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UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

MEMORANDUM FOR THE SECRETARY

FROM: David L. Aaron

SUBJECT: Letter to Korean Minister of Foreign Affairs and Trade
Hong Soon-young on the Procurement Practices of the
Korea Airport Construction Authority

I. SUMMARY

Over the past year, the Trade Compliance Center has led a cooperative internal and interagency effort to ensure that the Korea Airport Construction Authority (KOACA) adheres to the requirements of the WTO Agreement on Government Procurement (GPA) and treats U.S. suppliers in a fair and nondiscriminatory manner in procurements related to the construction of the new \$6 billion international airport at Incheon. Despite these efforts, Korea refuses to recognize the coverage of airport procurement and procurement by KOACA as part of its obligations under the GPA.

While in Seoul last November, you raised this issue with Minister of State for Trade Han Duck-Soo. Minister Han responded by noting that the Ministry of Foreign Affairs and Trade (MOFAT) wanted KOACA's procedures to be fair and transparent, and said that the government would urge KOACA to be more responsive, but that MOFAT did not exercise much control over KOACA.

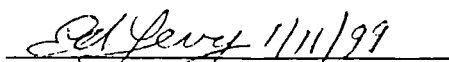
On January 5, 1999, the Trade Policy Staff Committee approved an ITA-drafted TPSC paper, which authorizes USTR to pursue WTO dispute settlement proceedings unless Korea recognizes the coverage of KOACA under the WTO GPA. The TPSC paper also recommends that you send a letter to Korean Minister of Foreign Affairs and Trade Hong informing him of the U.S. position. USTR has requested that the letter to Minister Hong be a joint letter from you and Ambassador Barshefsky.

The attached letter, therefore, requests that unless Korean Minister of Foreign Affairs and Trade Hong Soon-young formally confirms by January 27 that KOACA is legally within Korea's GPA coverage, the United States will request formal consultations under WTO dispute settlement procedures. Once you and Ambassador Barshefsky have signed the letter, I plan to call in the Korean Ambassador to deliver it.

II. RECOMMENDATION

That you sign the attached letter to Korean Minister of Foreign Affairs and Trade Hong.

Executive Secretariat Clearance:


James Dorskind or Ed Levy



JAN 14 1999



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

His Excellency
Hong Soon-young
Minister of Foreign Affairs and Trade
of the Republic of Korea
Seoul

Dear Mr. Minister:

As President Clinton noted in your recent meeting with him, we are impressed by the economic reforms your government has undertaken to promote a more market-oriented, transparent and efficient Korean economy. These vigorous efforts establish a strong foundation for Korea's rapid recovery from last year's financial crisis and for the continued development of close economic and trade ties between our countries.

We write today, however, to express the serious concern of the United States regarding Korea's implementation of its obligations under the World Trade Organization (WTO) Agreement on Government Procurement (GPA). Specifically, the procurement practices of the Korea Airport Construction Authority (KOACA) are not in accord with this Agreement. This issue has been repeatedly raised by U.S. officials in recent letters and meetings with Korean government officials. We bring this to your attention with the hope that we can reach a prompt and amicable resolution to this problem through bilateral channels.

Both the United States and Korea are parties to the WTO Agreement on Government Procurement. During negotiations on Korea's accession to the GPA, Korea confirmed to U.S. negotiators in writing that airport procurement, including the Incheon airport project, would be conducted by the Ministry of Transportation and the Office of Supply, both of which are listed in Korea's Appendix 1 to the GPA. After the negotiations, Korea created the Korea Airport Construction Authority, and assigned it the responsibility of conducting the Incheon airport procurement.

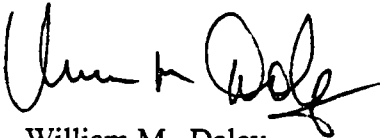
Based on your government's written statements during accession negotiations, and as an entity that is subordinate to the Ministry of Construction and Transportation (MOCT) and legally subject to the managerial oversight of that Ministry, KOACA is covered by Korea's commitments under the GPA. Yet, Korean officials have continued to maintain that KOACA and Incheon airport procurement are not covered under the GPA, and KOACA continues to conduct the Incheon airport procurement in a manner that is inconsistent with GPA rules. Transferring procurement authority to an entity not listed in Korea's Annexes to the GPA does not change Korea's obligations under the GPA. This matter is extremely important to the United States, as Korea's commitment to cover airport procurement was an essential element of our negotiated and mutually agreed balance of concessions in the GPA.

Over the past year, U.S. officials have repeatedly tried to find a resolution to this problem. To date, we have been unsuccessful. We ask for your assistance in taking immediate steps to remedy this situation by officially confirming that KOACA is covered by the WTO Agreement on Government Procurement and that KOACA procurement will be conducted in a GPA-consistent fashion. Unless we receive such confirmation by January 27, we will be left with no choice but to request formal consultations under WTO dispute settlement procedures.

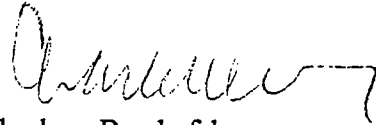
The Kim Dae Jung Administration has made clear it stands for creating a business environment that encourages trade and commercial cooperation. As we prepare for the upcoming U.S. Business Development Mission to Korea, it is important that we be able to convey with confidence to American companies that the Korean procurement market is open for business, and that American firms will be treated in a fair and equitable manner.

We appreciate your prompt attention to this important matter.

Sincerely,



William M. Daley
Secretary of Commerce



Charlene Barshefsky
United States Trade Representative

cc: Mr. Kang Bong-Kyun
Senior Secretary to the President
for Economic Affairs

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TRADE POLICY STAFF COMMITTEE
ACTION RECORD

DATE: January 5, 1999

DOCUMENT: 1998-128

SUBJECT: Recommend to Seek Resolution of Differences with Korea Regarding Government Procurement by Korea Airport Construction

SUBMITTED BY: Office of the United States Trade Representative

TELEPHONE CLEARANCE:

USTR: Frederick Montgomery, Chairman; Steve Weston

AGRICULTURE:

CEA:

COMMERCE: Nancy Morgan/Sherry Lewis-Khanna

ENERGY:

EPA:

HHS/FDA: Linda Horton

IDCA/AID:

INTERIOR:

JUSTICE:

LABOR:

NEC/NSC:

OMB:

STATE: Kimberly Clammon

TRANSPORTATION:

TREASURY:

USITC:

COMMITTEE DECISION/COMMENT:
Paper Approved

Gloria Blue, Secretary

TPSC PAPER

APPLICATION OF WTO GOVERNMENT PROCUREMENT AGREEMENT TO PROCUREMENT BY THE KOREA AIRPORT CONSTRUCTION AUTHORITY

ISSUE

Whether the United States should pursue World Trade Organization (WTO) dispute settlement proceedings against Korea for failure to implement its obligations under the WTO Agreement on Government Procurement (GPA) with respect to the Korean government's refusal to apply GPA procedures to procurement by the Korea Airport Construction Authority (KOACA).

RECOMMENDATION

The TPSC should authorize USTR to pursue WTO dispute settlement proceedings against Korea.

In early January 1999, Commerce Secretary Daley should write to the Minister of Foreign Affairs and Trade, noting USG disappointment that Korea has not responded to the USG's request for information under Article XIX of the GPA, and stating that the United States intends to initiate WTO dispute settlement procedures in January in the absence of formal confirmation from the Korean government that KOACA is legally within the ROKG's GPA coverage, and will adhere to GPA rules. This letter should be delivered through a high level demarche in Seoul and to the Korean Embassy in Washington.

Unless the ROKG confirms formally that KOACA is legally within the ROKG's GPA coverage, in late January the United States should request formal consultations under WTO dispute settlement procedures, as provided for in Article XXII of the GPA. These consultations would then be held during the week of February 23, on the margins of the GPA Committee meeting scheduled for that week.

LEGAL CONCLUSIONS

Korea is in violation of its obligations under the GPA as follows:

- failure to provide national treatment and non-discrimination as provided in Article III;
- failure to ensure that tendering procedures are consistent with Articles VII through XVI, as provided in Article VII;
- failure to provide information and review procedures as provided for in Article XVIII and Article XIX; failure to provide challenge procedures as provided for in Article XX.

