

The United States Requests KORUS Consultations with South Korea over Competition Policy



[I reported a couple of weeks ago](#) that the European Union (the **EU**) requested, in December 2018, formal consultations with South Korea following Korea's failure to implement certain sustainable development commitments made under the EU-Korea Trade Agreement.

It now appears that it is the United States' turn to initiate formal consultations with South Korea pursuant to Chapter 16 of the US-Korea Free Trade Agreement (**KORUS**).

On 15 March 2019, the Office of the U.S. Trade Representative announced (see [the official press release](#)) that it had requested those consultations after it had raised concerns with South Korea regarding the procedural aspects of hearing before the Korean Competition Authority (the Korea Fair Trade Commission – KFTC). According to the press release, those hearings have denied American companies certain fundamental rights, *"including the opportunity to review and rebut the evidence against them"*.

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This case is the third State-to-State dispute initiated in just a few weeks pursuant to newly concluded free trade agreements (the first two cases were brought by the EU against, respectively, South Korea and Ukraine).

However, with the exception of the EU-Ukraine dispute (which concerned an export ban on wood), the EU-Korea and U.S.-Korea disputes are two prime examples in which a party acts under a newly concluded FTA in order to contest non-trade specific policies and regulations adopted by the other party to the agreement: in its dispute against South Korea, the EU raised concerns regarding certain Korean labour law provisions, while the U.S. raised concerns regarding competition and antitrust proceedings.

In the long term, if such cases continue to replicate, it may illustrate a more profound shift in diplomacy and on how international disputes and the novel dispute resolution mechanisms provided for in new generation FTAs are used as a tool to put pressure on foreign countries and bring about regulatory and policy changes.

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