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The EU-Korea FTA and its Implications for the Future EU-Singapore FTA

Summary

In 2006, the European Union (EU) announced its intention to conclude a new generation of free trade agreements (FTAs) with strategic partners. These FTAs, primarily motivated by economic considerations, would aim at a high level of trade liberalisation. In particular, they would cover the areas which are crucial to the EU's competitiveness, such as services liberalisation and investment promotion and protection, and include strong provisions to tackle non-tariff barriers in areas such as intellectual property rights, public procurement, regulatory barriers and unfair competition. The EU also identified key partners that would offer significant opportunities for EU companies. ASEAN, Korea and Mercosur emerged as priorities in view of their market potential and the current level of protection against EU export interests.

The first FTA that EU has concluded in Asia is the EU-Korea FTA, which will provisionally enter into force on 1st July 2011. The EU considers it the most "ambitious" EU FTA and is presented as a "benchmark" for future ones. An overview of the main elements of the FTA illustrates the level of ambition of the EU in concluding its new generation of FTAs. In particular, it provides interesting insights into what a future EU-Singapore FTA may look like. After negotiations between the EU and ASEAN were put on hold, the EU decided to enter into negotiations with individual ASEAN member states, starting with Singapore in December 2009. Both partners are currently entering the last phase of negotiations and the FTA may be concluded over the next few months. The final shape of the EU-Singapore FTA would provide a reference point for a 21st century FTA and for EU's negotiations with other ASEAN member states, laying the foundation for the future of a comprehensive EU-ASEAN economic partnership.

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INTRODUCTION

In October 2006, the European Union (EU) adopted a new trade agenda and announced that it would aim at concluding ambitious and comprehensive free trade agreements with priority partners. Unlike the many preferential trade agreements the EU has entered into in the past, the EU announced that this new generation of Free Trade Agreements (FTAs) would be based primarily on economic motivations and would aim at a high level of trade liberalisation.¹

Implementing the strategy presented in the Commission document on “Global Europe: Competing in the World”,² the EU has entered into negotiations with several partners among which were Asian countries. Using economic criteria such as market potential (economic size and growth) and the level of protection against EU export interests (tariffs and non-tariff barriers), the EU selected in particular India, ASEAN and Korea as partners for new FTAs in Asia.

The first FTA to be concluded is the Korean-EU FTA (KOREU FTA), which was signed on 6 October 2010. It is considered by the EU as its most comprehensive and ambitious FTA and is presented by the EU as a benchmark for future ones.³ Examining the KOREU FTA may then give us an indication of what can be expected from the FTA that is being negotiated between the EU and Singapore.

This background brief will begin with an overview of the main elements of the new EU policy on FTAs. It will then examine some of the key elements of the KOREU FTA and look in particular at the provisions that may be of interest to Singapore. Finally, we will consider the EU-Singapore FTA negotiations in light of both the KOREU FTA outcome and the specificities of the trade and investment relations between the EU and Singapore.

¹ While economic criteria may factor in more heavily in the new generation of EU trade agreements, the decision by the EU to enter into a trade agreement will continue to be based on broader political considerations. As underlined by the European Commission in the “Global Europe: Competing in the World” Communication, “FTA provisions should be an integral part of the overall relations with the country or region concerned”.

See *Global Europe: Competing in the World: A Contribution to the EU's Growth and Jobs Strategy. European Commission Staff Working Document COM(2006) 567 final*. European Commission, p.18

² European Commission Staff Working Document, *Global Europe: Competing in the World: A Contribution to the EU's Growth and Jobs Strategy*. COM(2006) 567 final.

³ European Commission, Commission Staff Working Document, *Report on progress achieved on the Global Europe strategy, 2006-2010*, COM(2010)612, 9.11.2010, p. 7

1. THE NEW EU POLICY ON FREE TRADE AGREEMENTS

1.1 Evolution in the EU trade policy

The EU was an “early, major promoter of preferential trade agreements (PTAs)”⁴ and has developed a complex set of trade relations with third countries since the creation of the European Economic Community in 1957.⁵

The EU views PTAs as an integral part of its bilateral relations with third countries. There is no EU model PTA and EU agreements appear to be negotiated flexibly to suit the EU and its partners in each specific case.⁶ The content of these PTAs have differed among partners in terms of provisions and commitment. Some PTAs have been shaped by foreign/security policy concerns and others more by commercial considerations.⁷ The Association agreements entered into with the eastern or southern neighbors have focused on promoting economic development and political stability in the EU’s

⁴ The terms PTAs and FTAs are often used indistinctively to describe preferential trade agreements. The term FTAs, in particular, is widely used to describe all preferential trade agreements that are not customs unions.

“A preferential trade agreement (PTA) is a trade agreement wherein trade barriers between partners are less than the barriers facing non members whereas a Free Trade Agreement (FTA) is a PTA that eliminates all barriers to trade between partners. In practice several FTAs should in fact more correctly termed PTAs as they do not provide for completely free trade between partners. FTAs are also different from Customs Unions as members of an FTA maintain their own tariffs, quotas, and other non-tariff barriers vis-à-vis non-members.” From Pohl Nielsen, C. “Regional and Preferential Trade Agreements”, Fødevareøkonomisk Institut, Report no. 155

⁵ Ahearn, R.J., *Europe’s New Trade Agenda*, CRS Report for Congress, 6 December 2006, p. 2

⁶ Woolcock, S. *European Union policy towards free trade agreements*, ECIPE Working Paper No. 3, 2007, p.4

⁷ *Ibid.*

near neighborhood. The European Partnership Agreements (EPA) concluded by the EU with the so-called ACP (Africa, Caribbean and Pacific) countries⁸ pursue an economic development objective whereas commercial motivations have been at the origin of the EU agreements concluded with South Africa, Chile and Mexico. It is noteworthy that until the definition of a new trade agenda by the EU, the EU PTAs have been characterized by relatively modest ambition in terms of market-opening since many of them were defined as development or neighborhood policy instruments.⁹

In the mid-1990s, the EU began to give priority to the multilateralism of the World Trade Organisation (WTO) over bilateral agreements to reach further global trade liberalisation. In particular, the EU advocated the inclusion of new issues such as investment, services, intellectual property rights and competition policy known as the “Singapore issues”¹⁰ in the global trade liberalisation agenda. The EU’s priority then was the conclusion of the Doha Development round which was launched in November 2001.

⁸ The ACP Group consists of 79 Member-States, all of them, save Cuba, signatories to the Cotonou Agreement, a partnership agreement with the European Union: 48 countries from Sub-Saharan Africa, 16 from the Caribbean and 15 from the Pacific. http://www.acpsec.org/en/about_us.htm

⁹ Ahearn, R.J., *Europe’s Preferential Trade Agreements: Status, Content, and Implications*, CRS Report for Congress, 22 March 2010, summary page.

¹⁰ “Ministers from WTO member-countries decided at the 1996 Singapore Ministerial Conference to set up three new working groups: on trade and investment, on competition policy, and on transparency in government procurement. They also instructed the WTO Goods Council to look at possible ways of simplifying trade procedures, an issue sometimes known as ‘trade facilitation’. Because the Singapore conference kicked off work in these four subjects, they are sometimes called the ‘Singapore issues’”. from the WTO website

http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey3_e.htm

Consequently, the EU provisionally stopped the negotiations of any new trade agreements to focus attention on the negotiations of the Millennium Development Round of the WTO (the so-called Doha Round).¹¹ The EU thus exercised “a *de facto* moratorium” on new PTA negotiations.¹² The European Commission’s view then was that new bilateral negotiations would have weakened the EU’s position in pushing for a comprehensive multilateral round.

In July 2006, a successful outcome of the Doha round became increasingly unlikely and the negotiations came to a standstill. In October 2006, the EU announced a reorientation of its trade objectives and its intention to enter into more bilateral and regional FTAs¹³ while reaffirming that concluding a comprehensive round at the multilateral level remained its priority.

1.2 The “Global Europe” strategy

1.2.1 Reasons behind the shift in EU trade policy

Three main reasons account for the change in EU trade policy, which led to the definition of a new EU trade agenda.

The first element was, as already mentioned, the difficulties in the multilateral negotiations within the WTO’s Doha Development Agenda which led to negotiations being stalled. Furthermore, the EU failed to achieve its aim of a comprehensive WTO Agenda and had already allowed three of the so-called “Singapore issues”¹⁴ (investment,

competition and transparency in government procurement) to be dropped from the agenda in 2003.¹⁵ Likewise, no progress was reached in the services and non-agricultural market access.

The second element relates to developments in other countries’ trade policies. In 2002, the US trade policy underwent a radical shift and FTAs emerged as the centre of the new US trade agenda. Consequently the US proactively pursued bilateral and regional FTAs with many countries around the world following the ‘competitive liberalization’ doctrine.¹⁶ This new policy on the side of the US made it harder for the EU not to respond, especially when high growth markets such as Korea were concerned.¹⁷

The third element for the EU’s shift towards the negotiation of bilateral FTAs “has been the burgeoning economic growth in Asia and the conclusion of a range of FTAs that has accompanied this growth”.¹⁸ The EU needed to strengthen its presence in the growing Asian markets in particular and FTAs were employed to create opportunities for European companies abroad. More generally, the EU considered that

government procurement and trade facilitation. Ministers from the WTO member-countries decided at the 1996 Singapore Ministerial Conference to set working groups on these issues and since then, the issues are often called the “Singapore issues”. For more details, please refer to the page of the WTO website dedicated to these issues, http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey3_e.htm

¹⁵ Woolcock, S., p.5

¹⁶ According to the “competitive liberalization,” doctrine, as presented by the US Trade Representative R. Zoellick, “global, regional and bilateral trade negotiations would complement and reinforce each other”. See quotation of R. Zoellick by Chan M. in *US trade strategy of competitive liberalization*. (“The idea is to create a “competition in liberalization” among US trading partners so that trade reform in one market begets similar reductions in other markets”, p.5)

¹⁷ Woolcock, S., p.5

¹⁸ *Ibid.*

¹¹ Ahearn, R.J., *Europe’s New Trade Agenda*, p. 3

¹² Woolcock, S., p.2

¹³ For a detailed account of the reasons behind the change in the EU trade policy, please see Woolcock S. “*European Union policy towards free trade agreements*”, p.3

¹⁴ Singapore issues refer to the four subjects of trade and investment, competition policy, transparency in

“if the existing bilateral agreements supported the EU’s neighbourhood and development objectives well, its main trade interests, including in Asia, were less well served”.¹⁹ It is noteworthy that before the EU put an end to the “*de facto* moratorium on FTAs”,²⁰ it was “the only leading power not to have engaged in FTAs in Asia”.²¹

1.2.2 The new EU trade agenda

The new EU trade agenda was spelled out in the European Commission’s “*Global Europe*” Communication released on 4 October 2006. This new trade strategy aimed to respond to the changing dynamics and geography of international trade and to “set out the contribution of trade policy to stimulating growth and creating jobs in Europe”.²² It was to be an integral part of the so-called EU Lisbon Strategy on growth and jobs,²³ adopted by the EU in 2000 and which aimed to make Europe more dynamic and competitive.

