



January 23, 2003

Ms. Rhonda Schnare
Office of General Counsel
Attn: Section 1377 Comments
Office of the United States Trade Representative
600-17th Street, NW.
Washington, DC 20508

Sent via email: fr0056@ustr.gov

**Subject: AeA Response to U.S. *Federal Register* Notice (FR Doc. 02-30311)
Concerning Citation of The Republic of Korea under Section 1377 of
the Omnibus Trade and Competitiveness Act of 1988 (19 § 3106)**

Dear Ms. Schnare:

Pursuant to the Office of the U.S. Trade Representative's (USTR) request for public input concerning section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 § 3106), AeA would like to express concern about the Government of the Republic of Korea's apparent non-fulfillment of its obligations under the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT) and under the bilateral telecommunications trade agreement embodied in the July 14, 1997 Korean Ministry of "Information and Communication Policy Statement for the Realization of an Information Society."

It is the consensus of all interested AeA member companies¹ that the Government of the Republic of Korea ("Korean Government"), by the process it has utilized, has failed to abide by its obligations in the above-referenced agreements, and by proposing a government mandated standard, would create a new, unnecessary and unfair trade barrier that the U.S. high-tech industry faces concerning (1) excessive governmental influence over private operators' selection of technologies and (2) interference in private sector negotiations involving foreign licensing and technology transfers in the area of wireless Internet applications and platforms. As noted in the 2002 *National Trade Estimate* report issued by the Office of USTR:

¹ Motorola concurs with the AeA position condemning a government-mandated standard. Motorola believes that markets are best served by a single, open standard that emerges through the market process.

“...This governmental influence on the choice of sources of equipment and technologies is often implied in the licensing process for operators and also is clearly evident in localization policies for procurement. The U.S. Government will continue to urge Korea to avoid mandating specific technologies and standards or intervening in private sector negotiations related to this sector.

“The Korean government also appears to be leading efforts to discourage use of foreign-sourced software for certain telecommunications applications, while simultaneously supporting development of a Korean national standard for competing products. For example, the Ministry of Information and Communications [MIC] funds development of competing telecommunications standards through its research and development arm, the Electronics and Telecommunications Research Institute (ETRI). Although these newly developed standards are “voluntary,” the Korean Government’s control over tariff rate approvals, certification of equipment, licensing, and other regulatory authority provides it the means to exert influence over firms’ selection of specific standards or technologies. Such practices deny Korean consumers access to innovative products and potentially discriminate against U.S. software suppliers. The U.S. Government will continue to urge Korea to live up to its bilateral and multilateral commitments not to hinder the imports of such products, either through overt or informal means.”

Indeed, the MIC has promoted and funded the development of a national standard for wireless Internet platform (Wireless Internet Platform for Interoperability – WIPI)². The WIPI standard was ostensibly developed by a “voluntary” entity, the Wireless Internet Standardization Forum (WISF), and adopted by Korea’s official telecom standards-setting body, the quasi-governmental Telecommunications Trade Association (TTA). The TTA is, in fact, a subordinate organ of the MIC, and is chaired by a Korean Government official who has vice-minister status in the MIC and who is head of MIC’s research and development entity, the Electronics and Telecommunications Research Institute (ETRI). The MIC is estimated to have contributed, directly and indirectly, between \$11-14 million to develop WIPI.

The WIPI standard is purportedly intended to be an open-standard alternative that would compete with foreign-origin technology products, including proprietary products developed by U.S. companies. If WIPI is implemented as a mandatory standard in its current form, MIC will effectively prohibit the use of all current U.S.-origin wireless Internet platform products in Korea. This mandatory standard would require Korean wireless operators to adopt the WIPI standard and discontinue the use of non-WIPI technologies. Such an outcome would serve as an unfair trade barrier and result in the loss of certain U.S. exports to the Republic of Korea.

As a condition of participation in the standard-setting process, TTA required that participants disclose or transfer sensitive aspects of their proprietary technology and, thus, divulge their intellectual property. When U.S. manufacturers refused this

² TTAS.KO-06.0036, Ministerial Decree on Interconnection (to be amended)

commercially-suicidal request, they were denied any meaningful participation in the TTA standards-development process. The effect of this was to make the process non-transparent to foreign stakeholders.

Ignoring these systemic failings and having been the apparent driving force behind the standard's development, the Korean Government accepted the WIPI standard, has notified the Technical Barriers to Trade (TBT) Committee in the World Trade Organization (WTO) of its intention to adopt the WIPI standard, and would require Korean telecom operators to adopt the WIPI standard.

AeA believes that, by promoting and funding the non-transparent and discriminatory development of a standard for wireless Internet protocol and by subsequently mandating the adoption of the WIPI standard, the Korean Government would:

1. Violate its obligations under the 1997 bilateral telecom trade agreement; and
2. Violate its commitments under the Agreement on Technical Barriers to Trade (TBT) in the World Trade Organization (WTO).

Korean governmental protectionism, discrimination against U.S. technologies, and manipulation of private sector standardization and procurement decisions is not a recent development. Korea has previously been the subject of Section 1377 investigations for its poor track record of compliance with telecom trade obligations. In fact, USTR in 1996 designated Korea a "Priority Foreign Country" and launched a year-long investigation of Korean telecom policies and practices. This investigation was conducted in tandem with bilateral negotiations, which produced a bilateral telecom trade agreement that was intended to address Korean protectionism and coercion.

