



ADVANCING GLOBAL COMMUNICATIONS

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March 24, 2006

Via Electronic Mail to FR0607@ustr.eop.gov

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC

Dear Ms. Blue:

On behalf of the Telecommunications Industry Association (TIA) and our 600 member companies, I would like to take the opportunity to respond to the February 9, 2006 Federal Register notice regarding a proposed Free Trade Agreement (FTA) with the Republic of Korea. TIA is supportive of bilateral efforts to secure better economic and trading relations with countries like Korea, an innovative and dynamic global partner in the information and communications technology (ICT) sector. We believe that a free trade agreement with Korea is an opportunity to cooperate on issues that could, in the long-term, spur further investment, economic and technological growth, and enhance the ICT market worldwide.

TIA is the leading trade association for the information and communications technology industry. As owner and producer of GLOBALCOMM™, TIA represents global ICT suppliers and their service provider and enterprise customers through its leadership in standards development, domestic and international policy advocacy, and facilitating member business opportunities. TIA represents the communications sector of the Electronic Industries Alliance (EIA).

From the ICT industry's standpoint, a U.S.-Korea FTA should include the following:

Transparency

Transparency is a high priority for our sector. Korea is a signatory of the World Trade Organization (WTO) Agreement on Government Procurement, and should uphold its commitments. TIA supports transparency in government procurement is ensured in the FTA, particularly in international tenders. The need for transparency becomes crucial when it comes to government procurement and international competitive bidding practices. The establishment of a fair, objective and transparent procurement regime, whether private or public, will benefit the telecommunications sector. TIA supports international competitive bidding practices, in which governmental interference is forbidden.

The services chapter of an FTA should ensure the highest level of transparency in telecommunications services by guaranteeing the publication of telecom regulations, ensuring consultations on regulation, ensuring a prior notice period for new regulations and changes thereof, as

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The Telecommunications Industry Association represents the communications sector of



well as offering full recourse to appeal decisions of the telecommunications regulatory bodies. These provisions are beneficial for governments, regulators, companies and consumers.

Technical Barriers to Trade (TBT)

The objective of any FTA is to create a level playing field for U.S. businesses competing in a foreign economy. In that vein, a U.S.-Korea FTA should focus on facilitating procurement opportunities by including the following principles:

Mutual Recognition Agreements (MRAs), Suppliers Declaration of Conformity (SDoC)

Because telecommunications is a regulated sector, Mutual Recognition Agreements (MRAs) benefit a number of countries and regional trading groups by easing entry, lowering market barriers and enabling faster market deployment of technologies and products. At this stage, the United States and Korea have started implementing the Asia Pacific Economic Cooperation (APEC) MRA for Conformity Assessment of Telecommunications Equipment. Phase I is currently operational, with 16 Conformity Assessment Bodies (CABs) in place.¹

Supplier's Declaration of Conformity (SDoC) is also important for facilitating trade and allowing technologies to access the market more quickly. SDoCs decrease costs, reduce the time to market, minimize regulatory constraints for emerging and converging technologies, allow competition and consumer protection laws to provide the appropriate business environment, and remove third party intervention or barriers to placing product on the market.

TIA recommends that this FTA contain an agreement for Korea to complete Phase II of the APEC MRA that includes test labs, and use of the Supplier's Declaration of Conformity (SDoC), in which the manufacturers attest that their products conform to the technical requirements of the receiving market. This move will neither increase the regulatory burden of equipment certification, nor add new regulations on equipment that is not currently regulated.

Telecommunications Services

The telecommunications services chapter of an FTA should also contain a number of points that TIA and member companies feel will benefit the telecommunications industry.

"Negative List" Approach for Services

The U.S.-Korea FTA should incorporate a "negative list" approach for services. The "negative list" approach is beneficial for the introduction of all new services not initially exempted because new services will automatically start off as liberalized. As a result, the principles of market access, transparency and non-discrimination for telecom and other services will be reinforced.

¹ As of February 15, 2006 The U.S. National Institute of Standards and Technology has approved 16 Conformity Assessment Bodies for the Republic of Korea. Please reference:
http://ts.nist.gov/ts/htdocs/210/gsig/apec/Korea_Phase_I.html.

Technical Barriers to Trade

Technology Neutrality

The principle of technology neutrality ("technology choice") is one of the most critical issues for regulated sectors like telecommunications. Markets and innovation benefit most when ICT manufacturers and suppliers engage in demand-driven competition, standards are competitively and openly developed, and governments do not interfere to either curb market failures or promote market champions.