In its Communication, the Commission analyses the foundations of the EU’s trade policy and competitiveness, and outlines the measures necessary to respond to both the EU priorities in terms of competitiveness and the challenges of a global economy. The EU programme comprises an internal and an external dimension.

¹⁹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Global Europe: Competing in the World, contribution to the EU’s growth and jobs strategy*, COM (2006) 567 final, hereafter “Global Europe” p.9

²⁰ Woolcock, S., p.5

²¹ Sally, R., *Looking East: The European Union’s New FTA Negotiations in Asia*, ECIPE Jan Tumlir policy essay number 3/2007, p.5

²² *Global Europe*, p. 2

²³ A summary of the Lisbon strategy can be found at the following page http://europa.eu/legislation_summaries/education_training_youth/general_framework/c10241_en.htm

While insisting on the need for the EU to adopt sound internal policies that allow for a good functioning of the Single Market and on the necessity for the EU to be open to international trade and investments, *Global Europe* develops a strategy to open up foreign markets for the benefit of European firms. The opening up of markets in emerging countries is seen as essential as these markets account for “a growing share of global trade”.²⁴

Central to the creation of opportunities in emerging markets is the decision by the EU to launch a series of FTA negotiations with selected partners. While reaffirming its commitment to multilateralism, the Commission announced that “the EU must also endeavour to promote faster and more comprehensive trade liberalisation within the framework of its bilateral relations”.²⁵ The European Commission proposed a new generation of competitiveness-driven bilateral free trade agreements with key partners, in which economic criteria play a primary role. FTAs are presented as “a driving force towards achieving this goal”.²⁶ These have the advantage of being able to “build on WTO and other international rules by going further and faster in promoting openness and integration, by tackling issues that are not ready for multilateral discussion and by preparing the ground for the next level of multilateral liberalization”.²⁷ FTAs may cover domains that may not yet be addressed multilaterally. Furthermore, the EU wants these FTAs to better serve the EU’s commercial interests.

²⁴ *Global Europe: Competing in the world, Summary of legislation*, Europa website http://europa.eu/legislation_summaries/external_trade/r11022_en.htm

²⁵ *Ibid.*

²⁶ *Global Europe: Competing in the world, Summary of legislation*

²⁷ *Ibid.*, p.8

To that aim, the Commission notes that the FTAs should have a wider scope of content than the existing EU preferential trade agreements that were primarily pursuing neighbourhood or development objectives. Pursuing more commercial interest implies that FTAs should be “comprehensive and ambitious in coverage”.²⁸

First the EU insists on the need to aim at a “far-reaching liberalisation of services and investment”.²⁹ In particular, the EU announces that when its partners have signed FTAs with other countries that are competitors to the EU, it will at least seek full parity.³⁰

Second, the FTAs must cover domains that are not sufficiently tackled at multilateral level and that hamper trade and access to markets. There is a need to go beyond “traditional” tariff barriers such as customs duties and address other obstacles such as non-tariff barriers and beyond-the-border barriers. Many obstacles to trade are to be found in issues linked to the protection of intellectual property rights (IPRs), the provision of services, investment, public procurement and the enforcement of competition rules. Therefore, if FTAs need to eliminate tariffs and quantitative restrictions, they should also contain WTO+ provisions aiming at regulatory convergence. The domains of intellectual property, services, investment, public procurement and competition are described by the EU as “new areas of growth” of economic importance³¹ and the EU states that “FTAs should include stronger provisions” in these areas. The issue of regulatory barriers will also be addressed by the EU so that greater convergence in the use of standards can be found to facilitate trade in goods, services and investments. The issue of Rules of Origins (ROOs)

²⁸ *Ibid.*, p.9

²⁹ *Ibid.*

³⁰ *Ibid.*, p.9

³¹ *Ibid.*, p.6

is also identified by the EU as an issue that will need to be addressed for the FTAs to “reflect the realities of globalization”³² and in particular the fact that “the supply chain of many goods and services now encompasses factories and offices in various parts of the globe”.³³

Furthermore, FTAs will need to consider the issue of sustainable development by for example “incorporating new co-operative provisions in areas relating to labour standards and environmental protection”.³⁴

Global Europe also stresses that while FTAs will be based on economic criteria, they must also be based on the EU’s “partners’s readiness and broader political considerations”.³⁵ The new EU’s FTAs will therefore “also respond to the needs of each country in accordance with the EU’s strategies towards these countries and the regions to which they belong”.³⁶

To select its partners for new FTAs, the EU applies economic criteria such as “market potential (economic size and growth) and the level of protection against EU export interests (tariffs and non-tariff barriers)”. “Based on these criteria, ASEAN, Korea and Mercosur emerged as priorities. They combine high levels of protection with large market potential and they are active in concluding FTAs with EU competitors. India, Russia and the Gulf Co-operation Council (also have combinations of market potential and levels of protection which make them of direct interest to the EU. China also meets many of these

³² *Global Europe*, p.9

³³ European Commission, *Trade, Growth and World Affairs, Trade policy as a core component of the EU’s 2020 strategy*, Discussion paper, 9 Nov 2010, p. 4

³⁴ *Global Europe*, p.9

³⁵ *Ibid.*

³⁶ Sally, R., p.5

criteria, but requires special attention because of the opportunities and risks it presents”.³⁷

1.2.3 State of play

As a result of the *Global Europe* strategy, a series of more economically-orientated negotiations was launched with Korea, India and ASEAN in 2007. The EU- Korea FTA was officially signed by both parties on 6 October 2010. Negotiations of a ‘Comprehensive Economic and Trade Agreement’ (CETA) were launched with Canada in May 2009. Although Canada was not mentioned originally by the *Global Europe* Communication, the country is considered as of strategic importance for the EU industry and fulfils the economic criteria defined in the Communication for the selection of FTAs partners.

In addition, a number of other types of negotiations (e.g. Mercosur, Gulf Cooperation Council) predating the launch of *Global Europe* were re-launched as “they have an important role to play in achieving the objectives set out in *Global Europe*”.³⁸ The EU concluded the negotiations for an FTA with Columbia and Peru as well as with Central America in respectively March and May 2010.

If the EU has engaged in the negotiations of trade agreements based on economic considerations, it has also continued negotiating with countries in its neighbourhood (the Euromed/Eastern Partnership area) and has also pursued negotiations towards Economic Partnership Agreements (EPAs) with ACP countries, “with the primary objective to foster development”.³⁹

³⁷ *Global Europe*, p. 9

³⁸ European Commission, Commission Staff Working Document, *Report on progress achieved on the Global Europe strategy*, p.6

³⁹ *Ibid.*, p. 11

Recently, the Commission assessed in a report on the progress made in the implementation of the *Global Europe* strategy over the last five years.⁴⁰ With regards to FTAs, the Commission concluded that “overall, the FTA negotiations launched under the economic criteria defined by *Global Europe* have made good progress”, but “progress on some negotiating objectives beyond tariffs set out by the *Global Europe* strategy has been more mixed”.⁴¹

Building on the first achievements in the implementation of the *Global Europe* strategy, the European Commission presented a blueprint of its renewed trade agenda in a discussion paper entitled “Trade policy as a core component of the EU’s 2020 strategy”.⁴² An update of the EU trade agenda was felt necessary in the light of the changes in the world economy and world trade in order to better serve the new competitiveness strategy of the EU as spelled out in the Europe 2020 Communication.⁴³

In this context, the Commission reaffirms that it will pursue its negotiating agenda both in the WTO and with major trading partners. FTAs, in particular, are seen as “a major contribution to the Union’s wider agenda for smart, sustainable and inclusive growth”.⁴⁴ They should contain deep commitments on issues “that will make a difference in market access for services and

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, p. 12

⁴² European Commission. *Trade , Growth and World Affairs, Trade policy as a core component of the EU’s 2020 strategy*, Discussion paper, 9 November 2010, http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf

⁴³ European Commission, Communication, *EUROPE 2020 A strategy for smart, sustainable and inclusive growth*, 3.3.2010 COM(2010) 2020 final

⁴⁴ De Gucht, K., *Foreword to the European Commission’s Communication, Trade policy as a core component of the EU’s 2020 strategy*, p.2

investments”,⁴⁵ such as public procurement, competition and IPR. If these areas appear crucial for European businesses, they remain sensitive areas for many trade partners that may not be ready to further open their markets to foreign competitors. Drawing on the novelties brought in by the Lisbon Treaty,⁴⁶ the Commission also announces the negotiations of comprehensive investment provisions with some of the EU key trading partners. It concludes by stressing the need to ensure a proper enforcement of the agreements already concluded as “proper enforcement of trade rules is an important pillar of trade policy”.⁴⁷

As reiterated by the European Council of 16 September 2010, the objective of the EU remains thus “to secure ambitious FTAs, secure greater market access for European business and deepen regulatory cooperation with major trade partners”.⁴⁸