The failure to provide GPA procedures for procurement by KOACA is a violation of the GPA in itself; the USG does not need to provide evidence of any concrete procurement opportunity that

has been denied or any US bidder that has been unfairly treated as a result of the violation.

Korea is in violation of its obligations because KOACA is within the scope of Korea's bindings in Annex I of the GPA. The argument that KOACA is within the scope of Korea's coverage in Annex I can be based on straight textual interpretation of Annex I, and also on the written evidence that Korea and the United States intended all airport procurement to be covered by Korea's bindings in Annex I.

The fact that Korea has not notified the GPA of any modification of its Annex I coverage to exclude KOACA additionally supports the argument that Korea's coverage offer in Annex I includes KOACA.

CONGRESSIONAL VIEWS

We are not aware of any specific Congressional interest in this issue.

PRIVATE SECTOR VIEWS

The Commerce Department has consulted with many U.S. suppliers and service providers that actively participate in the public procurement market in Korea. No company consulted voiced opposition to the United States proceeding with dispute settlement consultations, and several noted their approval of USG efforts to ensure that Korea conducts procurements for the Incheon International Airport (IIA) project in a fair and nondiscriminatory manner. As can be expected in the area of public procurement, however, most companies consulted stated that they did not want explicit mention of their companies for fear of possible retaliation.

DISCUSSION

Summary

The Incheon International Airport project, valued at \$6 billion, is one of the largest in Asia. Procurements for this project over the next several years will be worth billions of dollars and it is important that U.S. firms have fair access to these contracts. Documentary records show that when Korea negotiated its accession to the GPA in 1991-92, it stated that procurement for the Incheon International Airport would be undertaken by two specific government entities, both of which were listed in Korea's annexes to the Agreement. Korea later created a new government entity—the Korea Airport Construction Authority (KOACA)—to manage procurement for the Incheon airport. Korea now asserts that, because KOACA is not expressly listed as a covered entity, procurement for the Incheon International Airport is not covered by the provisions of the GPA.

Incheon International Airport Procurement is Covered by the GPA

The GPA applies to any procurement by an entity listed in a Party's GPA Appendix I. During its negotiations to accede to the GPA, Korea represented to the United States in writing that procurement for the Incheon International Airport (IIA) would be conducted by the Ministry of Transportation and the Office of Supply, both of which were listed in Korea's GPA entity list. Thus, Korea's GPA concessions included coverage of airport construction procurement and on the basis of this balance of concessions, the U.S. concluded bilateral negotiations.

Subsequently, in 1994, Korea created the Korea Airport Construction Authority (KOACA) and assigned it with the responsibility to conduct Incheon International Airport procurement. Korean officials argue that because KOACA is not expressly listed as a covered entity in Appendix I of its entity list, KOACA procurement is not covered by the GPA. In effect, Korea has modified its GPA coverage by transferring the responsibility for Incheon airport construction procurement from two covered entities to an allegedly non-covered entity. However, a Party to the Agreement cannot modify its GPA coverage without notifying the WTO GPA Committee and providing appropriate compensation (GPA Article XXIV(6)(a)). Korea has never notified this modification to the Committee, nor provided compensation. Therefore, the United States considers that procurement for airport construction remains covered by the GPA.

An additional argument that the Incheon airport procurement is covered by the GPA is based on KOACA's relationship to the Ministry for Construction and Transportation (MOCT)¹. Note 1 to Korea's Annex I provides that MOCT and other covered central government entities include their "subordinate linear organizations."

According to the Act establishing KOACA, MOCT is the central government agency responsible for airport construction and development. It is responsible for appointing and/or approving all KOACA executives and appropriating/approving its budget. In addition, MOCT expressly lists KOACA as a "subsidiary organization" on its web page. For these and other reasons, it is clear that MOCT exerts substantial control over KOACA and that KOACA is a "subsidiary linear organization" of the MOCT, which means that KOACA's procurement is covered by the GPA.

¹ On August 3, 1994, Korea passed the law creating the Korea Airport Construction Authority which transferred responsibility for new airport construction from the Korean Airport Authority, a subsidiary organ of the Ministry of Transportation, to KOACA. KOACA was established on 9/1/94. The Ministry of Construction and Transportation (MOCT) was established by Article 40 of the Government Organization Act, as amended by Act. No. 4831, December 23, 1994 and Act No. 5153, August 8, 1996. On October 16, 1997, Korea notified the WTO Government Procurement Committee of modifications to its entity list, deleting the ministries of Construction and Transportation, and adding this new, combined ministry. The notification did not indicate any changes in coverage for MOCT.

For additional details regarding the negotiating history and the MOCT/KOACA relationship, see Attachment A.

KOACA's Procurement Practices Are Inconsistent with the GPA

Since 1997, U.S. companies have raised concerns about KOACA's non-transparent and discriminatory procurement practices which inhibit the ability of U.S. firms to effectively compete for airport construction projects. Several of these practices are described below.

Qualification Requirements: In a \$35 million contract for elevators, escalators, and travolators for the Incheon Airport, KOACA established a condition that to be eligible to bid as a prime contractor a firm needed to have four Korean-issued licenses. One of these licenses required that a firm maintain escalator manufacturing facilities in Korea. A U.S. firm lacked this license and therefore was effectively precluded from bidding as a prime contractor. This licensing requirement appears to be inconsistent with GPA Article III (requiring national treatment), Article VIII (prohibiting discrimination against suppliers of Parties to the GPA in the process of qualifying suppliers) and Article XVI (prohibiting the use of offsets).

Domestic Partnering Requirements: For most Incheon International Airport procurements, KOACA requires foreign firms to partner with a local Korean firm. For example, in a procurement announcement posted on the KOACA website on 6/9/98 for a Movement Area Management System contract, one of the qualifications for participation in the bid states that: "Foreign firms should participate in a bid with local firms (leading or prime company) as consortium members or subcontractors." Another example involves an \$8 million contract for which bids were due on December 7, 1998 for a Doppler weather radar system, which requires that "Local Firm and Foreign Firm shall participate together...." In addition, a local partnering requirement on a major tender for Integrated Security Systems announced in July, 1998, caused at least one major U.S. supplier to refrain from bidding, since its management decided against participating in a consortium with any Korean partners. These requirements appear to be inconsistent with the GPA's national treatment requirements.

Non-Access to Impartial Review Mechanism: The GPA requires that member countries provide effective procedures enabling suppliers to challenge alleged breaches of the GPA arising in the context of procurements. To implement this obligation, Korea passed the Act Relating to Contracts to Which the State is a Party (ARCSP) (along with related enforcement decrees and regulations). The ARCSP established the International Contract Dispute Mediation Committee (ICDMC) as an impartial body to review challenges to the procurement practices of entities covered by the GPA. Korean officials, however, have indicated that neither the ARCSP nor the ICDMC applies to procurements conducted by KOACA. Instead, they have indicated that KOACA's internal procurement regulations apply. These regulations have been translated by Embassy Seoul, and contain no provisions for challenging the KOACA procurement decisions or procedures.

Excessively Short Bid Deadlines: For most procurements, the GPA requires that the period for receipt of tenders shall not be less than 40 days. In at least one procurement, KOACA has imposed deadlines far shorter than the required 40 days. The contract involved the provision of passenger terminal construction supervision services, in which KOACA abruptly terminated the bidding process, then later re-bid the project but with different scope of work and a bid deadline of only 10 days, which precluded a U.S. company from bidding on the re-bid, even though it had participated in the original tender.

Commercial Importance of Incheon International Airport and KOACA

The Incheon International Airport is reported to be the largest public works project underway in Korea, estimated at almost \$6 billion, and will be one of the largest airports in the world. The airport is located approximately 50 km west of downtown Seoul and approximately 15 km from the Port of Incheon. The first phase of the IIA project is scheduled to be completed by mid-1999, and the airport is scheduled to open on January 1, 2001. The final phase of the airport construction will not be completed until 2020, however, with the construction of four 4,000 meter runways. KOACA has confirmed to Embassy Seoul press reports that construction for the airport was about half completed.

