TRUSTED FUTURE

# UNDERSTANDING BARRIERS IN U.S.–KOREA DIGITAL TRADE:

## FIVE REASONS CAPITOL HILL IS TAKING NOTICE OF DISCRIMINATION AGAINST U.S. FIRMS

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Korea is a critically important U.S. ally, a key player in our Indo-Pacific economic strategy, and among our most significant trading partners. Korea's digital economy performs at its best when its firms are able to compete on innovation, productivity, and technology, and when global firms have the predictability and trust in Korea they need to be able to invest and grow.

However as economic tensions and strategic competition reshape the Indo-Pacific, concerns have grown regarding South Korea's use of nontariff trade barriers that result in preferential treatment of domestic firms. Critics have long argued that South Korea maintains and uses a range of measures that disadvantage foreign firms, including opaque regulatory processes, preferential treatment for domestic companies, inconsistent enforcement of rules, and pressure to localize technology and data. Together they undermine trust in an important trading relationship.

The House Judiciary Committee recently published an interim staff report titled "Closed for Competition: South Korea's Discriminatory Attacks on American-owned Businesses" that examines these practices in detail and how they impact U.S. firms in the context of the U.S.-Korea Trade and Investment deal signed in November 2025.

The report explores South Korea's long-standing pattern of economic discrimination against U.S. firms. This includes aggressive investigative tactics, excessively burdensome regulations, and steep fines and penalties that appear designed to penalize American companies and undermine their ability to compete on a level playing field with domestic Korean firms. The report documents how the Korea Fair Trade Commission (KFTC) has been particularly aggressive in its approach to American-owned businesses, including through the use of aggressive enforcement practices like early morning raids, multi-day interrogations, and even the threat of criminal charges to coerce compliance.

The committee also describes a detailed case study of Coupang – an American technology firm and leading employer and investor in South Korea that enables a broad range of American and Korean companies, including small and medium enterprises (SMEs), greater access to the Korean economy and consumer through its online retail services. Despite the significant investments it has made in Korea and the important role it has played in opening up the Korean market to other U.S. goods and services, the Committee found that Coupang has been subject to a "harassment campaign" that has included ceaseless investigations, excessive demands from regulators, massive fines, and even a threat to suspend the company's business operations.

Trusted Future recently hosted an event on Capitol Hill exploring the findings of the report and looking at how the trade irritants described in the report are undermining trust in the bilateral economic relationship at a time when Washington and Seoul are seeking closer cooperation on AI, supply chains, advanced technology, and regional security. We also assessed how unresolved market access concerns could impact future collaboration in strategically important sectors and the long-term resilience of the alliance.

The conversation was held under the Chatham House Rule, and participants included a combination of congressional staff, and subject matter experts from think tanks, academia, and industry.

Below are five key takeaways from the discussion:

## 1. SOUTH KOREA'S REGULATORY APPROACH — ESPECIALLY TOWARDS AMERICAN TECH FIRMS — GOES FAR BEYOND ORDINARY COMPETITION ENFORCEMENT INTO TARGETED DISCRIMINATION.

Participants in the conversation argued that the actions of the KFTC do not fall into the category of standard antitrust or consumer protection activity. Instead, it is characterized by 1) unusually low thresholds for launching investigations, including by a single anonymous complaint; 2) routine use of criminal penalties for what would be civil infractions anywhere else in the world, and 3) aggressive tactics like dawn raids that function more as intimidation than evidence-gathering that collectively "makes it impossible for [U.S. companies] to compete." The top three largest fines in Korean history all landed on American companies for violations described as minor compared to domestic infractions.

One of the speakers conducted extensive research interviewing American firms that operate in South Korea. He noted that there is a universally held belief among American firms that they will be subject to a high frequency of KFTC requests and investigations along with an expectation of ongoing scrutiny. One participant even described a feeling among U.S. tech firm executives that getting called to testify before the South Korean National Assembly (its parliament) is a "rite of passage" – an experience unique to South Korea.

## 2. THE COUPANG CASE IS THE MOST EGREGIOUS BUT IS INDICATIVE OF A BROADER PATTERN WHEN DUE PROCESS BREAKS DOWN.

In many ways the Coupang case is the culmination of years of aggressive, discriminatory behavior. The American company was founded by a U.S. citizen originally from South Korea who set up an e-commerce platform initially focused on South Korea after seeing the success of platforms in the U.S. Coupang has achieved great success – it is the second largest private employer in the country, responsible for more than a third of all U.S. foreign direct investment (FDI) into Korea in the last 15 years including operating over 100 fulfillment centers, and was responsible for more than $5 billion in American goods and agricultural products to Korea in 2025 alone. All of this may have put it on the radar of the South Korean Government. It has been subject to large, disproportionate fines from the KFTC and other Korean regulators, subject to frequent dawn raids, pressured to sign admissions, and was subject to 400 inspections by the Ministry of Employment and Labor in 2025 alone.

Government actions escalated in late 2025, after a disgruntled former employee stole and downloaded data on roughly 3,300 people in Korea, all of which was fully recovered and resulted in zero consumer harm. Korean authorities claimed a data leak affecting 33 million – which is the number of people the employee could have theoretically had access to. This triggered a "whole-of-government regulatory assault" on Coupang including from a new interagency task force convened by President Lee Jae-Myung and 40 separate investigations – though only seven of those were tied to the alleged breach.