⁴⁵ European Commission, *Trade, Growth and World Affairs*, p. 4

⁴⁶ With the entry into force of the Lisbon Treaty, investment is no longer a competence of the Member States but now falls under the exclusive competence of the EU. As a consequence, the EU will be able to conclude investment treaties with its trading partners. For more details on the implications of the Lisbon Treaty on the EU trade policy, please refer to Pollet-Fort A., “Implications of the Lisbon Treaty on the EU external trade policy, EU Centre in Singapore, Background Brief n°2, March 2010, <http://www.eucentre.sg/articles/141/downloads/LisbonImpactonTrade-rev6Mar.pdf>

⁴⁷ European Commission, *Trade, Growth and World Affairs*, p. 12

⁴⁸ Conclusions of the European Council of 16 September 2010, as quoted in the European Commission communication, *Trade, Growth and World Affairs*, p. 11

2. THE EU-KOREA FTA AS A BENCHMARK FOR FUTURE FTAS CONCLUDED BY THE EU?

The EU-Korea FTA⁴⁹ is the first such agreement concluded by the EU with an Asian country and is presented as the most comprehensive free trade agreement negotiated by the Union. Although the EU stated that “its FTAs would respond to the needs of each country and this one is not a ‘blueprint’ for future FTAs”,⁵⁰ the EU-Korea FTA may serve as a benchmark for the on-going and future EU-FTAs, as it illustrates the level of ambition the EU aims at when concluding FTAs, especially with countries with a similar level of development.

2.1 The negotiation and conclusion of the EU-Korea FTA

Before looking into the key elements of the Korean-EU FTA (KOREU FTA), it is important to recall not only the offensive and defensive interests of both partners but also their respective negotiation objectives.

The negotiation parties had different or asymmetrical offensive interests. While the EU has been aiming at a deep and ambitious “WTO+” FTA that gives priority to the WTO’s “Singapore issues”,⁵¹ Korea has been more focus on the elimination of tariffs as well as the issue of environmental standards.

⁴⁹ The complete text of the EU-Korea FTA can be found online at the following address: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=443>

⁵⁰ Berz, P., *European Union Free Trade Agreements Negotiations with ASEAN countries*, Public lecture at the Lee Kuan Yew School of Public Policy, 24 March 2011

⁵¹ See footnote 14

2.1.1 The EU position

- Why Korea?

The Republic of Korea (Korea) was the first country identified when applying the *Global Europe* criteria as it is the EU's fourth largest trading partner outside Europe and offers significant growth potential. Its economy has grown – over the last 45 years - at an average rate of 7.5 percent and it has become the world's 13th economy. Furthermore, "as one of the most dynamic as well as most advanced economies in East Asia, Korea may provide an adequate point of entry into the region".⁵²

As stated by the EU, a FTA with Korea would open up "a fast growing East Asian market for EU exports" because of the perceived dynamism of the Korean market.⁵³ The EU runs a trade deficit with Korea but the Korean potential for economic growth may enable the EU to expand its opportunities in particular in the sectors where it already has a trade surplus such as chemicals, pharmaceuticals, auto parts, industrial machinery, shoes, medical equipment, non-ferrous metals, iron and steel, leather and fur, wood, ceramics, and glass.⁵⁴ In addition, "for agricultural products South Korea is one of the more valuable export markets globally for EU farmers, with annual sales of over €1 billion. Finally in the area of services as well, the EU may further develop its surplus position".⁵⁵

⁵² Nicolas, F., *Negotiating a Korea-EU free trade agreement: easier said than done*, Asia-Europe Journal (2009) 7:23 – 42, p. 32

⁵³ European Commission, Commission Staff Working Document, *Report on progress achieved on the Global Europe strategy, 2006-2010*, p.6

⁵⁴ European Commission, *EU and Korea sign free trade deal*, 6 October 2010

⁵⁵ "In the area of services, the EU has a surplus with South Korea of €3.4 billion, with exports of €7.8 billion in 2008 and imports of €4.4 billion", European

Despite the seemingly healthy bilateral trade between the EU and Korea, European companies have consistently experienced major trade barriers in the form of stringent standards and testing requirements for EU products and services.⁵⁶ Besides, if "moderate protection still applies in sectors such as textiles, clothing and footwear, as well as the automobile sector, high levels of protection and low market orientation remain the rule in agriculture".⁵⁷ However, Korea has been forthcoming in non-agricultural issues on previous FTA negotiations and a bilateral agreement may offer the possibility of deep regulatory cooperation.⁵⁸

It is in the EU's strategic interest to have better access to Korea's markets "so as to increase its market share vis-à-vis its main competitors such as the US and Japan".⁵⁹ Korea is actively pursuing the conclusion of bilateral FTAs. It is therefore essential for the EU to also engage in closer trade relations with Korea to ensure that European companies enjoy the same level of benefits in Korea as companies originating from countries having already concluded FTAs with Korea. In that context, "the US-Korea FTA actually set the floor for EU-Korea negotiations and the EU could at least expect parity with Korean concessions made to the USA".⁶⁰

Nevertheless, in order to bring benefits for the EU, the FTA will have to be comprehensive. An EU-commissioned quantitative study⁶¹ on the KOREU FTA concluded that a full FTA where all

Commission, *EU and Korea sign free trade deal*, 6 October 2010

⁵⁶ Nicolas, F., p.33

⁵⁷ *Ibid.*, p.25

⁵⁸ Sally, R., p. 24

⁵⁹ Nicolas, F., p. 33

⁶⁰ Sally, R., p.24

⁶¹ Copenhagen Economists & François J.F., *Economic Impact of a Potential Free Trade Area between the European Union and South Korea*, March 2007, http://trade.ec.europa.eu/doclib/docs/2007/march/tradoc_134017.pdf

trade in goods and services would be liberalized would deliver appreciable gains for Korea, while the net effect on the EU would be rather modest. It also stressed that a significant part of the benefits to the EU will come from services liberalization.⁶²

As underlined by the authors of a qualitative analysis of a potential FTA between the EU and Korea⁶³ commissioned by the European Commission, the quantitative studies “do not take into account non-tariff barriers” and “investment liberalization is not factored in”. Evidence however suggests that non-tariff barriers (NTBs) are the biggest hurdles for European goods and services and that their elimination would bring important benefits for the EU. Protection due to NTBs exceeds tariff protection to a large extent, especially in Korea.⁶⁴ An ambitious FTA addressing NTBs would therefore bring additional benefits to the EU.

- The EU’s interests and negotiating position

In its trade relations with Korea, the EU has both offensive and defensive interests.

Tariffs are generally not a major issue between the EU and Korea, except in some isolated cases such as agriculture or food and beverages.

In terms of sectors, the EU’s main offensive interests lie in the chemical industry (including cosmetics and pharmaceutical products),

⁶² *Ibid.*, p. 4

⁶³ CEPS, *A qualitative analysis of a potential free trade agreement between the European Union and South Korea*, November 2007, http://trade.ec.europa.eu/doclib/docs/2007/december/tradoc_136964.pdf

⁶⁴ CEPII/ATLAS, *The Economic Impact of the FTA between the EU and Korea*, May 2010, http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc_146174.pdf, p.4

machinery industry, food products and beverages, as well as in services.⁶⁵

In the manufacturing sector, NTBs such as specific standards, testing procedures or labeling requirements create difficulties for EU businesses to access the Korean market. European industry therefore called for their removal in favour of international standards and practices.⁶⁶ In the chemical and pharmaceutical sectors, the EU insisted on a better protection of IPR, which is a particularly sensitive issue for both industries.

Some sectors such as the automobile industry and the agriculture are more sensitive. The automobile sector in the EU is “the only one that showed some reluctance vis-à-vis a potential FTA with Korea”.⁶⁷ The gains for the Korean producers of cars may be much more substantial than for European carmakers given the limited size and the relative lack of opportunities in the Korean market. In any event, the remaining priority for the EU automobile industry was the elimination of NTBs.

In the agriculture sector, the EU’s objective was to increase its share in the pork and poultry sector. It also sought tariff reduction in a number of processed agricultural products. The issue of the protection of geographical indications was also a priority for the EU in conformity with the Global Europe Strategy.

In the services sector, the EU enjoys a comparative advantage and aimed at further liberalization of the Korean market, especially in the banking, financial and insurance sectors where protection remains high.

Finally, other issues such as various government interventions and public procurement policy as

⁶⁵ CEPII/ATLASS, p. 4

⁶⁶ Nicolas, F., p.33

⁶⁷ *Ibid.*, p.34

well as the further liberalization of FDIs were addressed by the EU.

2.1.2 Korea's position

- The EU as an FTA partner

Until 2004, Korea was one of the very last countries having no FTA at all. Korea shifted away “from an exclusive reliance on multilateral trade negotiations towards parallel bilateral/regional FTA initiatives”,⁶⁸ which became an established part of Korea's trade policy. The new Korean trade strategy is a result of the 1997 financial crisis and the failure of the WTO negotiations.