According to reports from US&FCS Seoul, KOACA will be conducting a number of significant procurements in the future, including those for (1) meteorological radar, (2) Satellite Navigation System (CNS/ATM), (3) control facilities for parking, (4) a cargo x-ray system and (5) a passenger x-ray system.

U.S. Government Compliance Efforts

Over the past year, Washington officials and Embassy Seoul have made extensive efforts to raise this issue with Korean officials. These have included letters from Under Secretary of Commerce Aaron to the Korean Minister of State for Trade, the Minister of Construction and Transportation and the President of KOACA. In his response, the Minister of Construction and Transportation firmly denied that KOACA is covered by the GPA. The issue was raised by MAC Assistant Secretary Mulloy at the November 3 U.S.-Korea Economic Subcabinet, but there has been no change in the Korean position.

In addition, using the provisions of Article XIX of the GPA which allows a member to seek information on any aspect of another member's procurement regime, the U.S. submitted questions to Korea on September 11, 1998. Despite repeated assurances that responses to questions would be forthcoming, over three months have passed and the questions remain unanswered.

Most recently, while in Korea in November, 1998, with the President, Secretary Daley discussed the issue with the Korean Minister of State for Trade who noted that the Ministry of Foreign Affairs and Trade (MOFAT) wanted KOACA's procedures to be fair and transparent, and said that the government would urge KOACA to be more responsive, but that MOFAT did not exercise much control over KOACA.

Despite these extensive efforts to seek a resolution of this issue, Korean officials maintain that KOACA and procurements for the Incheon International Airport are not subject to Korea's GPA obligations, and have refused to correct alleged GPA violations.

CONCLUSION

The Incheon airport project is one of the largest in Asia; its construction is reportedly about half completed. It is important that the U.S. government move rapidly to ensure that U.S. companies have fair access to these projects. As described in the Discussion Section, Korea undertook commitments to cover airport construction in its GPA entity list, has not notified the GPA Committee of a modification regarding airport construction or offered compensation. In addition, KOACA procurements are being conducted in a manner inconsistent with the provisions of the GPA. USG efforts have been unsuccessful in achieving Korea's recognition that KOACA is a covered entity under the WTO GPA and that KOACA procurement's must be conducted in conformity with GPA requirements.

Therefore, the TPSC should authorize the U.S. Trade Representative to initiate WTO dispute settlement procedures with the Republic of Korea regarding Korea's failure to implement its obligations under the WTO Government Procurement Agreement.

Drafted by: USDOC/TCC: SWeston/NMorgan
revised December 22, 1998

ATTACHMENT A

ADDITIONAL INFORMATION REGARDING NEGOTIATING HISTORY AND MOCT/KOACA

The Status of Airport Procurement in Korea During Korea's Negotiations to Join the WTO Agreement on Government Procurement

- I. Korea Represented During Negotiations that Procurement for the Incheon International Airport would be Conducted by the Ministry of Construction and Transportation and the Office of Supply, both GPA-Covered Entities.

In 1990-91 Korea was engaged in negotiations to join the General Agreement on Tariffs and Trade (GATT) Government Procurement Code (Code). At the same time, in the Uruguay Round of multilateral trade negotiations, GATT Government Procurement Code members were engaged in negotiating a new agreement that would cover not only goods at the central government level, but goods, services and construction services by entities at central, subcentral, and quasi-governmental levels. Korea's GATT Government Procurement Code negotiations evolved into WTO GPA negotiations during the Uruguay Round (1992-93).

Throughout negotiations with all countries seeking GPA membership, including Korea, the coverage of airport procurement under the agreement has been a priority for the United States. In May 1991, during Korea's Code accession negotiations, USTR submitted a list of questions to the ROKG, one of which specifically sought to determine which ROK entities were responsible for airport procurement. USTR asked:

How does the Airport Development Group relate to the Ministry of Communications? Does Korea's offer of coverage of the Ministry of Communications include purchases for the Airport Development Group? Please identify all ministries that will be responsible for the procurement of goods and services related to new airport construction. (emphasis added)

The ROKG responded by providing specific information regarding procurement for the airport that was later to be named the Incheon International Airport. The following was the Korean response:

The new airport construction is being conducted by the New Airport Development Group under the Ministry of Transportation. The new airport construction project is scheduled to be completed by 1997 after the completion of the basic plan by 1992

and the working plan by 1993. The U.S. company Bechtel is taking part in the basic plan projects. The responsible organization for procurement of goods and services relating to the new airport construction is the Office of Supply.(emphasis added) But at present, the concrete procurement plan has not been fixed because now the whole airport construction project is only in a basic planning stage.

There is ample evidence to support the position that Korea's repeated reference to "the new airport construction" refers to the Incheon International Airport. First, the only basic plan projects for the construction of an airport underway in 1991-92 involved the airport construction for the Incheon airport. Second, data on KOACA procurements obtained from the KOACA Internet Website reveals that Bechtel was involved in the basic plan projects for the Incheon Airport at the time of the Korean response to USTR's questions (the project began in November 1990, and was completed in December 1991). Moreover, the Incheon International Airport has been the only new airport built in the Republic of Korea in recent years. Finally, additional information obtained from the KOACA Website reveals that the name of the Incheon International Airport was not announced until March 21, 1996, which explains why it was not specifically named in the Korean response during the negotiations. Newspaper, trade journal, and industry press releases referring to the IIA published before the March 21, 1996 naming of the airport referred to the facility in various ways, including the "new airport project" and the "new Seoul international airport".

Because of Korea's representations that the IIA construction was being conducted under the Ministry of Transportation, and that the Office of Supply would be the responsible organization for the procurement of goods and services relating to the new airport construction, the United States made certain that Korea's commitments under the GPA extended to both the Ministry of Transportation as well as the Office of Supply. These commitments are reflected in Annex 1 of Korea's schedules to the WTO GPA.

II. Korea Committed to Covering Airport Procurement under Annex 1 Entities

General Note 1 to Korea's GPA Annexes supports the position that Korea agreed to cover airport procurement as part of its GPA commitments. Korea's General Note 1 states:

1. Korea will not extend the benefits of this Agreement
 - (a) as regards the award of contracts by the National Railroad Administration,
 - (b) as regards procurement for airports by the entities listed in Annex 1,

- (c) as regards procurement for urban transportation (including subways) by the entities listed in Annexes 1 and 2

to the suppliers and service providers of member States of the European Communities, Austria, Norway, Sweden, Finland and Switzerland, until such time as Korea has accepted that those countries give comparable and effective access for Korean undertakings to their relevant markets.

The General Note makes two important points: 1) there are Annex 1 entities responsible for airport procurement; and 2) the United States is not one of the countries whose suppliers are excluded from participating in procurements for airports listed in Annex 1.

When ROKG officials from the Ministry of Foreign Affairs and Trade (MOFAT) were reminded that Korea's General Notes indicate that certain Annex 1 entities are responsible for procurement for airports, the officials stated that the note probably refers to small subordinate linear organizations and local administrative organs that are related to Annex 1 entities that handle some procurement for airports.² The MOFAT officials, however, were unable to cite any particular entity.

The Korean Ministry of Construction and Transportation is Responsible for Matters Related to Aviation and the Construction of the Incheon International Airport and KOACA is Part of the Ministry of Construction and Transportation

The Republic of Korea Government has repeatedly maintained that KOACA is not subject to the requirements of the WTO Agreement on Government Procurement. Korean officials have argued that because KOACA is not listed in the Korean Annexes to the WTO GPA, that the entity and its procurements are not subject to GPA requirements. Korean officials further maintain that KOACA is an independent entity not subject to the control or oversight of the Ministry of Construction and Transportation (MOCT), and is therefore not subject to GPA requirements through MOCT commitments.

The former Ministry of Transportation, now the Ministry of Construction and Transportation, however, is the ROKG Ministry responsible for affairs relating to aviation and air transportation. The Korean Government Organization Act submitted by the ROKG in 1991 during initial

² Note 1 to Annex 1 of the Republic of Korea states that central government entities listed include their subordinate linear organizations, special local administrative organs, and attached organs as prescribed in the Government Organization Act of the Republic of Korea.

accession discussions describes the role of the Minister of Transportation as follows: "The Minister of Transportation shall have jurisdiction over the affairs relating to land, air and marine transportation."

