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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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March 2, 2016

The Honorable Ahn Ho-Young
Ambassador
Embassy of the Republic of Korea
2450 Massachusetts Ave., NW
Washington, DC 20008

Dear Ambassador Ahn:

I am writing to express my continuing concerns regarding full and faithful implementation of and compliance with the U.S.-Korea Free Trade Agreement (KORUS). As you know, I am a strong supporter of the economic relationship between the United States and Korea and worked hard to ensure that the U.S. Congress approved KORUS. I believe that the agreement overall has been a success. However, implementation of and compliance with the agreement has fallen short in several areas, resulting in limited benefits to U.S. firms seeking to benefit from the agreement and to expand their economic partnerships with Korean firms.

For example, Korea's Ministry of Health and Welfare continues to make pricing and reimbursement policies regarding pharmaceuticals and medical devices with little transparency and opportunity for stakeholder input. Its decisions on pricing and reimbursement for pharmaceuticals and medical devices often do not appropriately value innovative medicines and are not made in a fair, nondiscriminatory, and transparent manner. Critically, Korea still is not living up to its KORUS obligation to make available an independent review mechanism for stakeholders directly affected by pricing and reimbursement decisions.

Additionally, U.S. firms continue to be concerned about Korea's implementation of regulations pertaining to the transfer of data by financial firms for processing and other functions by affiliates outside of Korea. And while Korea has made progress with respect to software piracy, there is still work to do for Korea to live up to its obligation to ensure Korea's government agencies use only licensed software.

I also am concerned about legislation that your government recently submitted to implement Annex II of the KORUS, which establishes a process for liberalizing legal services in Korea. I am concerned that several amendments to the Foreign Legal Consultants Act would restrict significantly the types of Korean law firms that would be eligible to partner with U.S. law firms in joint ventures, prohibit joint ventures from practicing before certain courts and areas of law, and maintain an equity cap on joint ventures.

Another significant area of concern is a lack of transparency and procedural fairness in Korea Fair Trade Commission (KFTC) antitrust investigations. KORUS includes provisions addressing competition related matters. Chapter 16 sets forth significant antitrust-related obligations for the parties, including specific due process provisions and procedural safeguards, guaranteeing parties the right to cross-examine witnesses and review all documents on which charges may be based. I am concerned that in the short time

KORUS has been in effect, the KFTC has on repeated occasions failed to provide these basic procedural protections to American businesses. There also have been troubling accounts of witness intimidation, withholding of evidence, failure to provide access to key witnesses, and an absence of transparency and predictability in the investigative process.

Moreover, 16.1(2) of KORUS, provides that “[t]he enforcement policy of each Party’s [competition] authorities responsible for the enforcement of such laws is to treat persons who are not persons of the Party no less favorably than persons of the Party in like circumstances, and each Party’s authorities intend to maintain this policy.” KFTC’s caseload, which includes at least 40 antitrust investigations against U.S. companies in the last four years, appears to show a concerted effort to prioritize antitrust investigations against U.S. companies.

I understand that your government has expressed interest in joining the Trans-Pacific Partnership agreement, should it be approved by the U.S. Congress. The *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* makes clear that adherence to existing international trade and investment agreements is a key criterion to be considered by the U.S. government in determining whether to enter into additional trade negotiations with a particular country. As a strong supporter of the U.S.-Korea economic relationship, I hope that existing implementation and compliance issues will be resolved so that our countries can strengthen and expand our economic relationships without any impediments.

Sincerely,

A handwritten signature in blue ink, reading "Orrin Hatch". The signature is written in a cursive style with a large initial "O".

Orrin G. Hatch
Chairman
U.S. Senate Committee on Finance