Since the establishment of the FTA Roadmap in 2003, Korea has actively engaged in FTA negotiations with over 50 countries. FTAs with Chile, Singapore, the European Free Trade Area (EFTA), ASEAN and India have entered into force. Korea also concluded FTAs with the US, the EU and Peru and is negotiating FTAs with the Gulf Cooperation Council (GCC), Australia, New Zealand, Columbia, Canada, Mexico and Turkey.⁶⁹

The decision to enter into a FTA with the EU is also pursuant to the new strategy by Korea.⁷⁰ Two main reasons can be identified for Korea's choice of the EU as a FTA partner. Firstly, the EU is Korea's main trading partner after China. As spelled out by Nicolas, concluding a FTA with the EU will allow Korea to get better access to “the highly attractive EU market because of its

⁶⁸ *Ibid.*, p.36

⁶⁹ Ministry of Foreign Affairs and Trade, Republic of Korea, *FTA status of Korea*, <http://www.mofat.go.kr/english/econtrade/fta/issues/index2.jsp>

⁷⁰ Moon, W., Wouters, J., Corthaut T., Sterkx S., Ujupan, S., *EU-Korea relations and the EU-Korea Free Trade Agreement*, KUL, Leuven Centre for Global Governance Studies, Policy Brief No. 13, March 2010, p. 5

considerable size”.⁷¹ Secondly, Korea is aiming at diversifying its trade partners and “after the conclusion of the KORUS FTA, the EU appears to be a natural complement”.⁷² It will also allow for a diversification of Korean import sources away from an exclusive dependence on Japan.⁷³ A FTA with the EU will also contribute in the longer term to improve Korea's competitiveness by better factor productivity and by fuelling more competition into the Korean market.⁷⁴

- Korea's interests and negotiating position

Korea's offensive interests lie in manufacturing sectors such as textiles, leather/clothing, cars and transport equipment whereas it is more defensive in the agricultural sector and in the service sector.⁷⁵

In the manufacturing sector, Korea aimed at an “early abolition of tariffs by the EU, technological cooperation, as well as an easing of regulation on environment and technology”.⁷⁶ It requested “the abolition of the 10-22% EU rates on automobile imports and insists on tariffs elimination for electronics and textiles products. Korean textiles producers also wanted to be granted the same treatment as other textiles producers originating from countries with preferential trade agreements with the EU such as Morocco, Turkey or Tunisia”.⁷⁷

In addition, Korea considered that “the EU's RoOs are not flexible enough” and do not take into account “Korea's integration in East Asian production networks”.⁷⁸ While the primary aim

⁷¹ Nicolas, F., p.37

⁷² *Ibid.*, p.38

⁷³ *Ibid.*

⁷⁴ *Ibid.*, p. 37

⁷⁵ CEPII/ATLASS, *The economic impact of the FTA between the EU and Korea*, p.6

⁷⁶ Nicolas, F., p. 39

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, p. 40

of RoOs is to ensure that preferences accrue only to the signatories of a preferential trade agreement, they are often complex and can act as a barrier to trade.

The agriculture sector has always been a sensitive sector for Korea. However, if both the rice and beef markets are particularly sensitive for Korean farmers, they were less of a problem in relation to the EU than during the KORUS negotiations since the EU is neither a big producer of rice nor a big exporter of beef. However the situation is more difficult concerning the pork and dairy sectors as the EU is a big producer of both these products.⁷⁹

On the issue of services, Korea was favourable to the liberalization of services and aimed at the opening of the EU market in sensitive sectors such as finance, shipping and audiovisual services. In addition, the issue of standards and in particular of environmental standards is seen by Korea as an important technical barrier to trade on the side of the EU.

Although less strong than during the negotiation of the KORUS FTA, opposition to the KOREU FTA was voiced in Korea, especially in the agricultural sector and trade unions concerned about its negative effect on employment. As shown by the 2010 study on the economic impact of the FTA, while positive employment effect may be expected for textiles, leather/clothing and cars, “negative effects may be expected for specific manufactured products (machinery, electronic equipment and other manufactured products), specific services (business, transport and insurance) as well as dairy products and meat”.⁸⁰

⁷⁹ CEPII/ATLASS, *The economic impact of the FTAs between the EU and Korea*, p.5

⁸⁰ *Ibid.*, p.6

2.1.3 Conclusion and ratification

The text of the agreement was initialled between the European Commission and the Korea on 15 October 2009. On 16 September 2010 the Council finally approved the FTA after having found a compromise with Italy on the date of the provisional entry into force of the agreement.⁸¹ The Italian government, which feared for its car industry, requested an additional six months for the opening up of the EU market to Korean cars. The 27 EU Member States agreed to postpone the provisional implementation of the FTA until 1 July 2011, provided the European Parliament (EP) would give its consent. The consent of the EP is required for the ratification of all EU trade agreements since the entry into force of the Lisbon treaty on 1st December 2009. The agreement was officially signed between the EU and Korea on 6 October 2010 on the margins of the EU-South Korea Summit in Brussels and the EP gave its consent to the KOREU FTA on 17 February 2011. The EP agreement came after negotiations with Seoul, which guarantee that the new legislation on CO2 emission limits for cars would not be detrimental to European carmakers and after obtaining a safeguard clause to protect European automobile industry if ever it would be threatened by injurious surge of imports from South Korea.⁸²

On the Korean side, the Korean government submitted the KOREU FTA to the Korean Assembly in October 2010. After delays in the

⁸¹ Despite the fact that the Lisbon Treaty provides that trade agreements can be adopted by the qualified majority of the member states, in practice, the Council of Ministers has required a consensus of all 27 member states.

⁸² European Parliament, *EU-South Korea free trade agreement passes final hurdle in Parliament*, 17 February 2011

<http://www.europarl.europa.eu/en/pressroom/content/20110216IPR13769/html/EU-South-Korea-free-trade-agreement-passes-final-hurdle-in-Parliament>

ratification process due to political opposition and translation errors, the KOREU FTA was ratified by the National Assembly on 4 May 2011.⁸³ Political opposition focused mainly on agriculture and services liberalisation.

The EP's vote and the Korean Assembly vote allow for the FTA to be implemented from 1 July 2011. This implementation is however only provisional since the KOREU FTA is a so-called mixed agreement; it covers areas of national competences (such as cooperation in cultural matters or provisions relating to the criminal enforcement of IPRs) and will therefore also have to be ratified by the national parliaments of the 27 member according to their own laws and procedures.⁸⁴ In the meantime, however, most elements of the trade agreement would enter into force, whereas "elements in which only the individual member states have sole or mixed competence would enter into force after subsequent national ratifications have been completed".⁸⁵ This process may take several years.⁸⁶ The completion of the ratification procedure in each of the 27 member states will determine the definitive application of the KOREU FTA.

2.2 Key elements of the EU-Korea FTA

The KOREU FTA is a comprehensive agreement⁸⁷ that covers the broad range of economic

⁸³ Na Jeong-ju, Lee Tae-hoon, *National Assembly ratifies Korea-EU FTA*, The Korea Times, 4 May 2011

⁸⁴ European Commission, *EU and Korea sign free trade deal*, 6 October 2010

⁸⁵ Cooper W., Jurenas R., Platzer M., Manyin M. *The EU South Korea Free Trade Agreement and its implications for the United States*, CRS Report for Congress, 5 January 2011, p. 20

⁸⁶ European Commission, *EU Commission welcomes European Parliament backing for free trade deal with South Korea*, 17 February 2011.

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=680&serie=399&langId=en>

⁸⁷ Woolcock S., *Assessment of the EU-Republic of*

activities in the EU-South Korean bilateral economic relationship. It is organised into 15 chapters and includes special sector specific annexes which cover automotive products, pharmaceuticals, chemicals, and consumer electronics. Once it enters into force, it will eliminate tariffs on virtually all manufactured goods in Korea-EU bilateral trade within seven years and will reduce or eliminate most NTBs. The agreement will also establish rules and procedures in trade in goods and services and will address trade-related activities applying to IPR, labour rights, and environmental protection.

As it is not possible to cover all aspects of the KOREU FTA, only the key aspects of the FTA will be presented and in particular, the issues which are the most relevant to Singapore and/or illustrate the level of ambition that the EU is aiming at when concluding FTAs under the *Global Europe* strategy.⁸⁸

2.2.1 Tariffs

The KOREU FTA foresees the removal of customs duties over a transitional period. When considering both industrial and agricultural products, Korea and the EU will eliminate 98.7 percent of duties in trade value for both industry and agriculture within 5 years. The remaining portion of tariffs will be almost entirely eliminated over longer transitional periods, with the exception of a number of agricultural products.

Korea FTA, Presentation for the EP hearing of 23 June 2010

⁸⁸ The KOREU FTA contains ambitious provisions on trade liberalisation in the agricultural sector. We have chosen not to detail them as this is not relevant for Singapore. More information can be found in Dukgeun Ahn, *Legal and Institutional Issues of Korea-EU FTA: New Model for Post-NAFTA FTAs?*, Seoul National University

In terms of import value Korea will lift tariffs in 92 percent of manufactured goods in the first 3 years and 99 percent in 5 years time, while the EU will eliminate 93 percent of its tariff on manufactured goods in 3 years time and 100% within 5 years.

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 within the first 5 years once the FTA is applied.

For passenger cars with small sized engines and consumer electronics, for which Korea is very competitive, the EU customs duties will only be liberalized in year 5 of the agreement.

- Rules of origin

The Commission launched a process in 2005 to reform the rules of origin (RoOs). This need was also emphasized in Global Europe. This reform aims at “simpler and more modern that would reflect the realities of globalization”⁸⁹ since “vertical integration of production – where components of a single product may be sourced in a range of countries - is replacing traditional trade in finished goods”.⁹⁰

The changes introduced in the FTA with Korea go in the same direction to simplify the EU standard RoOs⁹¹. In addition, the EU accepts to go to 55 percent local value added in most manufactures. In sensitive sectors, a more moderate increase in the permissible foreign content has been agreed from the EU standard rule of 40 to 45 percent for

cars and for the most sensitive consumer electronic items.⁹²

Another point of interest is the EU’s duty drawback scheme. It is the first time that the EU allows duty drawback in a bilateral agreement.⁹³ 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.⁹⁴ The FTA however also contains a possibility of review of the clause on Duty Drawback, after 5 years from entry into force of the agreement, in case there is a significant increase in foreign sourcing.⁹⁵ This could then result in a limitation of the duties on parts that can be refunded to a maximum of 5 percent.⁹⁶

2.2.2 Non-tariff barriers

One of the most important aspects of the FTA, however, concerns the elimination of NTBs. The KOREU FTA incorporates fundamental 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. The FTA also contains separate chapters covering trade remedies, technical barriers to trade, sanitary and phytosanitary measures (SPS), customs and trade facilitation.