The current version of the Government Organization Act, which reflects the merger of the Ministries of Construction and Transportation, also clearly notes the jurisdiction of the Ministry of Construction and Transportation (MOCT) over aviation: "The Minister of Construction and Transportation shall perform duties as to the establishment and adjustment of a combined plan of development of land, the conservation, utilization, improvement, and restoration of land and water resources, the construction of cities, roads and housing, the reclamation of coasts and rivers, and matters as to inland transportation and aviation."

Information on the Ministry of Construction and Transportation Website provides further evidence that MOCT has responsibility over airports and that KOACA is part of the Ministry of Construction and Transportation. A document titled "History of the Ministry of Construction and Transportation" states:

As of today, the MOCT's organization consists of 3 offices, 5 bureaus and 47 divisions which overlook the affairs on national development planning, housing, city planning, land policy, water resources policy, construction and administration of roads and airports and all other matters concerning construction and transport safety affairs.

In preparation for the 21st century, this ministry is also dedicated to the construction of the Seoul-Pusan high-speed rail and the Incheon (sic) International Airport.

An additional document located on the KOACA Website details the chronology of the history of KOACA and the Incheon International Airport project. It indicates that on 6/21/90, the IIA construction corp was established within Ministry of Transportation. Then, on 8/3/94, the document notes that the IIA construction body was changed from the Korean Aviation Authority to KOACA, and that KOACA was established on 9/1/94.

Another document obtained from the KOACA Website details the creation of KOACA, and how KOACA came to manage construction of the IIA. The document states:

Initially, the Incheon International Airport Construction project was managed by the airport construction division within the Korea

Airport Authority [a subsidiary organization under the Ministry of Transportation]. Acknowledging the importance of the project as the nation's largest long-term capital project, the "IIA Construction Law" was enacted in Aug. 1994. Based on this legislation, the Korea Airport Construction Authority was established and assumed responsibility for the project.

The MOCT Website further acknowledges that KOACA is part of the Ministry of Construction and Transportation by listing KOACA as a subsidiary organization of the Ministry of Construction and Transportation. This document states that the reason why KOACA was established was for the "Construction of the Incheon International Airport; [and] Research concerning General Airport Construction matters."

The Ministry of Construction and Transportation exerts financial and decision-making control over KOACA. The Seoul Metropolitan Area New International Airport Construction Corporation Act,³ the legislation establishing KOACA which was passed on August 3, 1994, provides that the Minister of Transportation is responsible for appointing all KOACA executives, including the Chairman, Vice Chairman and auditors. Funding for KOACA is appropriated from the budget of the Ministry of Construction and Transportation. Additionally, the entity must submit business and budget plans to the Minister of Construction and Transportation for approval.

Further MOCT oversight of KOACA can be found in Ministry of Construction and Transportation regulation of 9/3/97 (Regulation No. 185), which established an entity within MOCT known as the Corps of New International Airport Construction Project (CNIACP). The CNIACP contains a division known as the New Airport Planning Division, whose duties, as set out in Regulation No. 185, include formulation of the budget for the IIA construction project, supervision of KOACA, and supervising other airport construction.

Moreover, in meetings with KOACA's Vice Chairman Yoo, the Vice Chairman noted that 40% of KOACA's operating budget comes from MOCT, and that all of KOACA projects, except those designated for private investment/financing, are funded from the national treasury. KOACA official Kim Chang-Kyu stated in a 1996 Business Korea article that, "Private Investment is excluded from central control of construction projects like the passenger terminal

³ As noted previously, the airport was not formally named the Incheon International Airport until 1996. It was formerly referred to by several different names, including the Seoul Metropolitan Area International Airport, given that the site of the airport is approximately 50 km west of downtown Seoul, and approximately 15 km from the port of Incheon.

because public facilities cannot be managed and operated by private companies". Newspaper accounts also confirm MOCT's role in setting KOACA's budget.

Korea's Duty to Notify The WTO Committee on Government Procurement of Modifications to its Coverage under the Agreement

Because KOACA assumed procurement responsibility originally belonging to the Ministry of Transportation and Office of Supply--both GPA covered entities--airport procurement now conducted by KOACA should be covered by the GPA. Korean officials have repeatedly insisted, however, that KOACA is not covered under the GPA. This constitutes a reduction in the scope of Korea's negotiated coverage under the Agreement.

Article XXIV of the GPA requires Parties to notify the GPA Committee of modifications to the schedules of member countries. Article XXIV:6 of the GPA states that:

rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.

Korea has not notified the GPA Committee of any modification to procure goods, services and construction services for airports from an entity other than the Ministry of Transportation and Construction (combined and notified in 1997), or the Office of Supply (SAROK).

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UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

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

Dear Mr. Minister:

As I mentioned to you in Paris and again in our recent meeting in Washington, I want to convey my strong support for and understanding of the very tough decisions that you and the Kim Dae Jung administration have made in the area of domestic economic reform and in responding to the Asian financial crisis. It is in that context that I want to bring a problem to your attention in the hope and expectation that we can quickly and amicably resolve the matter in a way that is in the best interests of both our governments.

I am concerned about certain questionable tendering practices of the Korean Airport Construction Authority (KOACA) -- these practices include tenders being issued under abbreviated bid deadlines that do not allow foreign firms enough time to prepare bids, as well as discriminatory participation requirements that effectively preclude qualified non-Korean companies from participating as prime contractors or joint bidders. These and other actions appear contrary to international public procurement practices, including those contained in the World Trade Organization Agreement on Government Procurement. Accordingly, U.S. officials raised our concerns with KOACA's tendering practices in the June 25, 1998 meeting of the WTO Committee on Government Procurement.

The American public can understand a decline in our exports to Korea in light of the financial crisis. What will not be understood is action that is unfair or directed against American firms. U.S. firms are prepared to compete on a level playing field with any competitor.

I ask for your assistance in helping to ensure that KOACA conducts all tenders, whether current or future, according to the international rules embodied in the WTO Agreement on Government Procurement, to which Korea is a signatory. I hope that you agree a quick resolution of this matter is in our mutual interest and would halt forward movement on any existing tenders for which your investigation reveals questionable tendering practices.

I hope that you will look into this matter and favorably respond to my request so that I can assure American companies that KOACA will follow government procurement practices open to all. I look forward to hearing from you and to continuing to work with your government on a speedy economic recovery.

Sincerely,

Ambassador David L. Aaron





UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

Mr. Kang, Dong-Suk
Chairman & President
Korea Airport Construction Authority (KOACA)
FKI Building, 28-1, Yoido-dong, Youngdungpo-ku
Seoul, 150-756, Korea

Dear President Kang:

As you know, the U.S. Department of Commerce and the U.S. Embassy in Seoul have worked closely with U.S. firms interested in participating in the new Incheon International Airport. We are pleased that our companies have become involved in the most important phases of IIA so far. U.S. firms have been successful in their efforts because they have been able to demonstrate, in an unbiased bidding process, that they offer superior technology, equipment and service.

I am concerned however, that bidding procedures for KOACA tenders have not always been fair and unbiased, and have not always been conducted according to international bidding practices, including those contained in the World Trade Organization Agreement on Government Procurement. These practices include tenders being issued under abbreviated bid deadlines that do not allow foreign firms enough time to prepare bids, as well as discriminatory participation requirements that effectively preclude qualified non-Korean companies from participating as prime contractors or joint bidders. For these reasons, U.S. officials raised our concerns with KOACA's tendering practices in the June 25, 1998 meeting of the WTO Committee on Government Procurement.

The American public can understand a decline in our exports to Korea in light of the financial crisis. What will not be understood is action that is unfair or directed against American firms. U.S. firms are prepared to compete on a level playing field with any competitor.

