



EU-SOUTH KOREA FREE TRADE AGREEMENT: A QUICK READING GUIDE OCTOBER 2010

The Free Trade Agreement between the EU and the Republic of Korea (EU-South Korea FTA) is the first of the new generation of FTAs launched in 2007 as part of the "Global Europe" initiative. These agreements, based on solid economic criteria, will represent a stepping stone for future liberalisation as they are also tackling issues, which are not ready for multilateral discussion and are going beyond the market opening that can be achieved in the WTO context.

Accordingly, the EU-South Korea FTA is the most comprehensive free trade agreement ever negotiated by the EU. Import duties are eliminated on nearly all products and there is far-reaching liberalisation of trade in services covering all modes of supply. It includes provisions on investments both in services and industrial sectors, strong disciplines in important areas such as the protection of intellectual property (including geographical indications), public procurement, competition rules, transparency of regulation and sustainable development. Specific commitments to eliminate and to prevent non tariff obstacles to trade have been agreed on sectors such as automobiles, pharmaceuticals or electronics. A Protocol on Cultural Cooperation is premised on the commitment of both parties to promote cultural diversity in accordance with the UNESCO Convention.

The agreement comprises of 15 Chapters, several annexes and appendixes, three protocols and four understandings. This document aims at providing a quick non technical summary of each of the relevant elements of the agreement.

Chapter 1 Objectives and General Definitions

Chapter one defines the objectives of the agreement and provides definitions of the Parties throughout the text.

Chapter 2 - National Treatment and Market Access for Goods

Chapter two sets out the objective of removing both customs duties and regulatory obstacles called Non-Tariff Barriers (NTB) on trade in goods.

The removal of customs duties is done over a transitional period so that domestic producers can gradually adapt to the lowering of customs duties. Consumers will benefit from lower prices and exporters from strengthened competitiveness.

The majority of customs duties on goods will be removed already at the entry into force of the agreement. Practically **all customs duties on industrial goods will be fully removed** a within the first 5 years once the FTA is applied. When considering both industrial and agricultural products, South Korea and the EU will eliminate 98.7% of duties in trade value within 5 years from the entry into force of the FTA. A limited number of highly sensitive agricultural and fisheries products have transitional periods longer than 7 years. Rice and a

few other agricultural products, for all of which the EU is not a significant exporter, are excluded from the agreement.

The agreement incorporates fundamental WTO rules on NTBs, such as national treatment, prohibition of import and export restrictions, disciplines on state trading etc. All export duties are prohibited from the entry into force of the agreement. Specific **NTBs**, such as, differing standards relating to automotive, electronics and pharmaceuticals are **tackled in separate annexes** to the agreement.

Finally, the FTA sets up a Committee on Trade in Goods that shall meet at the request of either party. This Committee can consider broadening the scope of NTB disciplines, speeding up liberalisation as well as tackling other issues related to trade in goods between South Korea and the EU.

SCHEDULE OF ELIMINATION OF CUSTOMS DUTIES

Some **highlights of the main benefits for EU exporters:**

- The FTA will **swiftly remove €1.6 billion of customs duties** which EU exporters to South Korea face every year. Already on day one when the agreement enters into force some €850 million will be removed. Obviously potential gains will be even higher as the trade between the EU and South Korea is expected to expand due to the FTA.
- **Machinery & Appliances** represent the largest sector where duties are saved with gains close to €450 million. 70% (or €312 million) of those duties will be removed as of entry into force. The **Chemical** sector is the second largest beneficiary and will see relief of €175 million worth of duties, of which €143 million already at entry into force.
- **Other industrial sectors** smaller in absolute numbers, but with considerable duty relief at entry into force include: textile exports will see 93% of duties swiped away immediately, glass 85%, leather & fur 84%, footwear 95%, Iron & Steel 93% and optical instrument 91%.
- For the most **sensitive industrial products** such as passenger cars with small sized engines, consumer electronics including TV sets, video recorders and LCD monitors, the EU customs duties will only be **fully liberalised in year 5 of the agreement**. A number of other sensitive goods, including cars with large or medium engines, have a 3 year liberalisation period.
- European **agricultural and processed food products** have very good reputation in South Korea and are well perceived by the Korean consumers. Therefore, the EU has substantial agricultural exports into the Korean market. Average annual exports is above €1 billion (pork €240 million, whisk(e)y €176 million, dairy products €99 million).
- The FTA would **fully liberalise basically all EU agricultural exports** to South Korea and would provide the biggest market liberalisation for EU agricultural exports in years. Today only 2% of EU agricultural exports enter South Korea duty free. The FTA would fully liberalise nearly all EU agricultural exports (e.g., wine is duty-free from day one, whisk(e)y on year 3 and there would be valuable duty-free quotas for products like cheese from the entry into force of the agreement). Certain EU pork exports will have duty free access from year 5, whereas for the most sensitive product (frozen pork belly) a 10 year transition period is envisaged.
- **Agricultural exporters would save €380 million annually** on duties for agricultural products, for which Korean duties are very high (35% on weighted average). In light of very high Korean tariffs, the potential for expanding EU exports is considerable. The FTA would therefore allow EU agricultural exporters to maintain and improve their competitive position in the Korean market.

