



18 July 2007

## **BUSINESSEUROPE POSITION ON THE EU-KOREA FREE-TRADE AGREEMENT (FTA)**

### **SUMMARY**

BUSINESSEUROPE calls for:

- An ambitious EU-Korea FTA covering goods, investments, services and trade rules.
- Industrial goods: Full coverage, full reciprocity and effective market access.
- Services: Ambitious liberalisation of as many sectors as possible.
- Investment: Strong rules to foster and protect investments.
- Agriculture: Reduced tariff and non-tariff-barriers for EU exports.
- Trade facilitation including customs clearance, competition and public procurement.



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### **INTRODUCTION**

South Korea has undergone an impressive economic transformation from a war-torn underdeveloped country to an industrialised heavyweight and OECD member. However, South Korea could open its economy even further.

The European Union and Korea have a long record of partnership and economic collaboration. Bilateral trade and investment flows are of crucial economic importance for both Korea and the EU, which remains Korea's second largest trading partner. South Korea is the EU's fourth largest trading partner outside Europe.

Despite the close economic ties, BUSINESSEUROPE believes that EU-Korea links can be further extended. A new FTA could pave the way for further trade between the parties and improve the framework conditions for investment, moving towards a more integrated economic relationship. A trade and investment agreement between the parties must be in conformity with WTO rules.

### **SOUTH KOREA**

South Korea was founded in 1948, after the northern and southern part where separated as a result of the start of the cold war. South Korea successfully developed into an industrial nation in only thirty years in the period from the late 1950's by combining import substations industrialisation with export oriented industrialisation. Also very close business-government cooperation paved the way for the industrialisation. Today South Korea has a GDP of € 708 billion (€ 922 billion based on PPP) and a population of around 49 million.

Until 2003, South Korea was the only developed country in Asia without having signed bilateral trade agreements. However, since 2004 South Korea has concluded negotiations with Chile, Singapore, EFTA, the ASEAN countries and the US. European companies should not have less favorable market access and investment conditions in the Korean market than companies from these countries.

### **EU ECONOMIC RELATIONS WITH KOREA**

In 2006 the EU's top trading partners – outside Europe – were the US, China, Japan and Korea ranking as number four. The EU is Korea's second largest export market after the US. In 2006, the EU was the largest foreign investor with around € 5 billion of foreign direct investment into South Korea, which represents 45% of the total.



## **BUSINESSEUROPE SUPPORTS AN EU-KOREA FREE TRADE AGREEMENT**

Since 2001, the EU has prioritised the multilateral track under the WTO Doha Development Agenda, and should continue to do so. There are huge economic welfare gains to be achieved from a multilateral trade agreement. To improve market access for European companies and ensure a non-discriminatory treatment for them in Korea and other third-country markets, the priority for BUSINESSEUROPE remains the multilateral approach in the framework of the WTO. European business is strongly committed to an ambitious conclusion of the Doha Development Agenda as soon as possible.

However, BUSINESSEUROPE supports a WTO-compatible FTA with Korea that is ambitious in terms of product coverage and liberalisation. The fundamental criteria for the agreement should be that it is based on economic criteria and on reciprocity.

Against this background, BUSINESSEUROPE supports an EU-Korea free trade agreement, which would ensure comprehensive liberalisation of trade in goods and services and an improvement of business conditions, including investment beyond what could be accomplished in the WTO framework (WTO+).

Korea is negotiating bilateral FTAs with several third countries, and has recently concluded a comprehensive free trade agreement with the US. Any EU-Korea FTA should ensure, as a minimum, a level playing field for EU companies in all sectors in Korea, equal to that enjoyed by its main competitors.

## **MAIN ECONOMIC ISSUES FOR AN AGREEMENT WITH KOREA**

The starting point for negotiations with Korea must be full reciprocity, effective access to the South Korean market and symmetry in tariff dismantling and implementation periods. The agreement should include the broadest product coverage possible in both services and goods. Against this background, the agreement should include the following key elements:

### **Tariffs**

South Korea's tariffs on industrial goods and agricultural products are an important barrier to trade. Negotiations on industrial tariffs should cover liberalisation of all tariff lines, addressing Europe's economic needs. The elimination of tariff peaks on a number of processed agricultural products should also be sought. The high level of tariffs, compared with the EU level, is demonstrated in the table below.



*Comparing tariff rates in Korea with the EU*

Country	Most recent Year	All products						Primary products		Manufactured products	
		Binding coverage	Simple mean bound rate	Simple mean tariff	Weighted mean tariff	Share of lines with international peaks	Share of lines with specific rates	Simple mean tariff	Weighted mean tariff	Simple mean tariff	Weighted mean tariff
Korea	2002	94.4	9.3	15.8	5.2	10.0	0.4	19.5	19.0	7.7	5.0
EU	2005	100.0	4.2	1.8	1.7	1.8	10.3	2.6	0.9	1.7	2.1

Source: World Bank, World Development Indicators, 2006

**Non-Tariff-Barriers (NTBs)**

The EU should knock down trade barriers, both in the form of tariffs and NTBs, and other forms of non-market access. Numerous reports from the Commission, European business, or international organisations point to NTBs as an increasing barrier to trade, as the levels of tariffs become gradually lower. FTAs must seek to address this, setting a course towards regulatory convergence - around transparent and predictable regulation.

