



January 5, 2004

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ms. Blue:

On behalf of the ArrayComm, Inc., I appreciate the opportunity to express to you our views on the effectiveness of trade agreements that impact the provision of telecommunications products and services. Particularly, I want to call to your possible current or future infractions by the Republic of Korea (RoK) to its trade agreements that could keep non-Korean companies out of the Portable Broadband Wireless Access (PWBA) market.

ArrayComm, Inc., founded in 1992, is the world leader in mobile broadband wireless and smart antenna technology. ArrayComm's innovative iBurst Personal Broadband System is the only wireless Internet access system that offers the freedom of mobility with the high speed of wired DSL systems. This submission references the following trade agreements:

- World Trade Organization (WTO) Agreement on Basic Telecommunications and the associated Reference Paper
- WTO Technical Barriers to Trade (TBT) Agreement
- WTO Trade-Related aspects of Intellectual Property Rights (TRIPs) Agreement

RoK has decided to license spectrum in the 2.3 GHz band for PWBA. In so doing, RoK has announced that it will require the use of a single domestic standard that will be developed by TTA, Korea's nationally recognized standards development organization for telecommunications systems. Section 2.2 of the WTO Technical Barriers to Trade Agreement, adopted during the Uruguay Round of the GATT and agreed to by Korea, requires that governments not adopt technical regulations that are more trade restrictive than is necessary to achieve legitimate objectives, which are described under this clause. Thus far, the RoK has not established any legitimate objectives for its standards mandate, particularly in the context of its trade commitments. More appropriately, RoK should maintain a position of technical neutrality. The only exception could be to encourage 2.3 GHz licensees to use international standards, if available. However, such could not apply in this case because there are no international standards currently established for the PWBA service.

Additionally, RoK is compelled under the WTO TBT agreement to ensure that any domestic standards are developed by independent standards organizations in an open, transparent and fair manner. To the contrary, however, RoK is influencing participants in the PG05 standards project within the TTA to adopt a sole standard that would favor Samsung, the major Korean telecom supplier. Thus, Korean operators are not only being told that only one standard will be approved, but also that only one based on a domestically developed technology will be accepted.

This attempt by RoK to preserve domestic telecom markets for Korean companies by excluding non-Korean technologies is not new. The US Government, led by USTR, has been fighting these policies and has threatened legal action before the World Trade Organization. Recently, to address this and two other similar problems, the two countries established an "Experts Group" to work on standards issues, an approach that RoK agreed to reluctantly and only on an issue-specific basis. To its credit, USTR was adamant and forceful at the first meeting but no positive results have ensued.

USTR Ambassador Robert Zoellick has officially notified Korea's Minister of Trade as well as the Minister of Information and Communications that the US views Korea's standards actions as "... a serious issue that threatens to escalate bilateral trade tensions over the next few weeks and months."

US industry has been active as well. The Telecommunications Industry Association (TIA) has been cooperating with USTR to develop a plan of action to level the playing field for non-Korean companies in the Korean market. TIA has notified Ambassador Han, Korean Ambassador to the US, of its concern that his Government's actions are having an adverse effect on a broad spectrum of US companies.

The actions of RoK may also be in contradiction to other trade agreements within the WTO. It is believed that RoK's efforts may be to intended reduce the amount of intellectual property (IP), and the royalties paid for such, from non-Korean companies. USTR should recognize that for many US companies, IP is their end product and main revenue source. USTR should consider how its various agreements on trade in goods can be applied to the export of IP and whether RoK's actions would constitute a violation of in the context of those agreements. Korea may also be in violation of the WTO Basic Services Agreement, which Korea joined in April 1997, wherein its Reference Paper requires that, "*Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner.*" Finally, ArrayComm remains concerned that the RoK has not given priority to the protection of IPRs, and encourages USTR to continue to monitor Korea's compliance to the WTO TRIPs agreement.

ArrayComm believes that it is important for the United States to continue to undertake bilateral and multilateral trade agreements to achieve a fully competitive global telecommunications market, particularly with respect to eliminating non-tariff barriers, and both trade and protection of IPR. This can be accomplished through the enforcement and expansion of existing trade agreements, as well as the negotiation of new trade agreements.

If you have any questions related to this submission or if there are other ways we can assist you, please do not hesitate to contact Len Kolsky, Counsel to ArrayComm, at (202) 828-9464 or lkolsky@fcclaw.com, and/or Joanne Wilson, ArrayComm's Vice President, Standards, at (202) 669-4006 or joanne@arraycomm.com.

Sincerely,

[signature]

Marc Goldberg,
Chief Technical Officer
ArrayComm, Inc.