As a result of bilateral negotiations pursuant to USTR's 1996 identification of Korea as a "Priority Foreign Country," the MIC agreed on July 14, 1997, to a series of commitments that are embodied in a bilateral exchange of letters between the Office of the USTR and the MIC³. In that Statement, the Korean Government agreed to provide for non-discriminatory, national treatment of foreign companies, the elimination of tariffs, increased foreign ownership of domestic companies, more transparency in government regulations and procedures, and stronger protection for intellectual property and proprietary information. This bilateral telecom trade agreement supplements the market-opening steps taken by the Korean Government under the WTO Information Technology Agreement, which entered into force on March 13, 1997, and the WTO Basic Telecommunications Services Agreement, which entered into force on January 1, 1998.

Under paragraph A.2 of the 1997 bilateral telecom trade agreement, the Korean Government affirmed that procurement decisions by private companies should be based solely on commercial considerations, irrespective of the origin of the equipment to be purchased or the nationality of the supplier:

³ See <http://www.tcc.mac.doc.gov/cgi-bin/doi.cgi?204:64:817928877:130>

“In accordance with Article XVII:1 (c) of GATT 1994, private sector companies are free to make procurement decisions independently, based solely on their commercial considerations, such as price, quality, availability, marketability and transportation and other conditions of purchase or sale, irrespective of the origin of the equipment or the nationality of the supplier. Ministry policies and regulations should not be interpreted as requiring the use of telecommunications equipment or services of any particular national origin.”⁴

AeA urges the U.S. Government to use appropriate means to seek revocation by the Korean Government of its proposed requirement for telecom operators to adopt the WIPI standard, allow the on-going international standards-development process to determine the technology, and ensure transparency and non-discrimination to foreign stakeholders in the regulatory development process.

Since competitive and alternative technologies exist and are currently being marketed in Korea, the Korean Government’s designation of a “technology-winner” – in this case, the WIPI standard – would not be the “least trade-restrictive” means to achieve its regulatory objective. The Korean Government’s action would, therefore, create an unnecessary barrier to trade. Article 2.2 of the TBT provides that a technical regulation is more restrictive than necessary when the objective pursued can be achieved by alternative measures which have less trade-restricting effects, taking account of the risks non-fulfillment of the objective would create. Article 2.2 states, “In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end uses of products.”

Additionally, the Korean Government claims that by mandating the WIPI standard, “interoperability” of wireless Internet platforms in Korea would be achieved. However, the Korean Government’s regulatory objective – as articulated in its WTO TBT Committee notification: “to ensure better consumer choice and fair competition in wireless internet services market” – is not included in the list of “legitimate” objectives for purposes of compliance with the TBT Agreement. Article 2.2 provides, “Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal and plant life or health, or the environment.”

Even if “interoperability” were a legitimate regulatory objective under the TBT Agreement, the existing WIPI standard does not achieve interoperability among existing platforms. Rather, WIPI selectively “borrows” aspects of existing products, but is not itself compatible with the original wireless Internet platform technologies. Most importantly, therefore, Korea’s WIPI standard would eliminate consumer choice by threatening to cut Korean consumers off from products enjoyed by the rest of the world. By mandating this standard, Korea would seriously impair competition in contravention of its own stated objective.

⁴ See http://199.88.185.106/tcc/data/commerce_html/TCC_Documents/Korea_Goods_Srv.html

AeA believes that the Korean Government could better achieve its stated objective by postponing the adoption of a unique, nationally-developed standard, pending the outcome of an international standards-setting process. For example, AeA notes that an international consortium, the Open Mobile Alliance (OMA)⁵, is in the process of developing an international standard for wireless Internet platforms. The principles guiding the work of the OMA are that:

- Products and services are based on open, global standards, protocols and interfaces and are not locked to proprietary technologies
- The applications layer is bearer agnostic (examples: GSM, GPRS, EDGE, CDMA, UMTS)
- The architecture framework and service enablers are independent of Operating Systems (OS)
- Applications and platforms are interoperable, providing seamless geographic and inter-generational roaming

In summary, AeA believes the Korean Government should withdraw its proposed requirement to adopt the WIPI standard and await the outcome of the international standards-development process. Article 2.4 of the WTO TBT Agreement requires:

“With respect to their central government bodies...Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the objectives pursued...”

We are prepared to work with the U.S. and Korean governments to ensure that the latter upholds its commitments under bilateral and multilateral trade agreements by (1) withdrawing its requirement for the adoption of the WIPI standard, (2) allowing the international standards-development process to reach agreement on an internationally-accepted wireless Internet platform standard, and (3) providing the U.S. high-tech industry with transparent and non-discriminatory access to the standards-development process in the Korean telecommunications market.

Sincerely,



Timothy Bennett

Senior Vice President, International

AeA – Advancing the Business of Technology

cc: Amy Jackson, Deputy Assistant U.S. Trade Representative, Republic of Korea

⁵ See <http://www.openmobilealliance.org/>