The Commission should take the problem of NTBs to the forefront of the negotiations with Korea. Effective standstill on NTBs as from the start-up of the negotiations should be agreed. Most NTBs result principally from the administrative burden and the number of procedures and authorisations that European companies face in Korea. The local certification process is lengthy as compared to the EU system. The WTO estimates that 25% of imports into South Korea face NTBs which is significantly higher than in Japan, Malaysia and Thailand.

The EU and Korea should work more closely towards enhancing a more transparent framework for technical regulations and standards, and using global harmonised standards. An efficient NTB arbitration mechanism could be instrumental to remove new NTBs. Moreover, a binding dispute settlement (comparable to the WTO mechanism or the mechanism in the FTA between EU and Chile) is key.

Non-tariff barriers are a particular problem for EU automotive exports. Korean standards and certification represents a significant market access barrier to the Korean sector. The FTA should lead the Korean Government to recognise the international UN/ECE standards.

In addition, the FTA would have to address the significant non-tariff barriers that are faced by the European digital electronics industry. In particular, the EU should ask the Korean government to identify the NTBs which close the market and put in place a well-defined 10-year plan to dismantle them. Some of the tariff barriers which would need to be addressed are: local manufacturers' control over the Korean retail distribution network and anti-competitive practices such as cartels, subsidies, loans on favourable terms and favourable tax treatments.



Labelling is often a problem for companies operating in the Korean market, for instance for the EU textile sector. A substantial amount of information is required, not in line with the WTO Technical Barriers to Trade (TBT) agreement. BUSINESSEUROPE supports a real reduction in the labelling regimes with international standards wherever possible.

Commitments in the field of NTBs should be enshrined as precisely as possible and with exact deadlines in sector specific annexes as general wording is not sufficient. They should be foreseen for all sectors which face NTBs and have substantial offensive interests. Full respect of these NTB commitments should be enforced through appropriate dispute settlement procedures as described below.

### **Industrial goods**

The agreement should ensure that free trade in all goods would be achieved, and negotiations should cover liberalisation of 100% of tariff lines. It should be firmly based on the principle of full reciprocity addressing Europe's economic needs, including free and effective access to the South Korean market without any discrimination. There should be no exemptions for any products and sectors from tariff elimination, which should be reduced within a short period of time.

Korea levies import taxes on semi-manufactured products which are bound for re-export. While the tax is refunded to the importer when the products have been exported, the paperwork and loss of liquidity during the period until refund has taken place constitute a disadvantage for EU suppliers compared to national suppliers.

### **Food, drinks and other agricultural products**

An FTA with Korea should also cover food, drinks and agricultural products, by addressing tariff reductions and other restrictions. The agreement should not put EU food producers in a less favourable position than producers from third countries that have bilateral FTAs with Korea. Negotiations must be compatible with the WTO provisions requiring coverage of 'substantially all trade'.

The Commission should secure that EU companies can take advantage of the single market and the possibilities of sourcing and producing across national borders in the EU when exporting to Korea. During the negotiations the Commission should secure that Sanitary/Phytosanitary measures (SPS) certificates, which are a national matter, can originate from authorities from different member states. Korean SPS measures must be developed in a transparent manner. Food products are subject to too lengthy and detailed quarantine inspection in South Korea.

### **Services**

A major offensive interest for the EU, and a key area for negotiations with Korea, would be liberalisation in the services sector, which de facto is still difficult to access.

An EU-Korea FTA should be substantial as set out in GATS Article V and should cover all modes of supply. A negative list approach, whereby the EU obtains full market access and all services are automatically liberalised unless specifically provided



otherwise, remains the preferred approach for BUSINESSEUROPE<sup>1</sup>. An FTA between the EU and Korea must ensure comprehensive liberalisation of key services sectors.

While Korea has liberalised its service industry, barriers remain on different levels. EU companies face difficulties entering the Korean insurance market because of the lengthy and stringent approval procedures for each insurance product. In banking, there are more onerous requirements for branches of foreign banks than for domestic banks, such as prudential ratios, which limit their activities in South Korea. For asset management, there are few tax discriminations favouring investment in domestic funds.

For the insurance sector, there should be a written advice of the Regulators when asked by EU insurers.

The Korean government has expressed its intention to liberalise its legal sector. However, it appears that new draft provisions would apply only to countries with which Korea currently has trade agreements.

Companies which want to place experts on the Korean market, can only get temporary residence permits to people who have worked more than one year in the company. Application procedures are complicated and not clearly explained in English. Permits relating to opening retail shops seem to be unnecessarily bureaucratic.

In telecoms, there is a risk of Korea developing a unique set of standards which do not comply with international ones.

### **Investment**

An agreement with Korea should guarantee free access to the Korean market, non-discrimination and national treatment, greater transparency and full pre- and post-investment protection, including free transfer of all investment-related capital flows. There still exists a 49 percent cap on foreign ownership in the telecom sector and restrictions in energy, shipping and banking.

