



8 June 2018

Douglas Bell
U.S. Department of the Treasury
Deputy Assistant Secretary for Trade and
Investment
1500 Pennsylvania Ave, NW
Washington, D.C. 20220

Daniel Bahar
United State Trade Representative
Assistant USTR for Services and
Investment
600 17th Street, NW
Washington, D.C. 20508

Dear Doug and Daniel,

Re: KORUS and Data Localization

SIFMA¹ looks forward to learning about the outcomes of the upcoming KORUS Financial Services Committee meeting in Seoul, Korea. The Republic of Korea is an important market for the U.S. financial services industry and for our economy – enhancing capital flows between the two countries, by promoting mutual market access and regulatory fairness, is something SIFMA applauds. We are writing to encourage you to begin considering ways in which the U.S. and Korea can modernize their commercial and economic relationship as we look towards areas where cooperation will be most important beyond next week's meeting.

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>."



Since the U.S. Korea Free Trade agreement was signed in 2006, and entered into force in 2011, the technological and commercial environment has evolved significantly. Cross-border trade of digitally-deliverable services has risen dramatically: global e-commerce reached almost \$28 trillion in 2016,² leaving some observers to conclude that “[v]irtually every type of cross-border transaction now has a digital component.”³ The ability to use and transfer consumer data across borders is therefore essential to support trade and investment in the 21st century. Cross-border data flows have increased global GDP by 10 percent over the last ten years.⁴ Digital trade is important for every sector of the economy, and financial services exports engender a multiplier effect for trade and investment by manufacturers, agriculture producers, and other service providers that further contribute to the digital economy. In this new digital economy, data security, and efficiency is critically important to businesses, governments, and consumers.

While the KORUS agreement contained critical language ensuring cross-border data flows, it did not *preclude* specific or de-facto data localization requirements that could restrict such flows. Limitations on the free flow of data when they are imposed have serious implications for global firms, the end-users they serve, and economic growth more generally. Policymakers engage in these localization practices incorrectly assuming that they will improve privacy and security, ensure better access to data, or that requiring local servers or computing facilities will foster innovation, spur technology transfer, or bolster domestic economic growth. The financial industry supports global regulatory authorities’ legitimate concerns to protect consumer and investor data privacy and security; however, there is no credible evidence that data localization requirements bolster security, ensure access to data, or mitigate privacy concerns. Furthermore, data localization requirements

² U.S. International Trade Commission, “Despite Huge Growth in Global Digital Trade in Recent Years, Some Countries Seek to Slow Adoption, Reports USITC,” September 2017, https://www.usitc.gov/press_room/news_release/2017/er092811836.htm.

³ McKinsey, “Digital globalization: The new era of global flows,” March 2016, <https://www.mckinsey.com/business-functions/digital-mckinsey/our-insights/digital-globalization-the-new-era-of-global-flows>.

⁴ Ibid.



and policies that hinder the free flow of data increase cyber risks and erect barriers to trade, competition, and innovation.

In the upcoming KORUS Financial Services Committee meeting, we urge you to share with Korea the evolution of policy on these issues by the U.S. Treasury Department and United States Trade Representative (USTR). Technology continues to advance and financial firms should have the ability to take advantage of technological progress, such as storing data in the cloud. We appreciate the time and effort that U.S. policymakers have put into developing policy on this issue and we look forward to assisting however we can in helping our trading partners do the same. This is an example of why mechanisms such as the KORUS Financial Services Committee are important. We encourage Treasury and USTR to begin to consider how to advance this issue with Korea whether through a Memorandum of Understanding or Exchange of Letters that would enable SIFMA members to use regional computing facilities or the cloud to store their data.

We wish you a successful trip and look forward to engaging on these issues upon your return.

A handwritten signature in blue ink, which appears to read "Ken Bentsen". The signature is fluid and cursive.

Kenneth E. Bentsen, Jr.

President & CEO

Cc:

Matthew Swinehart, Treasury

Lailee Moghtader, Treasury

Sarah Ellerman, USTR