvement in investment between the two countries, considering the size of the two economies and the volume of bilateral trade. In this regard, the Joint Study Group expressed its wish that recently concluded JKBIT would serve as a catalyst for expanding bilateral investment.

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Movement of Natural Persons

114. The Joint Study Group noted that the movement of natural persons constitutes important elements of economic partnership between the two countries. Given that the movement of natural persons represents Mode four of services supply, the Joint Study Group recognized the need to promote movement of natural persons especially engaged in the services sector. In this respect, it was pointed out that it is necessary to examine the requirements for work in each other's countries.

115. In this regard, the Korean side highlighted the significance of a bilateral visa waiving arrangement between the two countries. The Korean side explained its recent efforts to reduce forgery of Korean passports through such measures as building a network of sharing information on passport photos among relevant authorities, preparing a plan to issue biometric passports within a near future and strengthening immigration control. The Korean side also proposed to pursue provisional measures, namely visa exemption for business people and improvement of measures related to multiple visas.

116. In addition to visa exemption, Korea emphasized the importance of pursuing measures such as mutual recognition of certifications, as means to promote the movement of business people between the two countries.

117. The Japanese side responded that before moving forward to discuss issues concerning visa exemption, Korea would need to expend further efforts to improve the illegal entry and stay of Koreans in Japan. The Japanese side, especially members from the business sector, nevertheless, pointed out that exemption or relaxation of requirements of visas would contribute to promoting business between the two countries.

118. The Joint Study Group noted the progress made in this area such as mutual recognition of information technology (IT) engineers' certification, relaxation of visa issuance requirements for licensed people and the Asia-Pacific Economic Cooperation (APEC) Business Travel Card Scheme. The Joint Study Group also welcomed the results of the recent Summit Meeting

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between Japan and Korea, in which the leaders agreed to consider visa exemptions for Korean students visiting Japan on school trips and to reconsider the granting of visa exemptions during a limited period as a first step in making further efforts to realize visa exemption at an early date with a view to creating a one-day life area between Japan and Korea.¹⁹

Intellectual Property Rights (IPR)

119. Highlighting the importance of protecting IPR, the Joint Study Group shared the view that Intellectual Property Rights (IPR) is an essential element for economic and cultural development.

120. The Joint Study Group noted that the patent offices of the two countries would continuously pursue the Patent Examiner Exchange Program for the effective sharing of information related to searches and examination.

121. The Joint Study Group agreed that the IPR-related provisions in the JKFTA should comply with the existing treaties on copyrights of which both sides are members, including the Berne Convention, particularly regarding the principles of the most-favored nation and national treatment.

122. The Japanese side expressed its appreciation for the Korean government's efforts to enforce its IPR regime. In addition, the Japanese side submitted to the Korean side a request list regarding improvements that need to be made in the Korean intellectual property system. The request list included simplification of the procedures, expansion of the scope of protection, change of references dates for later/earlier-filed trademark applications, and introduction of effective dead copy regulation. The Korean side requested the Japanese side that the Japan Patent Office (JPO) and the Korean Intellectual Property Office (KIPO) should appoint each other as competent International Search Authority (ISA)/International Preliminary Examination Authority (IPEA) for Patent Cooperation Treaty (PCT) applications written in English and share the examination results.

¹⁹ Joint Statement at the Summit between Japan and Korea in June 2003

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123. A member from the private sector of the Japanese side expressed a view that the greater efforts of the Korean government to enhance the IPR protection would contribute to attracting more Japanese investments and increasing the trade of products related to cultural industries between the two countries.

Government Procurement

124. The Joint Study Group noted that both Japan and Korea are parties to the WTO Government Procurement Agreement. The Joint Study Group welcomed the measures taken by both sides in order to enhance fairness and transparency as well as to promote liberalization in government procurement. With a view to identifying the current situation, both sides exchanged statistics on the government procurement contracts awarded to foreign companies. The figures indicated that Japan and Korea have not actively taken part in the government procurement market of the other side so far.

¹⁹ Joint Statement at the Summit between Japan and Korea in June 2003

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<Table 7> Government Procurement Statistics

(Korea)

(unit: million Korean Won)

		Suppliers		Contract Value
Total				61,021,536
Construction Services				36,161,551
Services				5,165,007
Supplies				19,694,978
Supplies Contracts covered by WTO GPA	Foreign Suppliers	GPA Members	USA	198,248
			JAPAN	114,654
			Germany	102,972
			Others	132,910
			Total	548,784
		Non-GPA Members		129,048
		Total		677,832
Korean Suppliers		6,485,957		
Total		7,163,789		
Supplies Contracts uncovered by WTO GPA				12,531,189

Source : Ministry of Finance and Economy, Republic of Korea (2002)

(Japan)

(unit: thousand SDRs)

		Contract Value		
Total		33,951,482		
Amounts of contracts above the threshold	Total		10,498,857	
	Construction Works		4,969,004	
	Services		1,346,360	
	Goods	Foreign Suppliers	USA	475,283
			EU	117,499
			Korea	424
			Others	98,602
			Total	691,808
Japanese suppliers		3,491,685		
Total		4,183,493		
Amounts of contracts below the threshold	Total		23,452,625	

Source : WTO (statistics for 2000 as reported by Japan under the Article XIX:5 of the GPA)

125. The Joint Study Group acknowledged the necessity for developing the electronic procurement system to simplify the current bidding procedures and to enhance transparency in government procurement in order to make a friendly environment for active participation of both domestic and foreign companies.

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126. The Korean side commented that development of the electronic procurement system contributed to enhancing fairness and transparency of government procurement procedures. The Korean side explained its National Electronic Government Procurement (G2B) System introduced in September 2002. The G2B system processes all government procurements for the purchase of goods and services and construction projects through the Internet, which covers all procurement procedures from notice of tender to payments. As a result, 84 percent of all government procurement tenders are processed via the G2B system in Korea.

127. The Japanese side explained that electronic tendering had been implemented in part for public works and would be expanded to all construction works directly conducted by the Ministry of Land, Infrastructure and Transport in 2003.

128. The Joint Study Group also pointed out the necessity to encourage companies of the two countries to form a consortium and to support their advancement into the global markets.

Competition Policy

129. The Joint Study Group came to the understanding that it is important to enhance competition law enforcement by addressing cross-border anti-competitive activities and strengthen cooperation between the competition authorities of the two countries with a view to maximize the benefits from trade and investment liberalization through the JKFTA. In this regard, the Joint Study Group shared the view that competition policy should be included in the JKFTA.

130. The Korean side stated that, although current cooperation between the competition authorities of the two countries remains at an initial stage, it is necessary to enhance cooperation in law enforcement by establishing a formal cooperative framework. The Korean side suggested that competition policy in the JKFTA could include specific cooperation items such as notification of law enforcement activities that may affect the interests of the other side, negative

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comity, positive comity, confidentiality of information, and mutual assistance on law enforcement activities.

131. The Japanese side responded that it would like to start consultations on these matters between the competition authorities of the two countries, since it would be possible to strengthen such cooperation before concluding the JKFTA.

132. The Korean side pointed out that Korean companies voice concerns over the business practices in the Japanese distribution system, which restrain fair competition and discriminate against foreign companies, and proposed to include the competition authorities at NTM negotiations. The Japanese side explained its efforts to create a competitive environment by devising the guidelines for the distribution systems and business practices, and expressed its wish to be informed if there is any suspected violation against the Anti-Monopoly Act of Japan.