- Without the agreement this position would be challenged as South Korea has concluded or is negotiating FTAs with strong agricultural exporters such as Chile, USA, Canada, Australia and New Zealand. In addition, new market access possibilities are being created by eliminating duties on products currently not or little exported by EU farmers and producers, notably fruits such as mandarins, apples or kiwi.

Annexes on Non Tariff Barriers

In line with the ambition stated in the *Global Europe* communication, the EU-South Korea FTA is the **first FTA to include specific sectoral disciplines on NTBs to trade**. NTBs are all barriers to trade other than tariffs and arise in many different shapes. The costs created by non-tariff barriers are a high burden, often higher than custom duties, particularly for smaller and medium enterprises. Since a number of these barriers are a side effect of the otherwise legitimate pursuit of public policy objectives, overcoming the negative side effects requires finding carefully balanced solutions.

The **annexes on NTBs address effectively those regulatory and other barriers** that EU industry has identified as being the most important obstacles to access to the Korean market in the sectors concerned. In view of their detailed and technical nature, these barriers are very difficult to address and require entering deeply into the regulatory practices of trading partners. It is therefore of particular value that the rules on NTBs could largely be based on the European regulatory model.

Four sector-specific annexes are included in this FTA: consumer electronics automotive products, pharmaceuticals and chemicals.

Consumer Electronics: currently, exporters of consumer electronics and household appliances (from television sets to computers or micro wave ovens, mobile phones or telecom equipment) are obliged to duplicate cumbersome and expensive testing and certification procedures in order to sell in South Korea. The provisions of the electronics NTB annex provide real and tangible solution for such barriers to trade.

Firstly, the annex highlights the role of international standardisation and singles out the relevant international standard-setting bodies. Secondly, the provisions on conformity assessment restrict the choice of conformity assessment procedures to supplier's declaration of conformity (i.e., the firm selling a product is responsible for certifying that the product meets the relevant regulations in South Korea). Elimination of third party certification except for a limited number of products on a temporary basis is an important outcome of the negotiations. This change of the regulatory system will bring considerable reduction of costs, complexities and bureaucratic hassle, a complete change of the regulatory system for these products in South Korea.

During a three year transitional period, South Korea may continue to require third-party certification. In those cases, however, South Korea will recognise European certificates and test results. The FTA will dismantle South Korea's factory inspections as well as certification and duplicative testing requirements, especially with regard to electromagnetic compatibility. EU exporters will also be able to conduct safety testing in the EU thus lifting significant regulatory and financial burdens.

With regard to electrical safety, for a very limited list of 53 items (covering around 15% of EU exports), South Korea shall have the possibility to continue with a third-party certification regime if it can show on a product specific basis that allowing supplier's declaration of conformity would create risks for human health and safety.

Motor vehicles: the agreement contains far-reaching provisions to address non-tariff barriers in this sector, which have been perceived by EU industry as the most significant obstacles to export to South Korea. They basically provide for a wide-ranging recognition of international standards by South Korea.

For core safety standards, UN-ECE standards will be considered as equivalent to Korean domestic standards from the entry into force of the agreement. This covers all those standards signalled by industry as being significant trade barriers. In addition, for a further 29 standards, South Korea will align its regulations to UN-ECE regulations during a five year transitional period. For those standards not subject to equivalence or harmonisation, South Korea is committed to ensure that they continue to be applied in a manner which avoids market access problems

South Korea will moreover recognise EU on-board diagnostic (OBD) devices conforming to the future Euro-6 norm as equivalent with Korean standards. Until then, cars fitted with OBDs conforming to the current Euro-5 norm will be accepted within a transitional quota. This transitional quota will apply as from 1 of January of 2010.