I ask for your assistance in helping to ensure that KOACA conducts all tenders, whether current or future, according to the international rules embodied in the WTO Agreement on Government Procurement, to which Korea is a signatory. I hope that you agree a quick resolution of this matter is in our mutual interest and would halt forward movement on any existing tenders for which your investigation reveals questionable tendering practices.

I hope that you will look into this matter and favorably respond to my request so that I can assure American companies that KOACA will follow government procurement practices open to all. I look forward to hearing from you and to continuing to work with your government on a speedy economic recovery.

Sincerely,

Ambassador David L. Aaron



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외교통상부

Copie sent to

Copps
Muller

MINISTRY OF FOREIGN AFFAIRS AND TRADE, REPUBLIC OF KOREA

우 110-760 서울특별시 중로구 세종로 77-6 세종로형사 809호

THE GOVERNMENT COMPLEX BLDG.

77 6 SEJONG-RO JONGRO-GU SEOUL, KOREA

수신 (TO)	수신 : Office for Commercial Affairs	
	참조 :	
	FAX : 027-1628	TEL :
발신 (FROM)	북미통상팀(North American Trade Team)	
	FAX : 725-1737	TEL : 720-2331, 733-2778
제목 (TITLE)		
페이지 포함 총 1 매 (PAGE)		일자 (DATE) : 1998. 8. 24.
<u>FAX COMMUNICATION</u> Dear Acting Minister-Counsellor Ware: I have the honor to forward to you the attached letter from Minister of State for Trade, Han Duck-Soo in responding to Under Secretary Aaron's letter of August 17th. Sincerely, <i>Amid appreciate to comments</i> 070881 <i>[Signature]</i> Min Myung-Soo Director for North America Team Attached : As Stated LI 5 V 82 807 001		

August 21, 1998

The Honorable David L. Aaron
Under Secretary for International Trade
United States Department of Commerce
Washington D.C. 20230

Dear Ambassador Aaron:

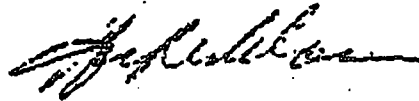
Thanks for your continued interest in and strong support for the economic reform in my country.

Concerning the tendering practices of the Korean Airport Construction Authority (KOACA), I would like to draw your attention to the fact that the KOACA is not subject to the requirements under the WTO Agreement on Government Procurement, since my government did not make any commitment with regard to the KOACA procurement.

That being said, it is my understanding that KOACA will conduct its tenders in line with principles of free competition and openness allowing the participation of all qualified companies.

I hope this information is useful to you.

Sincerely,



Han Duck-soo

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KOACA

Dong-Suk Kang / Chairman & CEO

KOREA AIRPORT
CONSTRUCTION AUTHORITY
2172 1, Shinan-dong, Yeosu-Ku,
Incheon City 406-300, Korea
TEL: 032-751 8741 FAX: 032-751-1784



September 3rd, 1998

Mr. David L. Aaron
Ambassador
United States Department of Commerce
The Under Secretary for International Trade
Washington, D.C. 20230, U.S.A.

Dear Ambassador David L. Aaron,

First of all, I would like to take this opportunity to express my appreciation for your interest and support for the Incheon International Airport (IIA) project.

Incheon International Airport is being developed as the state-of-the-art airport in the 21st century and our company, KOACA welcomes many leading foreign firms for their active participation, especially noteworthy firms in the United States for the airport project.

From the very beginning of the project development stage, KOACA has been emphasizing open-door policies to induce leading high-technology company participation from foreign countries. KOACA has provided exactly the same opportunities and conditions for both foreign and local companies. Needless to say, this is very important for the new airport project.

As the result, many foreign companies are actively working on the new airport project including manufacturing and installation of the machinery, project management and construction supervision. Not only that, among the nine major airport system developments, U.S. companies are working on the five of them. This shows how actively the U.S. firms are participating in and dedicating to IIA project.

According to your letter, I was informed that you are concerned with our bidding practices and I would like to clarify KOACA's bidding procedures to help your better understanding.

First, regarding the matter related to "not giving enough time for foreign firms to prepare bids" -

As you can see our bidding history in the past, We, KOACA allows more time for foreign firms other than 40 days which is required by the WTO on Government Procurement in its article 11.

For example, the case of elevator manufacturing and installation project which might be one of the projects that you are interested in, the American firm actually had a total 53 days instead of 40 days from the bidding announcement till the proposal submittal due date as KOACA allowed extra 13 days than the GPA requirement.

Secondly, regarding the matter related to the "discriminatory participation requirements from participating as prime contractors or joint bidders"

I have to say that KOACA's international bidding projects are for both local and foreign joint bidders; therefore, there is no such discriminatory participation requirements from participating

For the bidder to develop elevator manufacturing and management for Incheon International Airport, the firm is required to have related licenses and qualifications including having the licenses acknowledged by Korean government on the elevator/escalator manufacturing, installation and electrical works which are the KOACA's prerequisite for bidders.

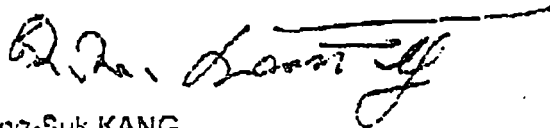
The U.S. firm in Korea, Otis, that you may have interest in, was not fully qualified for the bidding because the Otis had no license on the escalator manufacturing which was one of the KOACA's bidding requirements.

As you know, KOACA is not belonged to any of the GPA-conditioned organizations for the Annex 1 (Government organizations), Annex 2 (Regional body organizations), or Annex 3 (Government-invested organization for more than 51 percent share). Even though KOACA is not the GPA organization, we assure you that our company practices each international bidding on the international standards for our airport development.

For the conclusion, KOACA will continue to make our painstaking efforts to practice always our bidding procedures in fair and unbiased manners in parallel with Korea's expansion with globalization. This way, KOACA will be able to invite more actively major leading companies in the world to develop the Incheon International Airport as the most sophisticated airport in the 21st century.

Once again, I appreciate your important letter to bring my attention on the biddings for the new airport project.

Sincerely,



Dong-Suk KANG
Chairman & CEO

Mr. David L. Aaron

Ambassador of United States Department of Commerce
U.S.A.

인천국제공항 건설사업에 깊은 관심과 협조를 아끼지 않는 귀하에게 감사를 드립니다.

본인은 우리 공단이 추진하고 있는 21세기형 최첨단 공항건설사업에 미국을 포함한 세계 각국의 모든 우수한 기업들이 많이 참여해야 한다고 생각하고 있습니다. 때문에 우리 공단이 추진하고 있는 주요건설사업에는 모든 외국사들이 자유롭게 참여할 수 있도록 문호를 대폭 개방하여 왔으며, 국내사와 동등한 기회와 조건이 보장되도록 노력하여 왔다고 자부하고 있습니다.

이러한 사실은 인천국제공항의 각종 설계, 사업관리, 건축관리, 각종 시스템 및 기계설비류의 제작·설치사업 등 모든 분야에 외국업체들이 참여하고 있다는 사실이 이를 입증해 주고 있습니다. 특히 우리공단이 발주한 9개의 주요시스템구축사업중 8개 사업에나 미국업체가 참여하고 있음도 이해해 주시기 바랍니다

귀하의 서한에는 최근 특정 장비의 제작, 설치사업의 추진과정에서 귀국의 참여사가 공단의 발주방법에 대하여 일부 납득하지 못하고 있는 점에 대하여 본인의 답변을 바라고 있는 것으로 이해하고 있습니다. 이에 대한 우리 공단의 입장을 밝히드리고자 합니다.

첫째, 입찰을 준비할 충분한 시간을 주지 않았다는 점에 대하여

- 우리 공단은 국제입찰에 의하는 주요사업은 WTO 정부조달협정(GPA) 제11조에서 정한 입찰서 제출기한인 40일보다 더 많은 시간을 제공하고 있으며,
- 귀하의 관심사업으로 보이는 승강기 제조·설치 사업의 경우에는 입찰공고일로부터 제안서 제출일까지 GPA 규정보다 13일이나 더 많은 53일의 준비기간을 부여 하였던 것입니다.