⁸⁹ *Global Europe*, p. 9

⁹⁰ Commission services working doc annexed to *Global Europe*, p.4

⁹¹ KOREU FTA, *Protocol concerning the definition of “originating products” and methods of administrative cooperation*.

⁹² European Commission, *EU-South Korea Free Trade Agreement: A quick reading guide*, October 2010, p.12

⁹³ ECIPE, *What the EU South Korea Free Trade Agreement reveals about the state EU trade policy*, 13 January 2010, <http://www.ecipe.org/blog/what-the-eu-south-korea-free-trade-agreement-reveals-about-the-state-of-eu-trade-policy>

⁹⁴ European Commission, *EU-South Korea Free Trade Agreement: A quick reading guide*, p.12

⁹⁵ KOREU FTA, *article 14 of the Protocol concerning the definition of “originating products” and methods of administrative cooperation*

⁹⁶ European Commission, *EU-South Korea Free Trade Agreement: A quick reading guide*, p.12

The Commission stated that the KOREU FTA is a good reference point on non-tariff barriers for future agreements, especially where tariffs are low but significant regulatory barriers remain.⁹⁷

- Technical barriers to trade

More generally, the EU and Korea undertake to cooperate on standards and regulatory issues with a view to tackle Technical Barriers to Trade (TBTs). TBTs refer to the use of the domestic regulatory process as a means of protecting domestic producers. After reiterating the parties' commitments under the WTO Agreement on TBTs, the FTA includes specific undertakings on good regulatory practice such as 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.⁹⁸

In addition, the FTA includes specific sectoral disciplines on NTBs to trade. Four sectoral annexes address regulatory and other barriers in the areas of consumer electronics⁹⁹, automotive products¹⁰⁰, pharmaceuticals¹⁰¹ and chemicals¹⁰². In particular these annexes contain strong and precise clauses on the elimination of some selected NTBs such as safety standards and accreditation procedures in automobiles and electronics. Overcoming regulatory barriers through enhanced regulatory cooperation is a priority for the EU, which announced in *Global Europe* that it would play a leading role in the

⁹⁷ European Commission, *Commission Staff Working Document, Report on progress achieved on the Global Europe strategy, 2006-2010*, p.12

⁹⁸ KOREU FTA, Chapter 4

⁹⁹ *Ibid.*, Annex 2-B

¹⁰⁰ *Ibid.*, Annex 2-C

¹⁰¹ *Ibid.*, Annex 2-D

¹⁰² *Ibid.*, Annex 2-E

development of global standards.¹⁰³ One way to achieve this objective is, according to the European Commission to “urge our main trading partners to join and promote the use of existing sectoral regulatory convergence initiatives”.¹⁰⁴ This was done in the KOREU FTA, which provides for self-declaration of conformity, the elimination of double testing requirements for accreditation but also for legally binding commitments to adopt international standards in electronics (safety standards) and the adoption of international standards in automobiles. According to the KOREU FTA, UN-ECE (United Nations Economic Commission for Europe) core safety standards for automobiles will be considered as equivalent to Korean domestic standards from the entry into force of the agreement.¹⁰⁵

This new regime is expected to bring considerable reduction in costs, complexities and bureaucratic hassle since cumbersome and expensive testing and certification procedures will no longer be duplicated.

For pharmaceutical products and medical devices, the KOREU FTA specifically provides that the South Korean authorities will introduce new rules to align their practices with international standards. In addition, the KOREU FTA also introduces detailed binding rules on transparency regarding decisions on reimbursement, and stipulates the possibility that pricing decisions could be reviewed by a court. It also requires that decisions on reimbursement and pricing be objective and clear. The agreement also foresees further regulatory cooperation in the pharmaceutical and medical device sector, and

¹⁰³ *Global Europe*, p.9

¹⁰⁴ European Commission, *Trade, Growth and World Affairs*, p. 7

¹⁰⁵ European Commission, *EU-South Korea Free Trade Agreement: A quick reading guide*, October 2010, p.14

sets up a Working Group on Pharmaceutical Products and Medical Devices.¹⁰⁶

The Annex on chemicals highlights the importance of “ensuring transparency regarding the content of the laws of both partners and regulations and other measures of general application in the area of chemicals”.¹⁰⁷

This illustrates that standards and technical regulations are an essential element of the EU new generation of FTAs and that the EU is committed to negotiate with its trading partners the inclusion of strong and precise clauses on standards. The EU will not hesitate to enter deeply into the regulatory practices of its trading partners to tackle regulatory barriers. It will also “request and support relevant partner countries to participate in specific international mechanisms and standard-setting/regulatory convergence (e.g. ISO, UN-ECE)”.¹⁰⁸ More generally, the issue of regulatory convergence is expected to figure prominently in EU trade negotiations.

2.2.3 Other regulatory issues

The FTA provides for other far-reaching commitments to rules governing competition including state aid, intellectual property, enforcement and public procurement.

- Intellectual property

The FTA contains a separate Chapter 10 on Intellectual Property rights, which shall complement and specify the rights and obligations between the Parties under the WTO’s Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of 1994. This

¹⁰⁶ *KOREU FTA*, Article 15-3 (1)

¹⁰⁷ *Ibid.*, Annex 2-E, pt 2(a)

¹⁰⁸ Commission Staff Working document annexed to *Global Europe*, p. 18

comprehensive chapter covers provisions on copyright and related rights, trademarks, geographical indications, designs, patents and plant varieties.

A full section of the Chapter 10 of the FTA is devoted to the mutual recognition and protection of the Geographical Indications (GIs) of both Parties. GIs are a form of intellectual property that indicates the origin of a product. They are very important in the EU, which has a rich history of local and specialist agricultural production and many famous products closely linked to their place of origin like Parma ham, Roquefort cheese or Champagne. With the Korea agreement, the EU has gone beyond the traditional protection of its wine and spirit names, and expanded to other products – beers, meat specialties, cheeses, olive oil, etc.¹⁰⁹ Around 160 EU GIs will be protected directly with the entry into force of the FTA. Korea on its part protects teas, rice and spices.

- Government procurement

Both sides reaffirm their commitments to open up government procurement contracts to bidding by foreign providers under the WTO Government Procurement Agreement (WTO GPA). Korea will furthermore apply the trade liberalization provisions to a larger number of public agencies than required under the GPA. The FTA would also offer the opportunity to expand procurement opportunities to public work concessions and “Built-Operate-Transfer” (BOT) contracts not yet covered by the WTO GPA commitments. BOT contracts are “arrangements in which the private sector builds an infrastructure project, operates it and eventually transfers ownership of the project to the government and often used in long term

¹⁰⁹ For the full list of products, see Annexes 10-A and 10-B of the *KOREU FTA*

projects such as power plants and water treatment facilities”.¹¹⁰ The EU considers this provision to be an important contribution of the agreement because these contracts not covered by the WTO GPA, are of significant commercial interest to European suppliers, who are recognized global leaders in areas such as transport equipment, public works and utilities.¹¹¹ In *Global Europe*, the EU reaffirmed its commitment towards open European procurement markets but also announced that it would look for “effective ways of opening up major foreign procurement markets”.¹¹²

- Competition

The *Global Europe* Communication also calls for stronger provisions on competition in FTAs to ensure that European firms do not suffer in third countries from subsidies to local companies or anti-competitive practices, which can have similar effects to more traditional trade barriers. The negotiation of a comprehensive competition chapter covering both anti-trust, subsidy and transparency issues features prominently on the Commission's agenda. The KOREU FTA makes major advances in competition policy, particularly concerning subsidies. The FTA includes clauses on competition policy, which seek to align the practices of the EU's trade partner to those of the EU.¹¹³

The FTA contains interesting and novel provisions on subsidies. The section on subsidies apply to “subsidies for goods with the exception of fisheries subsidies, subsidies related to products

¹¹⁰ <http://www.investopedia.com/terms/b/botcontract.asp>.

¹¹¹ European Commission, *EU-Korea Free Trade Agreement: 10 Key Benefits for the European Union*. Memo/10/423

¹¹² European Commission Staff Working Document, Annex to *Global Europe*, p.22

¹¹³ *KOREU FTA*, Chapter 11, Competition, Section A Competition

covered by Annex 1 of the Agreement on Agriculture and other subsidies covered by the Agreement on Agriculture”.¹¹⁴

An important novelty brought by the Section of the FTA on subsidies¹¹⁵ is the obligation on both sides to report transparently to each other their respective distribution of subsidies to their economies. This will prove particularly interesting in the case of shipbuilding “which has been a matter of concern for the EU industry”.¹¹⁶ It provides in particular that the parties agree to remedy or remove distortions of competition caused by subsidies in so far as they affect international trade.

Furthermore the section 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 FTA's provisions on subsidies do not cover the area of services. However, the FTA provides that “the parties should use their best endeavour to develop rules applicable to subsidies to services”¹¹⁷ and contains a rendez-vous clause¹¹⁸

¹¹⁴ *Ibid.*, Article 11.15

¹¹⁵ *Ibid.*, Article 11.12

¹¹⁶ European Commission, *EU-Korea Free Trade Agreement: 10 Key Benefits for the European Union*, p.

¹¹⁷ Article 11.15 (1) of the *KOREU FTA*

¹¹⁸ A rendez-vous clause is adopted when negotiating partners cannot reach agreement on a particular issue and decide to come back to this subject at a later date.

according to which parties “agree to hold a first exchange on subsidies to services within 3 years from the entry into force of the FTA”.¹¹⁹

The KOREU FTA provisions on subsidies go beyond the regulation of subsidies under the WTO agreements and according to Jarosz-Friis, *et al.*, constitute “the first tangible results of the EU’s efforts to introduce more comprehensive disciplines on subsidies in trade agreements with third countries”.¹²⁰

2.2.4 Services

The KOREU FTA breaks new ground in the EU’s tradition of FTAs as it provides for some real achievements in services. The European Commission considers the KOREU FTA the most ambitious services FTA ever concluded by the Union.¹²¹ It goes beyond existing commitments in WTO’s General Agreement on Trade in Services (GATS). This is the case for financial services and telecommunications, maritime transport services and e-commerce.