South Korea will also give EU car makers flexibility to comply with the Korean emission standards, by providing for specific emission levels for car makers with sales in South Korea below certain thresholds. EU car makers will benefit from this provision for the whole year when the agreement enters into force. Other provisions establish that any new standards will have to be based on UN-ECE standards, and that new features and technologies will be allowed without hindrance.

The agreement also includes an MFN clause with respect to any benefits accorded to a third country as regards internal taxation or emission regulations affecting the car sector.

A number of mechanisms have been foreseen to ensure there will be no new artificial barriers erected in the future, including a commitment not to introduce measures that could affect negatively the benefits of the FTA.

To illustrate what the technical rules of the FTA mean in practice: there will be no need to conduct specific expensive tests to show compliance with a wide range of safety standards (e.g. resistance to crash or impact, effectiveness of braking, etc.) as the tests conducted in the EU to show compliance with EU standards will be recognised by South Korea. Equivalence with European standards on OBD would represent a major cost saving since Korean norms for petrol cars are based on US Californian standards, which makes it extremely costly to market in South Korea a car model which is not also marketed in the US. In the absence of flexibilities on emission standards, it would be very difficult for EU producers to maintain and expand their presence in the Korean market since most sales are concentrated in the high segment of the market.

Finally, a special accelerated dispute settlement will ensure compliance with the rules negotiated for the car sector. The period foreseen for an arbitration panel ruling will be reduced from 120 to 75 days. Monitoring of the implementation of commitments will also be undertaken through a Working Group, which will meet at least once a year.

Pharmaceutical products and medical devices: pharmaceutical exporters and exporters of medical devices shall benefit from strengthened transparency in pricing decisions.

As in many EU Member States, Korean health authorities set the prices at which drugs are reimbursed. However, there are concerns regarding the lack of transparency of the process under which prices are set. The FTA would address this long-standing concern by introducing detailed binding rules on transparency regarding decisions on reimbursement, and stipulating the possibility to have such pricing decisions reviewed by a court. The criteria on which the decisions on reimbursement and pricing are based shall be objective and clear.

Finally, the FTA structures and installs regulatory co-operation through a working group. The EU and South Korea will consider requests to accept each other's conformity assessments on the basis of international practices.

Chemicals: the FTA fully preserves the integrity of the EU regulatory framework in the chemical sector. In addition, it introduces a number of positive elements for possible future cooperation, highlighting the importance of "ensuring transparency regarding the content of their laws and regulations and other measures of general application in the area of chemicals." An important point of cooperation is in the area of Good Laboratory Practice and

Test Guidelines "in order to seek a harmonized approach to chemical assessment and management".

Chapter 3 Trade Remedies

The trade remedies chapter includes provisions relating to the **use of the traditional trade defence instruments** already existing in the WTO legislation (anti-dumping, anti-subsidy and global safeguard).

The key guiding principle concerning the traditional instruments is to re-affirm the need to **respect the rights and obligations foreseen by the WTO legislation**, while at the same time **setting out disciplines in order to limit the use of these instruments** to situations where this is necessary and to ensure a fair treatment for all the parties concerned. Those are already standard in the EU legislation.

For example, the FTA requires that the level of duty should be lower than the full amount of dumping or subsidy to the extent that this is sufficient to eliminate the injury. It also gives the possibility to conduct a public interest test in order to balance the various interests at stake and to examine the possible impact of the duties on the economic operators before imposing any measures.

There are also provisions aiming at **increasing transparency** of the investigation process, also giving the possibility of the economic operators involved in the proceedings to file documents in English, which would allow interested parties to better exercise their rights of defence and to avoid costly translations.

The agreement includes a **bilateral safeguard clause** which allows either party to reintroduce temporarily the tariffs applied to WTO members in case an increase of imports would cause or threaten *serious injury*. The EU will monitor the market in sensitive sectors and will be ready to activate safeguard procedures whenever the conditions are met. At the same time as the entry into force of the agreement, an EU Regulation will introduce rapid and effective procedures for the implementation of the bilateral safeguard clause.

Finally a **working group on trade remedies** has been established in order to set up a forum for dialogue on trade remedy co-operation. This will allow the investigating authorities of each party to have a better knowledge of their respective practice and exchange views in order to increase standards used in trade defence proceedings.

Chapter 4 Technical Barriers to Trade

The Chapter on Technical Barriers to Trade (TBT) is intended to reduce obstacles to trade between the EU and South Korea arising out of technical regulations, standards, conformity assessment procedures and similar requirements.