둘째, 자격을 갖춘 외국회사가 주계약자 또는 공동입찰자로서 참가하는 것을 배제하는 차별적인 조항을 포함하고 있다는 의견에 대해

- 우리 공단은 국제입찰에 의하는 대부분의 사업에 국내사와 외국사가 공동으로 참여하기 때문에 어떠한 차별조건도 제시할 수 없으며
- 승강설비사업의 경우는 승강기 제조 및 관리에 관한 법에 의한 승강기(엘리베이터 및 에스컬레이터)제조업 면허, 건설산업기본법에 의한 승강기 설치공사업 면허, 전기공사업법에 의한 전기1종공사업 면허등을 소지하도록 규정하고 있어 부득이 해당 면허를 입찰참가자격요건으로 제시한 것으로서 특정업체의 참가를 제한하기 위한 요건이 아니었음을 이해해 주시기 바랍니다.
- 귀하가 관심을 갖고 있는 미국제의 한국OTIS사는 에스컬레이터 제조업면허를 보유하고 있지 않아 기술적으로 충분한 자격이 있더라도 입찰참가자격이 없었던 것입니다.
- 자격문제로 기술적으로 뛰어난 귀국의 전문업체가 승강기 제조 사업에 계약당사자로 참여할 수 없었던 점에 대하여 우리 공단으로서도 유감으로 생각하는 바입니다.

끝으로, 우리 공단은 WTO 정부조달협정 체결시 우리나라가 개방하기로 한 양허기관 즉, ANNEX 1(중앙정부기관), ANNEX 2(지방자치단체), ANNEX 3(정부투자비율이 51%이상인 정부투자기관 등)에 포함되어 있지 않아 GPA 규정 적용대상이 아니지만, 앞으로도 국제화 추세에 부응하고 세계의 우수한 기업이 많이 참여할 수 있도록 국제입찰로 추진되는 모든 사업에 대해 국제상관행에 따라 국내기업과 똑같이 차별 없고 공정한 입찰절차가 적용될 수 있도록 최대한 노력할 것입니다.

다시 한 번 귀하의 관심과 조언에 깊은 감사를 드립니다.

신공합건설공단 이사장 강 동석

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MISSION PERMANENTE DES ÉTATS-UNIS D'AMÉRIQUE
AUPRÈS DE L'ORGANISATION MONDIALE DU COMMERCE

1-3 AVENUE DE LA PAIX
1202 GENÈVE

50 9/11
ML

September 11, 1998

H.E. Mr. San Soon Chang
Ambassador
Permanent Mission of Korea
Route de Pré-Bois 20
1215 Cointrin

Dear Ambassador Chang:

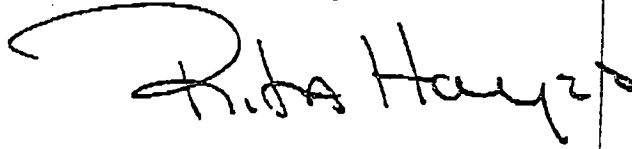
During the last two years, the United States has repeatedly raised its concerns with the procurement practices of the Korea Airport Construction Authority (KOACA). As we indicated in the June 25, 1998, meeting of the WTO Government Procurement Committee, the United States remains disturbed by Korea's repeated assertion that its commitments under the Agreement on Government Procurement (GPA) do not apply to KOACA. This assertion has serious implications for U.S. commercial interests and for the bilateral balance of rights and obligations established under the GPA. The United States urges Korea to reflect on this issue and to affirm, on that basis, that procurement conducted by KOACA is subject to and will be implemented in accordance with the provisions of the GPA.

Pursuant to paragraphs 1 and 2 of Article XIX of the GPA and in order to expedite the resolution of this important issue, the United States requests that Korea respond in writing to the attached list of questions relating to KOACA and its procurement practices. This information is requested without prejudice to the United States' rights under Articles XXII and XXIV of the GPA and any other relevant provisions of the WTO.



The United States requests that Korea respond to these questions by September 23, 1998, 12 weeks prior to the next meeting of the Government Procurement Committee, which is scheduled for October 7. Through the U.S. Embassy in Seoul, we will provide copies of this request directly to the Korean Ministry of Foreign Affairs and Trade, the Ministry of Construction and Transportation, and the International Contract Dispute Mediation Committee, under the Ministry of Finance and Economy.

Sincerely,

A handwritten signature in black ink, appearing to read "Rita D. Hayes". The signature is fluid and cursive, with a large loop at the beginning and a trailing flourish at the end.

Rita D. Hayes
Ambassador

Enclosure

cc: Mrs. Helle Klem, Chair of the Committee on Government Procurement

Attachment

1.
 - (a) Please explain the legal and operational relationship between the Korea Airport Construction Authority (KOACA) and the Ministry of Construction and Transportation.
 - (b) Please describe the extent to which the Ministry of Construction and Transportation has legal responsibility for managerial oversight of KOACA.
 - (c) In what way does the Ministry of Construction and Transportation exercise that responsibility?
 - (d) How are KOACA's president and other senior officials chosen? What approvals are required for each appointment?
 - (e) Please describe the extent to which the Ministry of Construction and Transportation or any other entity of the Korean government has legal authority to approve KOACA's budget and management plans.
 - (f) Please cite and provide copies of the legal or administrative authorities governing these issues.
2.
 - (a) What percentage of KOACA's annual budget is accounted for by appropriations from the Ministry of Construction and Transportation or other Korean government entities?
 - (b) What percentage of KOACA's annual budget is provided by sales of Korean public assets?
 - (c) What percentage of KOACA bonds or other debt, if any, is directly held or underwritten by the Korean government?
 - (d) What percentage of KOACA's budget is funded from private sector investments or other contributions?
 - (e) To what extent do any other Korean government entities have legal or budgetary authority over KOACA?
3. Please explain the relationship between KOACA and the "New Airport Development Group under the Ministry of Transportation," referred to in Korea's July 1991 written response to U.S. questions regarding government procurement for airport construction (attached)?
4. Please explain the relationship between KOACA and the "airport construction division of the Korea Airport Authority," referred to on KOACA's Internet web site at <http://www.airport.or.kr>.

5. Please explain the relationship between the "New Airport Development Group under the Ministry of Transportation," referred to in Korea's July 1991 response to U.S. questions regarding government procurement for airport construction, and the former airport construction division of the Korea Airport Authority, referred to on KOACA's Internet web site.
6. (a) At the time bilateral negotiations between the United States and Korea relating to Korea's participation in the GPA were concluded (1993), to what extent was the "New Airport Development Group under the Ministry of Transportation" responsible for airport construction projects in Korea?

(b) Please identify all government entities that were responsible for airport construction projects at that time and the relationship of those entities to KOACA, which was established subsequently.
7. (a) Is KOACA responsible for all airport construction projects currently being planned or implemented by government entities in Korea?

(b) If not, what other Korean government entities are responsible for planning and implementing airport construction projects?

(c) Please provide information on the estimated budgets of these entities.
8. Recent KOACA tender announcements include the requirement that "foreign firms should participate in the bid with local Firms (leading or prime company) as consortium members or subcontractors."

(a) What is the intent of this provision?

(b) Are there any circumstances in which U.S. or other non-Korean firms may qualify independently (i.e., as a "leading or prime company") to participate in this and similar KOACA procurement opportunities, or is partnership with a Korean firm a mandatory condition for qualification?

(c) Under what legal authority does KOACA have the authority to impose this requirement?
9. In recent KOACA tender announcements, all suppliers have been required to hold licenses and registration for manufacturing operations in Korea in order to qualify to participate.

(a) What is the purpose of this requirement?

(b) Does this preclude suppliers that have not established manufacturing facilities in

Korea from qualifying as a prime contractor?

(c) For suppliers that do not have manufacturing facilities in Korea, can possession of appropriate manufacturing licenses issued by U.S. or other non-Korean authorities satisfy this requirement? If so, under what circumstances?

(d) Under what domestic law does KOACA have the authority to impose this requirement?

(e) Does KOACA require that equipment supplied under these contracts be produced in Korea?