While a multilateral agreement in the Asia Pacific Economic Cooperation (APEC) on technology neutrality principles is important to achieve regional goals, a bilateral free trade agreement with Korea that underscores the principles of demand-driven, internationally recognized, competitive market practices in standards development and deployment is critical.

The United States and Korea have shown their ability to resolve technological issues, such as in the case of Wireless Internet Platform for Interoperability (WIPI). At the same time, the compromise reached on Korea's licensing for Portable Wireless Internet Services in the 2.3 GHz band did not fully meet the objective of providing "technology choice" or the principle of technology neutrality. In this example, the Korean government drove the development and commercialization of new technologies and standards, which limited competition from foreign technologies. As another recent example, Korean companies are developing a mobile television standard called Digital Multimedia Broadcasting (DMB) system.

An FTA with Korea should seek to discourage another incident in which non-Korean firms were disadvantaged in the marketplace. TIA would also strongly encourage USTR to include binding language on technology neutrality in future agreements in order to avoid enforcement and implementation issues in this area.

Protection of Intellectual Property Rights

Internationally recognized agreements on protection of intellectual property and business practices should be included in an FTA with Korea. This is essential for global competition and innovation. With this FTA, TIA hopes that Korea will continue to follow its obligations under the World Intellectual Property Organization (WIPO) treaties as a signatory in patent cooperation and registration of marks. Korea is one of the most dynamic markets and innovators, and is a beneficiary of strengthened intellectual property rights.

Independent Regulatory Body

An FTA should encourage Korea's telecommunications regulatory body to be separate from, and not accountable to, any supplier of public telecommunications services or government agency. In accordance with its WTO commitments, TIA sees the removal of the telecommunications regulatory body, the Korea Communications Commission (KCC), from its current residence in the Ministry of Information and Communication (MIC), as an essential goal of the FTA.

MIC's mission is to 1) Accelerate Informatization; 2) Promote the IT industry; and 3) Deregulate and liberalize the market.² Recent publications lay out goals for "Broadband IT Korea 2007" and "IT839 strategy"—both of which give clear direction and policy drivers to the Korean domestic market and industry. This creates a possible conflict of interest with the regulatory authority. When the home ministry is determining a national strategy, direction and areas for market growth, it would be difficult for the regulatory body to make independent decisions that ensure market competition, demand-driven development and deployment of standards and technologies.

The current structure does not ensure impartial decision-making, compromising the regulatory body's mission and function to act separately from the political branches of the Korean government. An independent regulator is critical to ensuring fairness, impartiality and regulatory integrity in each participating country's communications industry. An independent regulatory body would also guarantee that its telecommunications regulatory branch does not hold a financial interest or maintain an operating role in any supplier or policy directive from a governmental agency.

Foreign Ownership Requirement

The Korean Government is applauded for taking steps to ease foreign investment restrictions in telecommunications services, and allowing foreign ownership of up to 100 percent for simple international resale services interconnected to the Public Switch Telephone Network. However, foreign ownership in Type 1 facilities-based telecom services is still capped at 49 percent, restricting telecom services market access for facilities-based telecom firms. TIA believes that higher caps will encourage further investment into the Korean market.

Continuation of Regular Consultations

The United States and Korea currently have a quarterly consultation process to discuss issues in an on-going forum. TIA strongly recommends that should an FTA be negotiated, Korea and the United States continue holding similar meetings to discuss the trade relationship and progress between the United States and Korea.

² Korean Ministry of Information and Communication goals are posted, as of March 2006, on its website at http://eng.mic.go.kr/eng/gpms.tdf?a=common.HtmlApp&c=1001&page=about/about_c_01.html&mc=E_01_03_01

Ongoing consultations will encourage information exchanges on technical regulations, standards and conformity assessment procedures. This would foster cooperation on potentially controversial matters that may arise from the application of specific technical regulations, standards and conformity assessment procedures. This discussion would facilitate mechanisms solidified by the FTA and enhance and promote trade between the countries.

Conclusion

Thank you for the opportunity to comment. TIA is supportive of a free trade agreement with the Republic of Korea, and would be happy to provide additional information on any of the topics addressed in this reply.

Should you have further questions, please do not hesitate to contact Jason Leuck, Vice President of Government Relations and Global Policy for TIA, at jleuck@tiaonline.org or (703) 907-7725.

Sincerely,

/s/

Matthew J. Flanigan
President