The parties reiterate their commitments under the World Trade Organisation Agreement on TBTs. In addition, they undertake to **cooperate on standards and regulatory issues**, and where appropriate, to establish dialogues between regulators, with the intention of simplifying and avoiding unnecessary divergence in technical requirements applying to products.

The agreement includes specific undertakings on **good regulatory practice**: transparency in making rules, use where possible of international standards, providing the other Party with an opportunity to discuss rules before they are made, and allowing sufficient time for the other Party to comment on them and to take account of their adoption. Similar considerations apply to technical standards.

There are also provisions on marking and labelling, whereby requirements to mark or label products will be minimised as far as possible, and will be non-discriminatory.

Finally, a mechanism for co-ordination is set up between the EU and South Korea to keep these matters under consideration and to address any specific issues.

Chapter 5 Sanitary and Phytosanitary Measures

The main objective of the Chapter on Sanitary and Phytosanitary (SPS) measures is to further **facilitate trade** between the EU and South Korea in **animals and animal products, plants and plant products** while maintaining the **high level of human, animal and plant health**. Another objective is to ensure full transparency as regards sanitary and phytosanitary measures affecting trade.

With the aim of having a common understanding on **animal welfare**, the chapter also includes provisions on cooperation.

These objectives will be achieved by the introduction of the following **key elements**:

- a formal dialogue on SPS issues affecting trade;
- specific commitments on: transparency (in particular with respect to import conditions), consultation, working towards developing a common understanding on international standards and equal treatment of all EU Member States;
- a procedure for the recognition of disease-free areas, i.e. areas eligible for exporting products to the other Party.

In the framework of FTA, a specific mechanism for co-operation between the parties will be established (Committee on SPS measures) for the implementation of the SPS Chapter. This Committee will develop the necessary procedures and arrangements, will monitor progress, and provide a forum for discussion of problems arising from the application of certain SPS measures.

Chapter 6 Customs and Trade Facilitation

The agreement **will enhance co-operation in customs and customs-related matters**. In particular the Parties commit, amongst other, to:

- pursue harmonisation of documentation and data requirements with the aim to facilitate trade between them;
- develop effective communication with the business sector;
- assist each other in matters related to tariff classification, valuation and preferential origin of goods;
- promote strong and efficient enforcement of intellectual property rights regarding import, export and transit;
- improve the security, while facilitating trade, of sea-containers and other shipments imported into, transhipped through or transiting the Parties.

The agreement provides also a comprehensive benchmark for the application of modern and trade friendly customs and border related procedures. It builds on international standards and addresses the majority of the issues raised in the WTO Trade Facilitation Negotiating Group. To provide increased transparency and legal certainty, the **Trade Facilitation provisions** included in the FTA provide for advance rulings, appeal procedures and detailed rules for publication of customs and trade related legislation, fees and charges, the designation of inquiry points and consultations with the representatives of the trading community. To simplify and streamline border procedures the chapter contains provisions on the reduction of fees and charges, risk management, electronic submissions, the elimination of pre-shipment inspections, simplified customs procedures and customs valuation.

The agreement **establishes a Customs Committee** which consists of representatives of the customs authorities and other competent authorities of the Parties responsible for customs and trade facilitation matters.

The Committee serves a **forum to discuss and endeavour to resolve any difference** that may arise between the Parties with regard to customs and trade facilitation matters including, amongst others, tariff classification, origin of goods and mutual administrative assistance in customs matters. It may also formulate recommendations and opinions which it considers necessary for the attainment of the objectives established in the customs and trade facilitation chapter of the agreement. In between the Committee meetings, both sides co-operate closely through informal channels and also in the margins of the many international meetings (e.g. in the framework of the World Customs Organisation or the World Trade Organisation).

Chapter 7 Trade in Services, Establishment and E-Commerce

This agreement will be by far the **most ambitious services FTA ever concluded by the EU**. The FTA will significantly improve South Korea's current WTO-GATS commitments and its offer in the ongoing DDA negotiations. The agreement additionally covers the liberalisation of investment, both in most of the services and most of the non-services sectors. The scope of the FTA includes diverse services sectors as transport, telecommunications, finance, legal services, environmental services and construction. Audiovisual services are excluded from the chapter. Important improvements are for example:

- On **telecommunications**, South Korea would relax foreign ownership requirements, allowing 2 years after the entry into force of the FTA 100% indirect ownership. In addition, EU **satellite broadcasters** will be able to operate directly cross-border into South Korea, thus avoiding having to liaise with a Korean operator.
- **Environmental services**: South Korea would take commitments on the treatment of non-industrial waste waters (sewage services).
- **EU shipping firms** will have full market access and the right of establishment in South Korea, as well as non-discriminatory treatment in the use of port services and infrastructure. New business opportunities for European companies will also arise with respect to many maritime auxiliary services.
- South Korea will abolish the existing subcontracting requirement for **construction services**.
- All **financial firms** will gain substantial market access to South Korea and will in particular be able to freely transfer data from their branches and affiliates to their headquarters.
- EU providers of international **express delivery** services would have access to the Korean market. When the Korean postal reform law will be adopted, the Korean commitments will also apply to further areas that will be outside the definition of the reserved postal monopoly area such as parcels.
- There will also be improvements for auxiliary **air transport** services such as ground handling.
- **European law firms** will be allowed to open offices in South Korea to advise foreign investors or Korean clients on non-Korean law. Law firms will also be able to form partnerships with Korean firms and recruit Korean lawyers to provide "multi-jurisdictional" services. Lawyers would be allowed to use their home titles such as *Solicitor, Avocat, or Rechtsanwalt*.

Chapter 8 Payments and Capital Movements

The agreement also includes provisions on free capital movement which **ensure the smooth functioning of the agreement**. These include standard safeguards for both sides with a possibility to apply measures to ensure the stability of the financial system.

Chapter 9 Government Procurement

The South Korea-EU FTA would offer the **opportunity to expand procurement opportunities to public works concessions and "Built-Operate-Transfer" (BOT) contracts** not yet covered by the Government Procurement Agreement (GPA) commitments.

Such contracts are of **significant commercial interest to European suppliers**, who are recognized global leaders in this area. Guaranteeing the practical and legal accessibility of such tenders to European suppliers would thus secure substantial new tendering opportunities.

The FTA will cover, at equivalent thresholds, BOT contracts from all central and sub-central procuring entities committed by South Korea under the GPA. In addition, the FTA would extend those commitments to cover BOT procurement contracts of all the procuring entities (including cities, districts and counties) of the Seoul Metropolitan City, Incheon Metropolitan City, Gyonggi-do Province and the largest harbor, the Busan Metropolitan City. This additional coverage represents over 50% of South Korea GDP and population.

Chapter 10 Intellectual Property

The protection and enforcement of IPR is crucial to European competitiveness, it is therefore reassuring that the EU and South Korea have been able to agree on an ambitious IP chapter.

In particular, this chapter includes developed provisions on in particular **copyright, designs and geographical indications (GIs)** which serve as a complement and up-date to the TRIPS Agreement. The chapter also includes a strong section on **enforcement** of IPRs based on the EU's internal rules in the enforcement directive.

On **copyright** the provisions are in lines with the latest international developments. This part of the chapter also includes a provision that should facilitate for EU right holders to get adequate remuneration for the use of their music or other artistic works in South Korea.

Designs have lately become an economically important IP right. The chapter therefore includes provisions, which fills the gap in TRIPS as regards designs including provisions on unregistered designs.

Korean consumers are eager for EU agricultural quality products, notably EU **geographical indications (GIs)**. EU wines, spirits, cheese or hams have a very good reputation in South Korea. The FTA will offer a **high level of protection** for commercially important European GIs such as:

- *Champagne, Scotch or Irish whisk(e)y, Grappa, Ouzo, Polska Wódka*
- *Prosciutto di Parma, Szegedi szalámi or Jambon de Bayonne*
- *Manchego or Parmigiano Reggiano cheese*
- *Vinho Verde or Tokaji wines as well as those from the Bordeaux and Rioja and many other regions like the Murfatlar vineyard*
- *Bayerisches Bier or České pivo*

Around 160 major EU GIs will be protected directly at entry into force of the agreement. All agricultural GIs, and not only those relating to wines and spirits, will have the same high level of protection. Both sides are committed to protect additional GIs through a procedure envisaged in the agreement.

The FTA will also protect GIs from South Korea. This will provide EU consumers with clarity that when for example buying *Boseong green tea* they will savour the authentic Korean product.

Chapter 11 Competition

In the **competition chapter**, the Parties agreed to prohibit and sanction certain practices and transactions involving goods or services which distort competition and trade between them. This implies that **anti-competitive practices** such as, for instance, cartels or abusive behaviour by companies with a dominant market position and anti-competitive mergers, **will not be tolerated by the Parties and be subject to effective enforcement action**, as they lead to consumer harm and higher prices.

