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# OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Executive Office of the President**

600 17TH STREET, NW
WASHINGTON, D.C. 20508

***Office of Deputy United State Trade Representative Richard Fisher***

Korea Bilat
BIT
cc Malcolm

August 31, 1999

Number of Pages including cover:

**To:** **Lael/Holly**
**Office/Agency:** **NEC**
**Fax Number:** **62878/69280**

**SUBJECT:** **Letter to Han Duck-soo**

From: **Erin Ennis**
**Confidential Assistant to the Deputy**
Phone: (202) 395-9595 FAX: (202) 395-3390

per your conversation with Richard yesterday.

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 26, 1999

The Honorable Han Duck Soo
Minister for Trade
Ministry of Foreign Affairs and Trade
Republic of Korea
77 Sejong-ro, Chongro-ku
Seoul, Korea 110-760

Dear Minister Han:

I am back in Washington and wanted to follow up on your discussions with Ambassador Larson. If we are to conclude the BIT by the APEC Leaders' meeting in September, we must make some final decisions now. To complete the package, we have to reach agreement on the key outstanding issues: screen quotas, telecommunications, and intellectual property rights (IPR).

**Screen Quotas**

I have duly noted your concerns regarding the quarterly averaging element of the two-tier system currently on the table (*i.e.* separate rules for single-screen and multiplex theaters). In response to your concerns and in an effort to reach agreement on the screen quota issue, I propose two alternative options:

> **Option 1** - Treat every screen as a single screen, including screens in multiplexes. Under this system, the phased screen quota reduction would begin by no later than June 1, 2000, with the quota ultimately reduced to 55 days by no later than January 1, 2006; or
>
> **Option 2** - Use a two-tiered system which allows multiplex owners the choice between multiplex rules or single-screen rules. Under this system, the quota for seats in multiplexes would be counted on a daily basis, provided that the quota was reduced beginning no later than June 1, 2000, and ultimately reduced to13.7 percent of the multiplex's seating capacity by no later than January 1, 2006. The single-screen quota would be reduced as above.

In either of these two options, we would expect that if the Korean Government reduced screen quotas to a level below those specified above, those lower levels would be incorporated into the BIT.

In sum, in response to your request to drop our request for quarterly averaging, I am willing to do so assuming we reach agreement on screen quota options 1 or 2. In return, I require that you accept my proposal on telecom (both form and scope), and that we reach agreement on the outstanding IPR issues, as follows.

**Telecommunications**

In your last conversation with Ambassador Larson, you indicated that you would like our agreement on facilities-based telecommunications liberalization to be a "voluntary" exchange of letters. I cannot agree to that proposal on form; your recent formulation is an outright deal-breaker. In your letter of August 3, you proposed binding your commitment in a bilateral Memorandum of Understanding (MOU) or a formal exchange of letters. I agreed to your proposal in my letter of August 4, 1999, provided that, the MOU/letter exchange at a minimum ensures that the 51 percent commitment is as legally binding as it would be in a BIT, is enforceable through investor/State and State-to-State dispute settlement, affords investors in the relevant telecom services all the requisite legal protections (which would otherwise be provided in the BIT), and that your Government will make any and all changes to Korean laws, decrees, regulations and other relevant rules in advance of the January 1, 2003 date. That remains my position.

In order to address both our concerns on this issue, Ambassador Larson proposed including language in your Annex that provides for further liberalization by mutual agreement, and incorporating Korea's 51 percent commitment into a separate binding and enforceable agreement, which would take effect automatically by January 1, 2003, at which time it would be covered by the BIT. The separate agreement would be signed at the same time as the BIT and would enter into force simultaneously with entry into force of the BIT. I urge you to reexamine your position on this proposal. Unless we can arrive at a mutually satisfactory agreement on this issue, we will not be able to move forward on the BIT.

I understand from Ambassador Larson that your discussions regarding the scope of your proposal for majority ownership of facilities-based telecommunications services was helpful. Based on those discussions, we have redrafted our proposal to clarify our mutual understanding that the foreign equity ratio is limited to 49 percent for telecommunications services providers of facilities-based fixed wireline switched-voice telecommunications services and that a foreign equity ratio of 51 percent will be permitted by January 1, 2003, for providers of other facilities-based telecommunications services. The redrafted proposal also clarifies our mutual understanding of the circumstances under which a U.S. investor may acquire a 51 percent equity share in an integrated telecommunications service provider. We propose the following language:

> By January 1, 2003, an increase in the foreign equity ratio to 51 percent is allowed for facilities-based telecommunications service providers, excluding those providing switched voice telecommunications services exclusively over fixed wireline facilities ("excepted services"), for which the allowed foreign equity ratio is 49 percent, effective July 1, 1999. U.S. firms may acquire up to 51 percent of a facilities-based telecommunications service provider, including one providing excepted services, provided that the resulting concern is restructured within a reasonable amount of time following the acquisition, in order for the particular entity providing the excepted services to conform to the foreign equity ratio applicable for excepted services.

**IPR**

On data protection, we are waiting for you to confirm that you will use the specific TRIPS Article 39.3 language on disclosure (provided by Ambassador Larson in his August 21, 1999 letter) in any relevant laws, regulations, guidelines or other rules that Korea adopts. I also urge you to address our remaining concerns regarding implementation of full retroactive copyright protection, so that we are ready to finalize an agreement on copyrights and data protection through an exchange of letters on intellectual property as we conclude the BIT.

I look forward to your response. If we are to conclude the BIT by the APEC Leaders' meeting in September, we need to resolve these outstanding issues and afford our staff time to finish the remaining technical issues.

Best regards,

Richard

Richard W. Fisher