10. The United States requests that Korea provide complete copies of the following documents (in English, if available):

1. The Korean Airport Authority Act, and any related implementing or enforcement decrees.
2. The IIA Construction Promotion Law, promulgated or announced on or around May 31, 1991, and any other related laws and implementing or enforcement decrees affecting what has become known as the Incheon International Airport.
3. The Seoul Metropolitan Area New International Airport Construction Corporation Act, and any related implementing or enforcement decrees.
4. The General Construction Basic Law, and any related implementing or enforcement decrees.
5. The Electrical Construction Law, and any related implementing or enforcement decrees.
6. Regulations of the Ministry of Construction and Transportation or other entities pertaining to the creation, purpose and functions of the "Corps of the New International Airport Construction Project.
7. The Government Organization Act of the Republic of Korea.

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UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

September 15, 1998

Honorable Lee Jung-Moo
Minister of Construction and Transportation
Ministry of Construction and Transportation
1, Choongang-dong, Kwacheon,
Kyunggi Province, 427-760

Dear Mr. Minister:

I am writing to express my government's deep concern with recurring problems associated with the procurement practices of the Korea Airport Construction Authority (KOACA). I have recently corresponded with State Minister for Foreign Trade Han Duck-Soo on this issue, and very much appreciated his assurances that KOACA tendering practices should be consistent with the principles of free and open competition. Unfortunately, American companies' recent experiences with KOACA tendering procedures raise questions about KOACA's adherence to this policy. Since I understand that your ministry is responsible for oversight of KOACA's policies and management practices, I hope that you will take immediate steps to remedy this situation.

There is currently a procurement underway for the purchase of vertical transportation equipment (elevators, escalators, travolators), for which KOACA has imposed pre-qualification requirements that effectively preclude participation by foreign firms. In particular, one of these requirements is that all bidders must possess an escalator manufacturing license to participate as a prime contractor in the procurement. In effect, this requirement would force U.S. firms to commit to manufacturing escalators in Korea as a condition for participating as a prime contractor in this procurement, even though escalators that are actually used to fulfill the contract may be produced outside Korea.

Of particular concern to us is that KOACA's policies related to licensing have excluded Otis Elevators, Inc., a globally-renowned U.S. producer of vertical transportation equipment, from participating in the tendering process as either a full member of a consortium or as a prime contractor in two ways. First, KOACA's requirement that bidders possess four separate licenses, including manufacturing licenses for both elevators and escalators, disqualifies Otis (and any other foreign competitors) from submitting a bid, since only Korean companies are in a position to have all four licenses.

Second, I understand that KOACA has an internal regulation preventing companies with all four licenses to bid in a consortium with another company possessing any of the licenses. Since Otis's Korean partner, Dongyang Heavy Industries, already has all four licenses, a joint bid with Otis was disallowed. Thus, Otis was relegated to participating in this tender as a subcontractor, placing it at a significant competitive disadvantage. In a later development, Otis's participation even as a subcontractor was rendered impossible after its Korean partner was disqualified during the technical evaluation phase of the tender.



Otis is the world's largest manufacturer vertical transportation equipment called for in the KOACA procurement and has supplied such equipment to over 60 major airports worldwide. Procurement authorities worldwide that purchase Otis' vertical transportation equipment routinely accept the manufacturing licenses granted by the authorities in the countries in which Otis manufactures this equipment. Given Otis' global leadership in this industry, it concerns our government deeply that KOACA refuses to take into account this company's worldwide manufacturing and servicing capabilities, and instead has told Otis that they are ineligible to bid as a prime contractor.

Because the procurement is entering its final stages, immediate action is necessary to ensure that non-Korean companies are able to fairly participate in the procurement. Accordingly, I request your assistance in ensuring that KOACA does not proceed with the procurement of vertical transportation equipment, and reopens the procurement in a manner that allows for free, open and non-discriminatory participation by Otis and other non-Korean suppliers.

In responding to longstanding U.S. concerns with KOACA's procurement practices, Korean officials have repeatedly asserted that KOACA is not covered by the World Trade Organization Agreement on Government Procurement (GPA). My government strongly disagrees with this assertion. As an entity that is funded by your ministry and legally subject to your managerial oversight, KOACA is clearly covered by Korea's commitments under Annex 1 of the GPA. This is extremely important to the United States, since Korea's commitment to cover airport procurement was an essential element of our mutually agreed balance of concessions in the GPA. In any case, I am disappointed that this issue has even been raised in the context of the concerns advanced by Otis, since the procurement practices in question depart from your government's strong commitment to free and open competition and other measures which ensure efficiency and accountability in the allocation of both public and private resources.

As I mentioned in my recent letter to Minister Han, I admire the tough decisions that you and the Kim Dae Jung Administration have made in advancing your important domestic reform programs and in responding to the regional financial crisis. At this critical time, it is especially important that Korea not be perceived as unfairly restricting U.S. imports, and excluding qualified U.S. companies from participating in open and competitive procurements. I look forward to hearing from you regarding this matter.

Sincerely,



Ambassador David L. Aaron

cc: The Honorable Han, Duck-Soo
State Minister for Foreign Trade
Ministry of Foreign Affairs and Trade

Mr. Kang, Dong-Suk, Chairman & President,
Korea Airport Construction Authority

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H

Divider Title: _____

October 21, 1998

H.E. Ambassador David L. Aaron
United States Department of Commerce
The Undersecretary for International Trade

Dear Ambassador Aaron:

I would like to express my deep appreciation to you for your keen interest in the Incheon International Airport (IIA) project, and for your support for this government's economic reforms and the open-door policy for free and open competition.

I am pleased by the fact that the Korea Airport Construction Authority (KOACA) is developing IIA as a world-class airport with the participation of leading international companies, including many excellent firms from the United States.

I refer to your letter of September 15th regarding the bidding procedures for elevator equipment for the new airport. It appears that some differences of opinion remain with regard to the procurement practices of KOACA.

Our government has assured you several times in the past that KOACA is not an entity covered by the Government Procurement Agreement (GPA). As you know, KOACA is not listed among the entities in Annex 3 of the GPA. Before KOACA was established, the IIA airport project was administered by Korea Airports Authority (KAA), which also is not listed in Annex 3. There are no grounds for considering KOACA an entity covered by the GPA.

Currently, the IIA project is being developed by KOACA, which procures goods and services for airport construction according to its own administrative procedures. Our government is not in the position to influence KOACA's procurement practices. It is my belief that government interference in procurement is not only undesirable, but should be actively avoided.



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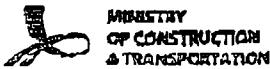
While it is true that this Ministry "oversees" KOACA, as it does other public organizations, KOACA has full autonomy in its managerial dimensions, including its capacity to devise and execute procurement practices. KOACA is not a part of the Ministry of Construction & Transportation. The Korean government does not have the authority to interfere with KOACA in its procurement practices.

Although KOACA is not an entity covered by the GPA, it has welcomed the participation of both local and foreign firms in biddings for airport projects. In keeping with Korea's open-door policy, fully open competition is being allowed for participation in the IIA project.

Many leading foreign firms are now taking part in the IIA project, offering technology and services. Of the nine major airport system developments, US firms are providing their services for five for IIA. I believe that this reflects how actively KOACA has been providing equal opportunities to foreign firms. You have my full agreement that free and open competition should be allowed for the successful development of the IIA project; I stress again that this has been the case under Korea's open-door policy.

Please be informed that I am not able to give you a fully detailed response as our government is not in the position to interfere in KOACA's procurement practices. As far as I know, KOACA has conducted itself appropriately by its own standard procedures and by Korean law. KOACA did not preclude qualified foreign firms from bidding, nor did it have the intent to do so.

It is to my regret that OTIS in Korea was not able to participate as a prime contractor for the elevator project. According to KOACA, OTIS in Korea had a fair opportunity to bid and KOACA's bidding procedures were executed in a fair and prejudice-free manner. A successful bidder for the elevator installation project has been found and the contracts have been signed.



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KOACA will continue to hold fair and unbiased biddings and invite tenders from both local and foreign firms for the IIA project.

Once again, thank you very much for your interest in our government's open-door policy. If you have any other issues to bring to my attention, please do not hesitate to contact me. I would be pleased to receive your comments.