In order to ensure an **effective enforcement**, the Parties agreed to maintain effective competition laws and an appropriately equipped competition authority responsible for addressing such anti-competitive practices. Both Parties recognise the importance of respecting the principles of due process in applying these competition laws.

The agreement provides that competition law should also apply to state-controlled enterprises and that there is no discrimination by monopolies. This ensures that companies of both Parties have equal access to each other markets.

Moreover, there are provisions laying down the main principles for consultations and cooperation between the Parties. More detailed rules on cooperation between the Parties can be found in the recently adopted Cooperation Agreement between the EU and South Korea on anti-competitive activities (OJ L 202/35 of 4 August 2009), which entered into force on 1 July 2009.

The **section on subsidies** provides that the Parties agree to remedy or remove distortions of competition caused by subsidies in so far as they affect international trade. This section is particularly significant in so far as it contains **provisions that prohibit certain types of subsidies**, which are considered to be particularly distortive. These are:

- a) subsidies covering debts or liabilities of an enterprise without any limitation, in law or in fact, as to the amount or duration;
- b) subsidies to ailing enterprises, without a credible restructuring plan based on realistic assumptions that would allow the recipient to return to long term viability without further reliance on State support. The turnaround has to be made within a reasonable time, and the enterprise must make a significant contribution to the costs of restructuring.

The section also contains **transparency provisions** according to which Parties have to report annually the total amount, types and the sectoral distribution of subsidies. Moreover, parties are obliged to provide further information on subsidy schemes or individual subsidies on request.

The rules on subsidies apply to goods with the exception of agriculture and fisheries. The agreement also contains a rendez-vous clause for services: Parties will discuss 3 years after entry into force of the agreement if this section should also be applied to services. Last, but not least, this section is subject to the dispute settlement mechanism.

Chapter 12 Transparency

As domestic regulatory environments have an impact on trade, the agreement sets up in this chapter the criteria to be followed in order to pursue an **efficient and predictable regulatory environment for economic operators**, especially the small ones. Lack of transparency of the regulatory environment has often been a concern expressed by European firms doing business in South Korea. It is therefore of great significance that this FTA includes strong transparency commitments that apply to all regulations having an impact on matters covered

by the FTA.

In particular, the Chapter provides for:

- Commitments to allow interested persons to comment on proposed new regulatory measures.
- The establishment of enquiry or contact points to respond to questions arising from the application of regulations or to seek to resolve problems arising from such regulations.
- Due process requirements as regards administrative proceedings, including as regards the review or appeal of administrative actions in areas covered by the FTA.

Chapter 13 Trade and Sustainable Development

The EU-South Korea FTA includes provisions establishing **shared commitments and a framework for cooperation on trade and sustainable development**. The agreement breaks new ground in the field of trade and sustainable development and enables close **dialogue and continued engagement** between EU and South Korea in the fields of environment and labour.

The chapter on trade and sustainable development includes firm commitments on both sides to **labour and environmental standards**. The agreement also sets up institutional structures to implement and monitor the commitments between the parties, including through civil society involvement.

Key elements of the Trade and Sustainable Development Chapter include:

- On **labour**, a shared commitment to ILO core labour standards and to the ILO decent work agenda, including a commitment to ratify and effectively implement all conventions identified as up to date by the ILO (i.e. going beyond those Conventions relating to the core labour standards).
- On **environment**, there is a commitment to effectively implement all multilateral environment agreements to which they are party.
- Confirmation of the parties' right to regulate, while aiming at a **high level of protection in the fields of environment and labour**, and a commitment to refrain from waiving or derogating from such standards in a manner that affects trade or investment between the parties.
- Strong **monitoring mechanisms**, building on public scrutiny through civil society involvement by both South Korea and the EU. Each side will set up a civil society advisory group, including a balanced representation of environment, labour and business organizations. The two groups will meet annually in a civil society forum to discuss the implementation of the sustainable development aspects of the chapter. Cooperation activities and monitoring of the implementation of commitments will be undertaken in a high level Committee on Trade and Sustainable Development.
- **Mechanisms** for settling differences through an independent panel of experts. Recommendations by the panel of experts will be subject to monitoring in the Committee on Trade and Sustainable Development. The Panel of experts should seek the advice of the Domestic Advisory Groups and competent international organisations, such as the ILO or relevant multilateral environmental organisations. The reports of the panel will be made publicly available to the Domestic Advisory groups.

Chapter 14 Dispute Settlement

In the EU-South Korea FTA, the **Dispute Settlement mechanism** is based on the model of the WTO Dispute Settlement Understanding, but its procedures are much faster.