Negotiations with Korea on investment must entitle EU companies to operate in a manner that will enable them to compete effectively in Korea. EU provisions on investment should be complementary to Member State bilateral investment treaties (BITs), neither undermining nor creating conflict with them. They must also offer strong protection from unfair treatment and unfair expropriation and provide a mechanism for investor-to-state dispute settlement.

### **Intellectual property rights**

Intellectual property rules are crucial to ensure that companies continue to invest in research and development. European business strongly supports the WTO TRIPs agreement. Full implementation and enforcement of TRIPs commitments must be the absolute minimum for FTA negotiations between the EU and Korea, with a view to

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<sup>1</sup> If the Commission does not adopt a negative list approach, for sectors with additional commitments (e.g. Telecommunications with the Reference Paper on Basic Telecoms), the schedules of commitments must respect the existing GATS classification in order to avoid confusion on the scope of the services subject to regulatory provisions.



provide international standards of IPRs, which will not only satisfy TRIPs requirements, but also reflect international standards and best practice.

Companies report about problems with IPR in the maritime sector, and IPR enforcement is still to be improved. The EU should negotiate strong procedures on enforcement, and provide detailed prescriptions on the legal and procedural reforms necessary to ensure that regimes effectively protect intellectual property.

Penalties for counterfeiting and piracy in South Korea are insufficient to address the problem.

### **Competition policy**

For BUSINESSEUROPE the fundamental objective of a FTA between the EU and Korea is that companies should be able to compete with each other in both, individual markets of Korea and EU members states on a level playing-field, taking full advantage of the expansion of international trade. Korea should, where appropriate, install meaningful systems to enforce competition policy. Disciplines should include basic principles of transparency, non-discrimination, government subsidies as well as commitments to tackle hard core international cartels.

### **Public procurement**

Public procurement markets represent in the EU as well as in Korea a substantial proportion of GDP in both goods and services. Provisions on transparency and qualification procedures/decisions are important. Companies report that there seems to be an often inappropriately close relationship between operators and suppliers, making it difficult for foreign suppliers to enter the market.

The bilateral agreement should foresee a substantially lower threshold for non-discriminatory tendering than the current GPA-threshold (it should not be higher than the level stipulated in the FTA between the US and Korea). The number of institutions which fall under the bilateral procurement provisions should be substantially enlarged compared to Korea's current GPA commitments.

Given the complex system of exemptions it contains, an agreement with Korea should also include further disciplines to ensure that national treatment and non-discrimination are guaranteed and that national and/or local preferences are to the greatest extent possible eliminated.

### **Trade facilitation**

An agreement with South Korea on trade facilitation should be based, as a minimum, on the WCO Revised Kyoto Convention and take into account the results of the WTO negotiations from the Trade facilitation. The provisions of the agreement should be focused notably on:

- minimisation and/or elimination of fees and charges;
- procedures for legal recourse and appeal, complaint or mediation services in the case of disputes with customs;
- establishment of a single administrative window;
- publication of trade regulations, and



- accelerated and simplified procedures for release and customs clearance of goods.

## **Rules of origin**

The EU's FTAs should also include rules of origin that strengthen the competitiveness of EU business, which are clear, transparent, easily implemented, as harmonised with WTO rules as possible, not imposing any additional burden on economic operators. BUSINESSEUROPE supports maintaining the predictability of the preferential rules of origin and taking into account the variety of economic situations, which could imply different criteria. The situation of products from the Kaesong industrial zone in North Korea should be clarified.

## **Anti-dumping**

Korea must not be granted any privileges and derogations from the current EU Anti-dumping or Anti-subsidy regulations. Concessions of this kind should also not be granted informally on a case-by-case basis. BUSINESSEUROPE will closely follow developments in this area and would dismiss any bilateral agreement or informal practice which would undermine current EU anti-dumping or anti-subsidy standards.

## **Transparency**

The European Union strongly encourages adherence to a certain number of procedural safeguards designed to ensure transparency, objectivity and administrative efficiency in decision-making. These provide companies with predictability and ensure that decisions are neither arbitrary nor abusive.

The FTA between Korea and the EU could support similar principles of transparency, objectivity and administrative efficiency, including deadlines for decisions and objective justification for these decisions.

For the pharmaceutical industry, Korea's pricing and reimbursement policies for innovative medicines is a major continuing concern, as the current system is opaque and causes commercial uncertainty.

## **Dispute settlement**

The agreement with Korea should include a binding and effective bilateral dispute settlement mechanism with clear cut deadlines. This should be set up in analogy to the WTO mechanism or the mechanism enshrined in the FTA between the EU and Chile. Precise deadlines and retaliation as a means of last resort are key. BUSINESSEUROPE supports direct access by companies to the mechanism.

## **CONCLUSION**

BUSINESSEUROPE supports the EU-Korea negotiations on trade and investment leading to an ambitious agreement which facilitates economic integration between the parties. BUSINESSEUROPE is willing to work with the Commission to move these negotiations forward.

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