Sincerely,

Lee Jung-Moo
Minister of Construction & Transportation
Republic of Korea

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외 교 통 상 부

MINISTRY OF FOREIGN AFFAIRS AND TRADE, REPUBLIC OF KOREA

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제 목 (TITLE)		
표 지 포 함 총 매 (PAGE)		일 자 (DATE) : 1998. 1. 15.
<u>FAX COMMUNICATION</u> Attached is the reply to the US questionnaire on WTO/GPA application to KOACA. Hong Young-Ki Deputy Director		

< Reply to the Questionnaire >

1. (a) Please explain the legal and operational relationship between the Korea Airport Construction Authority(KOACA) and the Ministry of Construction and Transportation.
 - o KOACA exercises full executive authority in its activities, including contracting for construction and procurement of materials.
 - o The Ministry of Construction & Transportation (MOCT) has managerial authority over KOACA.

- (b) Please describe the extent to which the Ministry of Construction and Transportation has legal responsibility for managerial oversight of KOACA.
 - o MOCT has general managerial responsibility over KOACA.

- (c) In what way does the Ministry of Construction and Transportation exercise that responsibility?
 - o MOCT exercises its managerial right by approving budgets and implementation plans.

- (d) How are KOACA's president and other senior officials chosen? What approvals are required for each appointment?
 - o The chairman and auditors are appointed by the Minister of Construction & Transportation. Other officials are appointed by the chairman.

- (e) Please describe the extent to which the Ministry of Construction and Transportation or any other entity of the Korean government has legal authority to approve KOACA's budget and management plans.
 - o MOCT has the authority to approve budgets and implementation plans.

- (f) Please cite and provide copies of the legal or administrative authorities governing these issues.
 - o These authorities are listed in the act on the new airport construction authority for seoul metropolitan area and the "Act on the Promotion of a New Airport for Seoul Metropolitan Area Construction".

2. (a) What percentage of KOACA's annual budget is accounted for by appropriations from the Ministry of Construction and Transportation or other Korean government entities?

o MOCT provides roughly 36% of KOACA's budget.

- (b) What percentage of KOACA's annual budget is provided by sales of Korean public assets?

o No portion of KOACA's budget comes from the sale of public assets.

- (c) What percentage of KOACA bonds or other, if any, is directly held or underwritten by the Korean government?

o KOACA is responsible for its bonds.

- (d) What percentage of KOACA's budget is funded from private sector investments or other contributions?

o Beyond the budget provided by the government, KOACA's revenues come from its bond issuances and loans.

- (e) To what extent do any other Korean government entities have legal or budgetary authority over KOACA?

o None.

3. Please explain the relationship between KOACA and the "New Airport Development Group under the Ministry of Transportation, "referred to in Korea's July 1991 written response to U.S. questions regarding government procurement for airport construction(attached)?

o The New Airport Development Group under the Ministry of Transportation devises basic plans for the construction of the Incheon International Airport.

o KOACA draws up implementation plans and carries out construction of the airport.

4. Please explain the relationship between KOACA and the "airport construction division of the Korea Airport Authority," referred to on KOACA's Internet web site at <http://www.airport.or.kr>.
 - o Before KOACA was established in September 1994, construction of the Incheon International Airport was carried out by the Airport Construction Division of the Korea Airport Authority.
5. Please explain the relationship between the "New Airport Development Group under the Ministry of Transportation," referred to in Korea's July 1991 response to U.S. questions regarding government procurement for airport construction, and the former airport construction division of the Korea Airport Authority, referred to on KOACA's Internet web site.
 - o The Airport Construction Division of the Korea Airport Authority was the institution in charge of the new airport's construction, while the New Airport Development Group under MOCT was responsible for setting up basic plans.
6. (a) At the time bilateral negotiations between the United States and Korea relating to Korea's participation in the GPA were concluded(1993), to what extent was the "New Airport Development Group under the Ministry of Transportation" responsible for airport construction projects in Korea?
 - o Refer to answer to Question 5.
 - (b) Please identify all government entities that were responsible for airport construction projects at that time and the relationship of those entities to KOACA, which was established subsequently.
 - o No other institution besides the New Airport Development Group was involved in the construction of the airport.
7. (a) Is KOACA responsible for all airport construction projects currently being planned or implemented by government entities in Korea?
 - o KOACA is responsible for the construction of the Incheon International Airport. At present, there are no other plans for airport construction.

(b) If not, what other Korean government entities are responsible for planning and implementing airport construction projects?

o Refer to answer to Question 7 (a).

(c) Please provide information on the estimated budgets of these entities.

o Refer to answer to Question 7 (a).

8. Recent KOACA tender announcements include the requirement that "foreign firms should participate in the bid with local Firms(leading or prime company) as consortium members or subcontractors."

(a) What is the intent of this provision?

o KOACA is not an entity covered by the GPA. Thus, Article 19.3 of the GPA does not apply to this question.

(b) Are there any circumstances in which U.S. or other non-Korean firms may qualify independently(i.e.,as a "leading or prime company") to participate in this and similar KOACA procurement opportunities, or is partnership with a Korean firm a mandatory condition for qualification?

o Refer to answer to Question 8 (a).

(c) Under what legal authority does KOACA have the authority to impose this requirement?

o Refer to answer to Question 8 (a).

9. In recent KOACA tender announcements, all suppliers have been required to hold licenses and registration for manufacturing operations in Korea in order to qualify to participate.

(a) What is the purpose of this requirement?

o KOACA is not an entity covered by the GPA. Thus, Article 19.3 of the GPA does not apply to this question.

(b) Does this preclude suppliers that have not established manufacturing facilities in Korea from qualifying as a prime contractor?

o Refer to answer to Question 9 (a).

(c) For suppliers that do not have manufacturing facilities in Korea, can possession of appropriate manufacturing licenses issued by U.S. or other non-Korean authorities satisfy this requirement? If so, under what circumstances?

o Refer to answer to Question 9 (a).

(d) Under what domestic law does KOACA have the authority to impose this requirement?

o Refer to answer to Question 9 (a).

(e) Does KOACA require that equipment supplied under these contracts be produced in Korea?

o Refer to answer to Question 9 (a).

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K

Divider Title: _____

THE MINISTER OF FOREIGN AFFAIRS AND TRADE
SEOUL, KOREA

January 25, 1999

The Honorable William M. Daley
Secretary of Commerce
Washington D.C.

Dear Mr. Secretary:

Thanks for your continued interest in my government's economic reform efforts. Let me take this occasion to respond to your letter dated January 14, 1999 and address your concerns over the procurement practices of the Korean Airport Construction Authority (KOACA).

As a party to the World Trade Organization (WTO) Agreement on Government Procurement (GPA), Korea is fully complying with the GPA rules and keeping the bidding practices of entities covered by the rules fair and open. As for KOACA, the Korean government is of the view that it is not covered by Korea's commitments under the GPA. In December 1991, the responsibilities relating to the new airport construction were transferred to the Korean Airport Authority (KAA) from the Ministry of Transportation, and a number of U.S. companies participated in the procurements conducted by KAA. When Korea submitted its final offer list for its accession to the GPA in December 1993, KAA was not included in it, and the US side did not raise any objection in that regard. In September 1994, KAA's responsibilities were transferred to the newly established KOACA. Seen in this light, we believe it is clear that KOACA is not covered by the GPA.

Still, I hope that this issue can be addressed through bilateral consultations. For that purpose, I would like to propose a working group meeting between our two governments to reach a mutually agreeable solution. The merit of such a bilateral meeting is that it provides an opportunity to resolve the problem expeditiously without falling into a drawn-out litigation process. For your reference, I'd like to further inform you that my government has been strongly advising KOACA to open all of its remaining biddings to foreign bidders.

So far, there has been significant progress in Korea's economic reforms. Thanks to the reform efforts coupled with the support from the international community, the Korean economy is beginning to show signs of recovery, and international credit rating agencies are elevating Korea to investment-grade status. I hope that the upcoming visit of the U.S. Business Development Mission to Korea can boost the U.S. companies' confidence in the Korean economy.

Yours sincerely



Hong Soon-young