The Korean Personal Information Protection Commission (PIPC) also fined Coupang over $410 million for the data breach, the highest privacy-related fine in Korean history and significantly higher than that given to Korean company SK Telecom, which recently had a data leak involving approximately 25 million individuals and more sensitive data, yet was fined a fraction of the amount of Coupang. This is despite Coupang engaging in an extensive operation in China to recover the data at the direction of the Korean National Intelligence Service (NIS), which subsequently denied any involvement. This led the Korean government to file criminal complaints against Coupang's American CEO of its Korean subsidiary and several other Coupang executives for telling the truth.

This case study was proffered as a clear demonstration of the discriminatory treatment of U.S. companies in Korea, including through a breakdown in due process that involves criminal charges without justification, disproportionate fines, and a regulatory response far beyond what is reasonable. As one speaker put it: the reason for focusing on Coupang and South Korean competition policy is because of the effect it has on U.S. firms to compete and trade in Korea.

## 3. WHILE KOREA STANDS ALONE IN THE SEVERITY OF ITS APPROACH, IT'S PART OF A GLOBAL POLICY TREND THAT WILL CONTINUE IF NOT ADDRESSED.

While noting that Korea's activities go far beyond any other country or jurisdiction in terms of their scale and severity, several speakers did draw a direct connection between discriminatory actions like those by the KFTC and those in the EU including through its Digital Markets Act (DMA). One speaker described the DMA as explicitly being designed to protect European competitors by setting regulatory treatment thresholds that capture American firms while excluding EU domestic ones. The event took place on the same day that the EU issued a fine of more than $1 billion against Google, which amounts to over 2 percent of the European Union government's total annual budget, as was noted in the room.

There was concern expressed in the discussion about what this trend means for global trade moving forward. Notably, one speaker warned that if the kind of discriminatory activity we are seeing in Korea is not dealt with swiftly given its role as a fast follower after the EU, it could spread to more markets, impact more firms, and broadly impact revenue and technology development for American companies. This situation illustrates the highly negative impact of non-tariff barriers to competition and entry for U.S. companies.

## 4. THE ECONOMIC IMPACT EXTENDS WELL BEYOND THE LARGE FIRMS DIRECTLY TARGETED.

Technology platforms often serve as gateways to new markets for SMEs given their ability to connect buyers and sellers at a lower cost. So, when a Google or Coupang sets up shop in a new location, it creates an ability for SMEs to start businesses and reach consumers in those zones.

As more firms expand globally, there has also been a trend of more restrictions being imposed in more markets, with the EU and Korea both leading examples. This results in the shrinking of digital openness, the effects of which are immediate for large platforms and trickle down to SMEs, who don't have the lawyers, public policy officials, and capital to defend themselves.

To put this in context, one speaker cited a study that put the cost of Korea's restrictive trade practices at roughly $1 trillion for the U.S. and Korea combined.

## 5. PARTICIPANTS CALLED FOR A POLICY RESPONSE CENTERED ON DUE PROCESS AND A LEVEL PLAYING FIELD.

Speakers emphasized urgency, noting that if the U.S. doesn't push back now, it should not only expect Korea to continue these practices but also Korea's approach to be replicated elsewhere. One expert warned that if the U.S. does not make a case out of South Korea's treatment of American companies, that these methods will be duplicated in other countries and the U.S. will face challenges in more markets, specifically citing examples of Vietnam, Thailand, India as potential jurisdictions where we could see similar methods.

The call from the experts in the room wasn't for Korea to change or add to its underlying competition laws, which are sufficient. Instead, they asked for fair, transparent procedures including access to evidence, functioning courts, and consistent application of rules regardless of a company's nationality.

There was also discussion about proposed U.S. tools to push back against these practices. These include Section 301 trade authority, which speakers noted has proven effective in dealing with similar issues including in the digital space. One speaker noted that Coupang investors had previously filed a 301 petition on this issue, though that was withdrawn which was a signal the U.S. Trade Representative (USTR) was taking the digital trade situation seriously. As one speaker noted, without putting a spotlight on digital trade barriers to foreign trade partners, countries will continue to push as far as they can.

Another remedy discussed was a new piece of legislation titled "No Racketeers on Our Shores Act," introduced by Congressman Baumgartner after the House Judiciary Committee report and targeting foreign officials who discriminate against American firms by denying them entry into the United States. This bill is a good indicator of how the issue could be escalated on the Congressional agenda.

In sum, in addition to direct harms against U.S. companies, there was a clear consensus that discriminatory or protectionist measures actually undermine the very SMEs and innovators Korea needs to be more competitive, deters Korean policy objectives, and can have very real monetary impacts for its economy and consumers. That may be why the recent Korea Strategic Trade and Investment deal agreed to by our two countries specifically committed to ensure that U.S. companies are not discriminated against and do not face unnecessary barriers concerning digital services. Korea also committed to provide additional procedural fairness provisions in competition proceedings, including the recognition of attorney-client privilege. Our discussion underscored exactly why that unfulfilled commitment is so critical, and why action to fulfill it is so urgent.