



SAFEGUARDING U.S. COMPANIES FROM UNFAIR SOUTH KOREAN COMPETITION POLICIES

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Advanced technology goods and services play a crucial role in shaping the trade relationship between the United States and the Republic of Korea (ROK). However, the latest U.S. National Trade Estimate continues to highlight a significant and persistent problem where South Korea uses discriminatory, restrictive, and arbitrary behind-the-border regulations and enforcement to target U.S. firms. Within this context, the actions of the ROK government and, specifically, the Korea Fair Trade Commission (KFTC), the country's competition authority, provide a clear example of challenges that the United States may seek to confront in trade negotiations with the ROK.

Background

U.S. firms report that the KFTC unfairly targets them via office raids, threats of prosecution, and attempts to harass companies with criminal allegations and investigations. The KFTC's actions can be seen as violating the essence of the Trump administration's "Reciprocal Trade Memo," which targets policies that represent "unfair or harmful acts, policies, or practices" and are a "structural impediment to fair competition. The memo's criticism of EU regulators for targeting U.S. tech companies could similarly be applied to the KFTC's targeting of U.S. firms.

The U.S. decision to pause reciprocal tariffs for 90 days creates a diplomatic window for Seoul to reset and reaffirm its commitment to fair, balanced, and frictionless trade. To address these issues, the ROK could agree to detailed safeguards and nondiscriminatory treatment provisions to prevent the KFTC from misusing competition policy in the future. The United States and South Korea could do this by repurposing provisions from the competition chapter in the U.S.-Mexico-Canada Agreement (USMCA). The two countries could use these provisions to update the competition policy chapter (chapter 16) in the Korea-U.S. Free Trade Agreement (KORUS) or as part of a bilateral executive agreement. For the United States, such a development would serve to protect U.S. companies from targeted investigations. For the ROK, addressing these issues could reduce the risk that the country could be subject to heightened "reciprocal" or other tariffs from the United States.

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Like the EU's Digital Markets Act (DMA), the KFTC seeks to create an *ex ante* competition policy where regulators can target specific firms, determine potential business behavior that might hurt competition, and define competition in broad terms. Like the DMA, the KFTC seeks to establish thresholds to designate dominant firms and platforms (so-called gatekeepers) that align with the claimed market power of large U.S. tech firms. This approach is part of a global trend of regulators following the EU in proactively imposing measures on large firms to prevent hypothetical anticompetitive behavior before it occurs. Such measures depart from the traditional *ex post* enforcement approach, which reacts to violations only after they are detected and in response to clear and direct impacts on competition and consumer welfare.

The KFTC argues that its proposals are “designed to align with global regulatory standards, such as the EU's Digital Markets Act.” The KFTC's explicit reference to the DMA should be a clear signal as to why it deserves priority attention in trade talks.

Policy Options

The most viable path for the United States to address these challenges is to seek commitments to eliminate the KFTC's discretionary and discriminatory enforcement practices as key outcomes in negotiations with South Korea. These commitments could draw on enforceable standards used in the USMCA and include the following:

Prohibition of discriminatory practices. South Korea could commit to abstaining from practices that directly or indirectly target U.S. firms, including politically motivated investigations, disproportionate sanctions, coercive settlement tactics, and the use of civil infractions as pretexts for criminal prosecution. Such provisions could mirror the USMCA's binding language in Articles 21.2 and 21.3, requiring nondiscriminatory treatment and impartial administration of competition law.

Additional due-process and procedural and burden-of-proof safeguards. As is mandated under USMCA Article 21.2(7), South Korea must guarantee due process in all enforcement proceedings, including prior notification of investigations, access to full records and evidence, rights to legal counsel, and the opportunity to meaningfully contest allegations before an impartial adjudicator. Furthermore, commitments should not shift the burden of proof onto defendants in a manner inconsistent with principles of due process and procedural fairness.

Commitments on regulatory neutrality and nondiscrimination. The ROK could commit to applying consistent legal standards to both domestic and foreign entities, including by prohibiting frameworks that presume monopolistic dominance based on market share thresholds.

A defined scope for legitimate competition policy objectives. The ROK could define a clear and objective scope of competition-related policy goals (e.g., combating cartel behavior, illicit collusion, and abuse of market dominance) and explicitly prohibit the misuse of competition law to pursue industrial policy, protect domestic competitors, or serve noncompetition objectives. This could align with the USMCA's language on policy enforcement and additionally for South Korea's purposes with standards of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Conclusion

The KFTC realizes that the context of its actions has changed and that it is under increased scrutiny. In a February 2025 statement, it noted, “We [the KFTC] are keeping all options open given the uncertainty in the global trade environment.” The United States should use negotiations and the threat of tariffs to persuade South Korea to agree to provisions that address its problematic approach to competition policy. An updated KORUS competition chapter or an executive trade agreement would introduce transparent, predictable, and enforceable safeguards into Korean competition policy to mitigate concerns about bias.