The first step of the procedure is the **consultation** between the parties, with a view to reaching a solution. If the parties do not find an agreement, the dispute is referred to an **arbitration panel**. The panel is composed of three experts that are chosen by the parties, or selected by lot from a list agreed in advance.

The panel receives submissions from the parties, and will hold a hearing that will be **open to the public**. Interested persons or companies will be allowed to inform the panel of their views by sending **amicus curiae** submissions.

The panel's **ruling**, delivered within 120 days after the establishment of the panel, is binding on the parties. After the ruling, the party in breach of the FTA will have a reasonable period of time to bring itself into compliance with the FTA. This period is agreed between the parties or decided by an arbitrator.

By the end of the **period for compliance**, the party that was found in breach of the agreement must have remedied the situation. If the complaining party considers that the defending party is still in breach of the FTA, it can refer the issue back to the panel. If the panel confirms that the defending party is still in breach of the FTA, the complainant is entitled to impose proportionate **sanctions**.

All time-limits of the arbitration procedure are reduced in cases of urgency. Disputes on the application of the FTA's sectoral annex on Motor vehicles and parts or on the special clause on Duty Drawback also follow these accelerated procedures.

The FTA also contains a **mediation mechanism** that the parties can use to tackle market access problems due to non-tariff measures. The aim of this mechanism is **not to review the legality of a measure, but rather to find a quick and effective solution** to a market access problem.

Under the mediation mechanism, the parties will be assisted by a **mediator** that they have jointly agreed, or that has been selected by lot from a list agreed in advance. The mediator meets with parties and will deliver an **advisory opinion and propose a solution** within 60 days of its nomination. The opinion and the proposal of the mediator are **not binding**: the parties are free to accept them, or use them as a basis for a solution.

The mediation mechanism does not exclude the possibility to have recourse to dispute settlement, during or after the mediation procedure.

Chapter 15 Institutional, General and Final Provisions

The Institutional provisions foresee that the agreement will be managed by a **Trade Committee co-chaired** by the Minister for Trade of South Korea and the member of the European Commission responsible for Trade. The Trade Committee will meet yearly and will set its agenda.

Six specialised committees are also established:

- (a) the Committee on Trade in Goods
- (b) the Committee on Sanitary and Phytosanitary Measures
- (c) the Customs Committee
- (d) the Committee on Trade in Services, Establishment and Electronic Commerce
- (e) the Committee on Trade and Sustainable Development
- (f) the Committee on Outward Processing Zones on the Korean Peninsula

As well as **seven Working Groups**:

- (a) The Working Group on Motor Vehicles and Parts
- (b) The Working Group on Pharmaceutical Products and Medical Devices
- (c) The Working Group on Chemicals
- (d) The Working Group on Trade Remedy Co-operation
- (e) The Working Group on Mutual Recognition Agreements on Services.
- (f) The Working Group on Government Procurement

(g) The Working Group on Geographical Indications

The EU intends to cooperate closely with all relevant stakeholders to ensure an effective implementation of the commitments assumed under the FTA. For this purpose, the Commission will consult business organisations, trade unions and environmental organizations with a view to develop the most appropriate mechanisms to monitor implementation.

Additionally, a Committee on Cultural Cooperation will be established. By derogation from the institutional provisions of Chapter 15, the Trade Committee will have no jurisdiction over the Protocol on cultural Cooperation and the Committee on Cultural Cooperation will exercise all functions of the Trade Committee where this is necessary in order to implement the FTA.

PROTOCOL 1: RULES OF ORIGIN

Rules of origin play an **important role in all preferential trade agreements**. Indeed, they define the 'economic nationality' of the products which is needed to determine the duties applicable to these products when traded.

In all FTA's or other international trade arrangements, the EU rules of origin (RoO) comprise a **protocol with some annexes**. The RoO **protocol** itself contains provisions on the definitions of 'originating products', on the territorial requirements, on 'Duty Drawback', on the 'proofs of origin' and on arrangements for administrative cooperation.

Within the annexes, the **annex II** with the 'list rules' is the most important one. It is a list of the working or processing required to be carried out on non-originating materials in order that a product can obtain originating status after manufacturing.

Negotiations with South Korea on the EU's standard 'list rules' resulted in a number of changes. However, these changes were made in close cooperation with the EU industry concerned and have been done rationally. In this context, it can be noted that the Commission launched in 2005 a process to reform the rules of origin. This reform endeavours a "simplification" of the RoO. The **changes introduced** in the FTA with South Korea **go in the same direction to simplify the EU standard RoO**, which is good for business and trade.