The KOREU FTA uses the “positive list approach” rather than the “negative list approach,” in laying out the schedule of these commitments. As explained by Cooper, Jurenas, *et al.*, “the positive list requires each Party to specifically identify the types of services for which it will provide national treatment and market access to providers from the other Party”.¹²² All sectors and modes not

Their decision is made official by putting it in writing and including it as a clause in the legal text they are discussing.

¹¹⁹ Article 11.15 (2) of the *KOREU FTA*

¹²⁰ Jarosz-Friis, A., Pesaresi, N., Kerle, C., *EU-Korea FTA: a stepping stone towards better subsidies control at the international level*, Competition Policy Newsletter, Number 1, 2010, p.82

¹²¹ European Commission, *EU-Korea Free Trade Agreement: 10 Key Benefits for the European Union*. Memo/10/423

¹²² Cooper, W., Jurenas, R., Platzer, M., Manyin, M., p.16

specifically mentioned in the list are not liberalised. “In contrast, a negative list approach would liberalise all sectors and services except those explicitly stated in the agreement”.¹²³ The EU has so far always used a positive list approach in trade negotiations whereas the KORUS FTA, on the other hand, uses a negative list approach.

Although it is believed that a negative list approach usually leads to a broader and more “ambitious” market access, the KOREU FTA achieved a high level of liberalization in the services area. Several commentators consider that the KOREU FTA “largely mirror the coverage found in the KORUS FTA”,¹²⁴ if not “going beyond what was achieved by the KORUS FTA”¹²⁵ especially in the telecommunications and environmental services.¹²⁶

The KOREU FTA greatly increases market access for services. On the EU side, although, as underlined by Lee Jong-Kyu, “the EU’s services market is already mostly opened”, market accessibility was further improved for Korean firms in the sectors of “architecture, engineering, urban planning, landscaping, oriental medicine, printing, publishing, telecommunications, construction, finance and transportation”. However, “the EU did not open accessibility to medical, education and audiovisual services”.¹²⁷ The health and education sectors are sensitive for the EU because of their public service nature. As for the audiovisual sector, the EU considers that the audio-visual sector should not be included in trade liberalization negotiations in particular for the purpose of preserving cultural diversity.

¹²³ *Ibid.*, p. 16

¹²⁴ Lee, Jong-Kyu, p. 1.

¹²⁵ Moon, W., Wouters, J, Corthaut T., Sterkx S., & Ujupan, S., p 7.

¹²⁶ Lee, Jong-Kyu, p. 11

¹²⁷ *Ibid.*, p. 10

On the Korean side, European companies will enjoy greater market access, particularly in the fields of satellite broadcasting, shipping, environmental services, financial services and legal services.

- On telecommunications

South Korea will relax foreign ownership requirements, allowing 2 years after the entry into force of the FTA “EU telecommunications providers to own 100% of the voting shares of Korean-based providers, except for the KT Corporation and SL Telecom Co., for which the share of ownership would be limited to 49% or less”¹²⁸ In addition, EU satellite broadcasters (telephone and TV) will be able to operate directly cross-border into South Korea, thus avoiding having to liaise with a Korean operator. This provision on international satellite private line service sector goes beyond the Korean commitments in the KORUS FTA.¹²⁹

- On financial firms

All EU 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.

The FTA covers “all financial suppliers” and is not limited to “financial institutions” thus allowing asset management services to operate in Korea, for example.¹³⁰ The City UK report points out that “the FTA will provide financial service providers full rights to:

- Establish or acquire financial service suppliers in the other party’s territory to provide a complete range of financial services;

¹²⁸ Cooper W., Jurenas R., Platzer M., Manyin M., p. 16

¹²⁹ Lee, Jong-Kyu, p. 11

¹³⁰ The City UK, *The EU-South Korea Free Trade Agreement, Financial & Related Professional Services*, 14 June 2010

- Establish branches of banks, insurance companies, and asset managers in the other party’s territory;
- Supply cross-border a specified list of financial services, including portfolio management services for investment funds, offshore advisory and auxiliary services and the transfer of financial data processing software of financial services permitted within two years”.¹³¹

The FTA will also increase the access to the insurance market. In particular, as underlined by the City UK report, “the maritime, commercial aviation, space launch and freight insurance markets will be opened up. Reinsurance and retrocession will be permitted, as will auxiliary insurance service, consultancy, risk assessment, actuarial and claims settlement services and insurance intermediation services”.¹³²

- On legal services

The area of legal services was an EU priority during the negotiations. The provisions of the KOREU FTA mirrors the KORUS FTA¹³³ and foreign lawyers will be allowed to provide advisory services and employ domestic lawyers. The legal market will be open in three stages. For EU law firms, this means that following entry of the FTA, they will be allowed to open law firms in Korea to advise foreign investors or Korean clients on international and foreign law. No later than two years after the entry into force of the agreement, EU law firms’ representative offices would be able “to enter into cooperative agreements with Korean law firms”¹³⁴ and to “fee share with a Korean law firm, either on a project by project

¹³¹ The City UK

¹³² *Ibid.*

¹³³ The Law Society of UK and Wales, *EU-Korea FTA: legal services market to open July 2011*. <http://international.lawsociety.org.uk/node/10006>

¹³⁴ Cooper W., Jurenas R., Platzer M., Manyin M., p. 16

basis or on an ongoing basis".¹³⁵ No later than five years after that date, EU law firms would be permitted to form partnerships with Korean firms and will be able to employ Korean lawyers.

2.2.5 Investment

There is no general investment chapter in the KOREU FTA, and in particular no investor-state dispute settlement procedures, as before the entry into force of the Lisbon Treaty on 1st December 2009, investment protection was the responsibility of Member States through the conclusion of Bilateral Investment Treaties (BITs).

The KOREU FTA only contains provisions on the liberalization of foreign direct investments (FDIs) and in particular clauses on the review of the parties' investment legal frameworks.¹³⁶ The objective of such clauses is to assess and address with the other party any obstacles to investment.

2.2.6 Trade and sustainable development

The KOREU FTA includes provisions establishing shared commitments and a framework for cooperation on trade and sustainable development. The EU and Korea commit to uphold International Labour Organization (ILO) core labour standards as well as ratify all ILO conventions that go beyond the core labour standards. On environment, there is a commitment to effectively implement all multilateral environment agreements to which they are parties.

In addition, the EU and Korea commit to not lowering the enforcement of labour standards or environmental standards in any way that would affect trade or investment between them. The

¹³⁵ The Law Society of UK and Wales, *EU-Korea FTA: legal services market to open July 2011*

¹³⁶ KOREU FTA, Article 7.16

two sides will also set up both advisory groups to monitor the implementation of workers rights and environmental provisions and a panel of independent experts to resolve issues that arise during its implementation.¹³⁷

An interesting development in this area is the debate that took place around the new Korean draft legislation on CO₂ emissions that introduces tougher rules on fuel efficiency and CO₂ emissions for cars. The EU car industry had expressed concerns that the new Korean on car emissions could be used as a non tariff barrier and be detrimental to European car makers. The EU brought the issue with Korea that agreed to modify its draft legislation and, in particular, granted derogations for car makers selling a small number of cars in Korea.¹³⁸

2.2.7 Dispute settlement

The dispute settlement mechanism included in the FTA is based on the WTO Dispute Settlement Understanding model and consists of different approaches for tariff and non-tariff issues. It is however considered to be much faster than at the WTO.¹³⁹

In particular, "accelerated procedures are allowed in case of very urgent situations as well as in specific areas such as "motor vehicles and parts" or "duty drawback" sectors".¹⁴⁰ For market access problems due to NTBs, the FTA contains a mediation mechanism "that aims to find an effective solution in the shortest period

¹³⁷ Cooper, W., Jurenas, R., Platzler, M., Manyin, M., p.19

¹³⁸ European Commission, Press statement on Korean Co₂ Legislation, 24 January 2011. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=677>

¹³⁹ European Commission, *EU-South Korea Free Trade Agreement: A quick reading guide*, October 2010, p.10

¹⁴⁰ Moon, W., Wouters, J., Corthaut, T., Sterkx, S., Ujupan, S., p. 8

possible”.¹⁴¹ The mediator’s opinion and the proposal that results from the mediation mechanism are not binding on the parties involved in the conflict.

3. POSSIBLE IMPLICATIONS FOR OTHER EU FTAS IN PARTICULAR FOR THE EU-SINGAPORE FTA

The above overview of the key provisions of the KOREU FTA illustrates the level of ambition that the EU is aiming at when concluding its new generation of competitiveness-driven FTAs. Even if the EU takes into account the specificity of each trade partner, the new generation of EU FTAs will be WTO+ agreements with an important regulatory content. As underlined by Erikson and Lee-Makiyama, “the novelties of the KOREU FTA are not only important in bilateral EU- Korea trade; they will also form the basis for future FTA negotiations with other countries”.¹⁴²

3.1 The difficult negotiations of an EU-ASEAN FTA

ASEAN was identified in the *Global Europe* communication as among the first candidates for the conclusion of an economically-based “WTO+” FTA.

Following the EU member states’ authorisation to negotiate, ‘region-to-region’ FTA negotiations with a group of seven (out of ten) ASEAN countries were launched in 2007.

Despite ASEAN’s wish that all ASEAN members be included in the negotiations, the Commission’s negotiating mandate only covered the older seven ASEAN members. The mandate left out the

three Least Developed Countries of ASEAN, although it left the door open to Cambodia and Laos to join the agreement in the future. The EU decided not to negotiate with Myanmar on principle, given its human rights record and the existence of EU sanctions on Myanmar.

