

KOREA - LAWS, REGULATIONS AND PRACTICES IN THE  
TELECOMMUNICATIONS PROCUREMENT SECTOR

Request for Consultations by the European Communities

The following communication, dated 9 May 1996, from the Permanent Delegation of the European Commission to the Permanent Mission of Korea, is circulated in accordance with Article 4.4 of the DSU.

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On behalf of the European Community, I hereby request consultations with Korea under Article XXIII:1 of the GATT 1994 and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter also referred to as the "Understanding") with respect to Korean laws, regulations and practices in the telecommunications procurement sector.

According to the Basic Telecommunications Act (hereafter: "Telecom Act"), the Minister of Communications (MoC) is responsible for developing and executing a plan for the promotion of telecommunications technology (Article 8), including, for instance, the establishment and financing of research institutes (Article 10). The MoC can require network operators to make financial contributions to these institutes and to spend a certain ratio of annual revenues on R&D investments (Article 12). According to Article 6 of the Enforcement Decree, the MoC can select research subjects for these institutes which include the promotion of domestic production of telecommunications equipment. The Korean government has applied these provisions to promote the build-up of a domestic industry in telecommunications network equipment.

The Government Procurement Fund Act (hereafter: "Procurement Act") regulates the procurement of government agencies. It covers government and local agencies as well as "other agencies" as described in the Presidential Decree for the Enforcement of the Procurement Fund Act (hereafter: "Presidential Decree"). The latter establishes that the term "other agencies" refers to government-invested corporations such as, for instance, Korea Telecom (KT). Article 2 of the Presidential Decree distinguishes between "foreign currency" procurement and "domestic currency" procurement. The former applies to procurement of goods and services which are not available on the domestic market. Participation is open to all foreign suppliers. This does not hold for equipment which is available on the domestic market. The "Working Rules for the Procurement Fund Act" determine under Article 10 that the Director General notifies agencies covered by the Procurement Act which products have to be purchased locally. As pointed out above, this procurement regime applies to KT, as a government-invested corporation.

The combined effect of the promotion of domestic manufacturing of telecommunications network equipment and the above-mentioned procurement legislation has been to drive European manufacturers out of the Korean market during the last decade. Today, more than 90 per cent of KT's procurement of network equipment is carried out under the "domestic currency" regime to which European suppliers do not have access. The European Community considers that this legislation constitutes a breach of Korea's obligations under the WTO, particularly those under Articles III and XVII of the GATT 1994, or that it constitutes a measure applied by Korea which, even if it did not conflict with the provisions of the WTO, may nullify or impair benefits accruing to the European Community thereunder.

Following the conclusion of two Korea-US bilateral telecommunications agreements, in 1992 Korea adopted a Special Regulation on the Accounting of Government-Invested Corporations (hereafter: "Special Regulation") requiring KT to open partly its network equipment market to US suppliers. By doing so, Korea has granted US products an advantage, favour or privilege which has not been accorded to like products originating in the European Community. The European Community therefore considers that this Special Regulation constitutes a breach of Korea's obligations under Article I of the GATT 1994.

The second network operator in the Korean telecommunications market, Dacom, applies internal procurement rules which discriminate against foreign products. Article 5 of Dacom's "Working Rules for Materials Purchasing" provides that foreign purchasing should only be undertaken when the material is not available on the domestic market. It is the understanding of the European Community that such procurement rules are against the commercial interests of a private company operating in a competitive market. The European Community wishes to examine with Korea to what extent Dacom's purchasing policy and the government's role therein constitute breaches of Articles XVII and III of the GATT 1994.

Therefore, the European Community requests a meeting with the appropriate Korean authorities to discuss the matter with a view to finding a mutually satisfactory solution in accordance with Article 4 of the Understanding.