At the same time, the agreement confirmed the EU RoO for the most important products in the sensitive sectors of agriculture (such as sugar, pasta, olive oil), fisheries (aquaculture), non-ferrous metals (notably for copper and aluminium) and textiles and clothing (where the double transformation requirement is kept with only a few derogations, limited by a quota).

For the **car sector** only a moderate increase in the levels of foreign content has been agreed from the 40% (EU standard rule) to 45%.

For **consumer electronics and machinery** (chapters 84, 85 and 90) the CTH (change of tariff heading, implying 'manufacture from materials of any heading, except that of the product') is allowed only where the parts of the final product are classified in the same heading than the one of the final product or where the EU MFN duty is low, so that the economic effect of allowing CTH-rule would be minimal. Moreover, the Commission obtained that the permissible foreign content would be limited to 45% for the most sensitive consumer electronic items.

Under '**Duty Drawback**' (DDB)/'inward processing' schemes, the duties paid on parts used for the production of a final product (e.g. a car) are refunded when the final product is exported. Such schemes are allowed under the EU-South Korea FTA. In case there was a significant increase in foreign sourcing, the FTA foresees, after 5 years from entry into force of the agreement, a special clause on Duty Drawback, which can result in a limitation of the duties on parts that can be refunded to a maximum of 5%. The EU will introduce effective and rapid internal procedures to implement this clause, which will be adopted at the same time as approval of the agreement.

PROTOCOL 2: MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

The Protocol on mutual administrative assistance in customs matters provides a **legal framework for assistance** with enquiries related to customs irregularities/fraud between the competent authorities of the Community and South Korea in order to ensure the correct application of customs legislation and fight against breaches of this legislation.

Competent authorities undertake to supply each other with all relevant information enabling them to pursue investigations, including the possibility for officials of the requesting Party to participate in administrative enquiries in the territory of the requested Party.

PROTOCOL 3: CULTURAL COOPERATION

In order to implement the **UNESCO Convention on the protection and promotion of the diversity of cultural expressions** and in particular its Article 20, the FTA includes a dedicated protocol on cultural cooperation. The Protocol, that will enter into force only if and after South Korea ratifies the UNESCO Convention, has its own institutional structure independent from other parts of FTA, and also offers a special mechanism to settle disputes.

The Protocol sets a framework to engage in policy dialogue on culture and audiovisual issues, and **cooperate in facilitating exchanges regarding cultural activities**, notably in the area of performing arts, publications, protection of cultural heritage sites and historical monuments, as well as in the audiovisual sector. It also seeks to ensure a **facilitated movement for artists and other cultural professionals and practitioners** who are not service providers.

These provisions are adapted to the level and type of exchanges with South Korea and the degree of development of its cultural industries. In particular, the draft Protocol with South Korea is based on reciprocity and balance. In the area of **audiovisual cooperation**, this is reflected by taking into account the partners' level of development and the existence of specific policies for the promotion of cultural content. Accordingly, the Protocol's specific provision on audiovisual co-productions **encourage the conclusion of bilateral co-production agreements between South Korea and the Member States** and allow certain finished audiovisual works co-produced by European and Korean partners to qualify as European and Korean works, for the purposes of respective legislations on the promotion of local/regional cultural content provided they meet the strictly defined criteria defined therein. These criteria (which are even stricter in the animation sector) notably ensure that a balance is maintained between financial and technical/artistic contributions of the parties and that that the rich tradition of cooperation between operators from different EU Member States is maintained by requiring participation from co-producers from several different EU Member States.

Moreover **the sustainability of the audiovisual cooperation scheme over time is ensured** by foreseeing that the co-production provisions apply for an initial period at the end of which they can be terminated. A **balanced cooperation over time** is preserved by incorporating a suspension mechanism which can be activated if one of the parties was to modify its cultural content legislation in a way which adversely affects the others' co-producers.

The facilitation of exchanges through the **promotion of co-productions** benefits the parties' professionals not only in terms of extended circulation opportunities for their works but also of **induced benefits** such as training through mutual-learning, and reinforcement of local capacity. Such co-productions can in addition bring a dynamic effect whereby this type of international cooperation helps to gain more detailed knowledge of habits and preferences of the audiences in different countries/regions and provide an opportunity to develop new formats and works or programmes that, being of cross-cultural nature, can appeal to and address larger and/or different audiences.