The proposed FTA “is expected to be fully WTO compatible (the EU as well as all ASEAN member states, with the exception of Laos and Myanmar, are WTO members). The EU Council gave the mandate to the European Commission to pursue an ambitious and comprehensive agenda while taking into account the different levels of development of the countries that participate in the FTA”.¹⁴³ The EU wants a ten-year transition period for tariff elimination and commitments in services and investment, perhaps with longer transition periods for some sensitive agricultural products. As underlined by R. Sally, the EU “is willing to give Special and Differential Treatment (SDT) to less-developed ASEAN countries in the form of longer transition periods, while no SDT was envisaged for Korea and India”.¹⁴⁴ Likewise in the area of public procurement, the EU appears less ambitious than in the negotiations with Korea, insisting only on greater compliance with WTO regulations and commitments.

Ending in March 2009, nine negotiation rounds were held. However, progress in these region-to-region negotiations was slow, and both sides agreed to put negotiations on hold at that time. ASEAN and the EU concluded that the conditions for a region-to-region FTA did not yet exist, at least not at a level of ambition that the EU aims for.¹⁴⁵ As the Commission concluded, “one

¹⁴¹ *Ibid.*

¹⁴² Erixon F. and Lee-Makiyama H., *Stepping into Asia’s Growth Markets: Dispelling Myths about the EU-Korea Free Trade Agreement*, ECIPE, Policy Brief n3, 2010, p.13

¹⁴³ ECORYS, “Trade Sustainability Impact Assessment of the FTA between the EU and ASEAN”, *Final report volume 1*, Rotterdam 19 June 2009, p.7

¹⁴⁴ Sally, R., p.16

¹⁴⁵ Garcia Berrero I., *The EU’s Role in Promoting Balanced Economic and Social Development*, opening

difficulty in the region-to-region negotiations arose from significant structural differences within ASEAN, which meant that existing levels of liberalisation and negotiation objectives differed widely among countries in the group”.¹⁴⁶ In particular, differences arose on issues like government procurement and intellectual property rights’ (IPR) protection. Some ASEAN members were reluctant to further adjust their government procurement to European companies as requested by the EU. In addition, the level of IPR protection remains weak in the region and most ASEAN’s members –apart from Singapore - were not ready to commit to strengthening IPR enforcement.¹⁴⁷

However, the EU decided to re-launch negotiations with ASEAN countries on a one-to-one basis. In December 2009, EU member states gave the green light for the Commission to hold FTA negotiations with individual ASEAN countries, starting with Singapore and Malaysia. The purpose of these bilateral FTAs is to serve as building blocks for the long-term objective of an agreement within the regional framework. As stressed by the Trade Commissioner Karel De Gucht recently, the EU’s “ultimate goal of a regional EU-ASEAN trade agreement remains valid”.¹⁴⁸ The Commission further insists that “by

address to the Malaysia Europe Forum Spring Dialogue, Munich, 2 March 2010

¹⁴⁶ European Commission, *Commission Staff Working Document, Report on progress achieved on the Global Europe strategy, 2006-2010*, p.6

¹⁴⁷ Delgado Rivera, J., *The EU-Malaysia FTA: an overdue assignment*, 29 August 2010, <http://www.neweurope.eu/articles/The-EUMalaysia-FTA-an-overdue-assignment/102276.php>, accessed on 15 December 2010, p.3

¹⁴⁸ Karel De Gucht, European Commissioner for Trade Closing Remarks to the first ever ASEAN-EU Business Summit ASEAN-EU Business Summit Jakarta, 5 May 2011, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/309&format=HTML&aged=0&language=EN&guiLanguage=en>

aiming for consistency in each bilateral FTA, a subsequent consolidation of bilateral deals at the regional level remains possible and indeed desired. The objective remains, in due time, to ‘regionalise’ the various bilateral deals into a single FTA”.¹⁴⁹

As underlined by the EU position paper on the trade sustainable impact assessment of the free trade agreement between the EU and ASEAN,¹⁵⁰ the EU still believes that “the ASEAN region holds out considerable potential for EU exporters and that it would be important to retain the ambition of eventually concluding free trade agreements with ASEAN countries. Competitors are increasingly gaining preferential access there and the EU risks being crowded out by non-ASEAN members which have already concluded or are concluding trade agreements with ASEAN (eg. Australia/New Zealand, Japan, China, South Korea and India) or by individual ASEAN member states (eg. Singapore’s FTAs with the US, Japan or EFTA). The current strategy, endorsed by EU member states, is to proceed on the basis of a country by country approach with those ASEAN countries that show willingness to conclude an ambitious and comprehensive bilateral FTA with the EU”.

3.2 The EU-Singapore FTA

As emphasised by the European Commission Services’ annex on Singapore, “Singapore holds a unique position amongst ASEAN countries as a developed industrial economy with a highly

¹⁴⁹ Press statement of the EU delegation to Malaysia as quoted by the Malaysian Insider, *FTA and partnership with Europe coming closer with initiatives launch*, 6 October 2010

¹⁵⁰ Commission services’ *position paper on the trade sustainable impact assessment of the free trade agreement between the EU and ASEAN*, ECORYS, June 2010, p. 2

educated population”¹⁵¹ and “an economy that is, in terms of GDP per capita, on equal with the EU”.¹⁵² It is the “EU’s foremost trade and investment partner in South East Asian countries”¹⁵³ and as such is an ideal candidate for the conclusion of a deep ‘WTO+’ FTA.

3.2.1 Overview of EU-Singapore trade and investment relations

The brochure of the EU delegation to Singapore on EU Singapore Trade and Investment 2011¹⁵⁴ gives the following overview of trade relations between the two countries.

- Trade in goods

The EU is Singapore’s second largest trading partner behind Malaysia and ahead of China and the US. The EU is Singapore’s largest supplier and Singapore’s fourth export market. The 2011 brochure recalls that “EU trade is highly concentrated in certain key product groups” and in particular, the machinery and transport equipments, chemicals and miscellaneous manufactured goods.¹⁵⁵

Singapore is the EU’s number one trading partner within ASEAN and the EU’s 12th largest trading partner. It represents the EU’s largest export market categories Southeast Asia with 1.8% of the EU’s total exports. Singapore’s exports to the

¹⁵¹ European Commission Services, *Annex one on Singapore to the position paper on the trade sustainable impact assessment of the free trade agreement between the EU and ASEAN*, 28 June 2010, p. 1

¹⁵² *Ibid.*, p. 4

¹⁵³ De Gucht, K., *Europe and Singapore: partners in trade, partners for growth*, Speech by EU Trade Commissioner Karel De Gucht at the Lee Kuan Yew School of Public Policy, Singapore, 3 March 2010.

¹⁵⁴ EU Delegation to Singapore, *EU Singapore Trade and Investment 2011*, 8 June 2011

¹⁵⁵ *Ibid.*, p.17

EU are concentrated in the machinery and transport equipment sector and the chemical sector. In 2010, these two sectors combined “represented more than 70% of Singapore’s exports to the EU”.¹⁵⁶

After a decline in trade between the EU and Singapore as a result of the global financial and economic crisis in 2008-2009, in 2010, the trade flow levels are now back to the levels reached in the pre-crisis period. In particular, according to Eurostat and as reported in the 2011 brochure, the EU-Singapore overall merchandise trade increased by 22% from its 2009 level. “Over the last five years the EU-Singapore’s total external trade increased by 9.4%”.¹⁵⁷

As already stated in the EU delegation 2010 brochure, “the growth in EU-Singapore trade can be largely attributed to the role of Singapore as a trading hub in South-East Asia. The strategic position of Singapore is becoming increasingly attractive for its trading partners such as the EU. Its gateway position has also made Singapore the EU’s number one trading partner in ASEAN and the EU’s largest export market in South-East Asia”.¹⁵⁸

- Trade in services

The 2011 brochure states that “trade in services between the EU and Singapore is growing at a steady rate”. Today, the EU is Singapore’s largest trading partner in services while Singapore is the EU’s eight largest trading partner in services.

As far as sectors are concerned, “according to SingStat, transportation, business related and communication services account for 72.3% of Singapore’s exports to the EU and 57% of its

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ EU Delegation, *EU Singapore trade and investment brochure 2010*, p.16

imports. However, it is royalties that had the largest share (30.8%) in Singapore's imported services from the EU".¹⁵⁹

- Foreign direct investment

The EU is the most significant source of FDI (30%) in Singapore ahead of the US (10.5%) and Japan (9.7%). Over the last 10 years, "the most important sectors for EU FDI in Singapore are manufacturing, and financial and insurance services. Over 8,500 EU companies are present in Singapore".¹⁶⁰ The 2011 brochure notes that "despite the intensifying competition for FDI among Asian countries, Singapore is the largest Asian destination for EU FDI outflows to Asia, ahead of Hong Kong, Japan, and Mainland China".

In addition, "Singapore is among the biggest external investors in the EU". Out of all Asian FDI stock to the EU it "ranks second with a share of 16.5%, after Japan, with a share of 44.4%". "The vast majority of Singapore's FDI within the EU is in the financial and insurance services and the manufacturing sectors, followed by information and communications, wholesale and retail trade, and finally, hotel and restaurant services".¹⁶¹

As underlined by the EU Ambassador to Singapore, the strong trade ties between the EU and Singapore "provides [the EU and Singapore] with a solid basis to make another step forward with the expected Free Trade Agreement".¹⁶²

¹⁵⁹ *Ibid.*, p. 20. As explained in the EU delegation brochure, "royalties include fees and charges, among others, for the use of patents, manufacturing rights, trademarks, franchising fees and copyrights."

¹⁶⁰ EU Delegation, *EU Singapore trade and investment brochure 2011*, p.21

¹⁶¹ *Ibid.*

¹⁶² Ungeheuer, M., "Message from European Union Ambassador to Singapore", in *EU-Singapore Trade and Investment brochure 2011*

3.2.2 The arguments in favour of an EU Singapore FTA

- The EU position

Singapore appears as an ideal FTA partner for the EU for several reasons.

First, as shown by the data on the EU-Singapore trade and investment relations, the EU has a major economic stake in Singapore. Singapore is by far the EU's largest ASEAN trade partner, and is considered to be one of the most business friendly country.¹⁶³

Second, Singapore is a gateway to the region and is the location of regional headquarters of many European companies. Already today European companies in many sectors have chosen Singapore as a hub from which to serve the Asia-Pacific region, and the FTA would seek to create additional trade and investment opportunities.

Third, as underlined by the European Commission, "Singapore's experience in FTA negotiations and its record in concluding ambitious agreements with developed economies like the US and Japan indicate that the EU could aspire to negotiate a comprehensive and ambitious FTA with Singapore".¹⁶⁴ An EU-Singapore FTA would also put an end to the discrimination suffered by EU companies as a result of the preferential market access granted to their competitors originating from existing FTA partners of Singapore. As stressed by the European Chamber of Commerce (EuroCham) in Singapore, "with each new FTA the benefits for those who are in diminish, and the disadvantages for those who are out increase". Therefore a FTA with Singapore would "eliminate disadvantages for EU companies in

¹⁶³ European Commission services' *Annex one* p. 1

¹⁶⁴ *Ibid.*

Singapore resulting from other FTA's notably the US-SIN FTA".¹⁶⁵

Finally, the fact that Singapore is not a major exporter in the politically sensitive sectors of agriculture, textiles, apparels and steel also means that the EU may aim at a relatively quick and unproblematic FTA conclusion.

In view of the above, the EU, when negotiating the FTA with Singapore, has taken as benchmarks both the results achieved in the KOREU FTA in the tariffs, services and regulatory areas and the commitments given by Singapore to its other FTAs partners.

The EU has also made clear that "the merit of FTA negotiations with Singapore lies as much in the intrinsic commercial benefit of such a deal, as in the systemic value of establishing a good precedent for future FTAs, and in particular with future ASEAN FTAs".¹⁶⁶ As underlined by one of the EU trade negotiators, "there may not be too many trade irritants with Singapore, but this agreement will become an important reference for other agreements with ASEAN states".¹⁶⁷

In negotiating a FTA with Singapore, the EU therefore pursues a double objective: further improving the access to the Singaporean market for EU companies, and setting the scene for EU's activities with ASEAN.

- The Singapore position

As already underlined, Singapore's economy, in terms of international trade and foreign

¹⁶⁵ European Chamber of Commerce in Singapore, *EU-Singapore FTA: a business primer*. Available at www.eurocham.org.sg

¹⁶⁶ European Commission services' *Annex one*, p. 1

¹⁶⁷ European Commission, Directorate General for Trade, *Civil Society Meeting, Bilateral Trade Negotiations: state of play*, 09 February 2011

investment remains one of the "most open, and thus competitive, in the world. With a few exceptions, tariffs are zero, total merchandise trade is nearly four times GDP and inflows of foreign direct investment are substantial".¹⁶⁸

The 2007 overview of Singapore's trade policy conducted by the WTO Secretariat concludes that "Singapore views the WTO as at the core of its trade policy strategy but also considers that trade liberalization efforts undertaken bilaterally and regionally can accelerate the momentum towards trade liberalization and thus form building blocks for the multilateral trading system".¹⁶⁹ The WTO Secretariat recalls that Singapore "participates in ASEAN and the Asia-Pacific Economic Cooperation Council (APEC) and has also bilateral trade and investment agreements with various countries in the world."

According to the Singaporean Ministry for Trade and Industry, Singapore's network of FTAs cover 18 regional and bilateral FTAs with 24 trading partners. Singapore has concluded both bilateral and regional FTAs. The following FTAs are already in force: ASEAN Free Trade Area (AFTA), ASEAN-Australia-New Zealand FTA (AANZFTA), ASEAN-China FTA (ACFTA), ASEAN-India FTA (AIFTA), ASEAN-Japan FTA (AJCEP), ASEAN-Korea FTA (AKFTA), Singapore-Australia FTA (SAFTA), Singapore-China FTA (CSFTA), Singapore-Jordan FTA (SJFTA), Singapore-India FTA (CECA), Singapore-Japan Economic Partnership Agreement (JSEPA), Singapore-Korea FTA (KSFTA), Singapore-New Zealand FTA (ANZSCEP), Singapore-Panama FTA (PSFTA), Singapore-Peru FTA (PeSFTA), Singapore-EFTA FTA (ESFTA), Transpacific SEP (Brunei, New Zealand, Chile, Singapore), Singapore-United States FTA (USSFTA).

¹⁶⁸ WTO Secretariat *Report on Trade policy Review of Singapore*, July 2008, p.vii

¹⁶⁹ *Ibid.*

FTAs with the Gulf Cooperation Council and with Costa Rica were concluded but are not yet into force. Singapore is currently in FTA negotiations with Canada, Mexico, Pakistan, Ukraine and the EU.¹⁷⁰

Looking at the content and scope of Singapore FTAs, the WTO Secretariat concluded that “while Singapore has almost no applied tariffs, it has offered to negotiate preferential treatment for partners, ranging from binding all its tariff lines at zero and open access to service industries in Singapore, to regulatory issues such as mutual recognition of standards, enhanced investment protection disciplines, greater commitment to protect IPRs and elimination of anticompetitive practices”.¹⁷¹

The WTO Secretariat’s overview noted that “Singapore’s import restrictions are based mainly on environmental, health and public security concerns” and that “Singapore makes very little use of trade defence instruments such as anti-dumping measures and has no legislation on safeguards”. As general policy, Singapore uses international standards where available. The WTO Secretariat concludes that “regarding public procurement, Singapore provides additional market concessions for its trading partners under most of its bilateral FTAs”.¹⁷²

In view of Singapore’s FTA policy and the importance of the EU as a trade partner, concluding a FTA with the EU would be a natural complement to the network of FTAs already concluded by Singapore. An FTA with the EU would further enhance its trade and investment links with the world’s largest trading entity and

¹⁷⁰ For a more detailed account of Singapore’s FTAs, please visit the following website.

<http://www.fta.gov.sg/>

¹⁷¹ WTO Secretariat *Report on Trade policy Review of Singapore*, July 2008, p.7

¹⁷² *Ibid.*, p. 11

the access to one of the most lucrative consumer market of 501 million people.

The impact of a FTA with the EU on Singapore’s economy and its sectors has been looked at in a study commissioned by the European Commission.¹⁷³ Although the study looks at the effect of a potential EU-ASEAN FTA, its findings on Singapore are considered by the European Commission to remain valid, in particular as the EU-Singapore FTA is meant to be a further element of an EU-ASEAN FTA.¹⁷⁴

The study concludes that “in absolute terms, Singapore stands to gain most substantially in terms of increased trade flows, consolidating its position as a regional trading, sourcing and distribution hub and financial centre”.¹⁷⁵

As Singapore is a service economy, it is in the services sector that “Singapore stands to gain more in percentage terms, especially in the insurance sector and the financial services sector”.¹⁷⁶

Finally, “investments and the reallocation of capital are considered to be “the main drivers behind the long run dynamic efficiency gains”¹⁷⁷ from an EU Singapore FTA.

3.2.3 Possible contentious issues in the EU-Singapore FTA

As underlined by the Annex on Singapore to the Position Paper, “it would not seem unreasonable

¹⁷³ ECORYS & partners, *Trade Sustainability Impact Assessment for the FTA between the EU and ASEAN*, 3 April 2009, http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc_143167.pdf

¹⁷⁴ European Commission, *Annex one*, p.1

¹⁷⁵ *Ibid.*, p. 2

¹⁷⁶ ECORYS, p. 11

¹⁷⁷ European Commission, *Annex one*, p. 2

to expect that overall, negotiations in the three main negotiating areas – tariffs, services and the regulatory issues (such as intellectual property, government procurement, regulatory transparency, sustainable development, competition and dispute settlement) will lead to ambitious results”. It is therefore very likely that the EU Singapore FTA will follow the same structure as the KOREU FTA and in particular contain ambitious provisions similar to the KOREU FTA. The EU is aiming at a “WTO+” FTA that would at least create a level playing field with other companies on the ground and ensure that regulatory issues are properly addressed.

- Tariffs

Along the line of the KOREU FTA, the future EUSFTA may certainly lead to an extensive elimination of tariffs on industrial and agricultural goods. The EU has announced that its FTAs aim at very large tariff reduction. On the side of Singapore, this may not be an issue as Singapore already has zero tariffs on a great range of goods and has granted generous concessions to its existing FTAs partners. The EU is expected to abolish tariffs in a similar way as it did with Korea.

The most challenging area however regarding the tariff chapter is perhaps the issue of Rules of Origin (RoOs).¹⁷⁸ According to commentators, that fact that most manufacturers located in Singapore operate in the basis of scale production “raised concerns about opening a backdoor for Chinese products”.¹⁷⁹ It will be interesting to see how the outcome of the EU Singapore FTA negotiations will compare in relation to the KOREU FTA, which showed an

¹⁷⁸ Delgado Rivera J., *Big prospects for the upcoming EU-Singapore FTA*, 5 November 2010

¹⁷⁹ IBEC (Irish Business and Employers Confederation) *quarterly trade bulletin*, March 2011

increase of the foreign content percentage authorized by the EU to qualify for the FTA favourable treatment. The increased flexibility in the EU’s RoOs will be critical for Singapore as a global manufacturer. The issue of taking into account the global value chains is essential for many Asian countries, and as Pascal Lamy, the Director-General of the WTO recently put it, “the questions of who produces what and where the value added is accruing are perhaps as important as the traditional concept of country of origin [...]”.¹⁸⁰

- Regulatory issues

The EU Singapore FTA is expected to go deep and to address ‘behind the border’ issues, to secure a safe and fair regulatory environment. In this area, the outcome of EU Singapore FTA is expected to be similar to what was achieved in the KOREU FTA in particular on the issue of standards and certification. In particular, in addition to good regulatory practices, cooperation on standards and transparency provisions, “it will include also sectoral annexes on technical barriers to trade (cars, electronics and pharmaceuticals) as the KOREU FTA”.¹⁸¹

- IPRs

Likewise, in area of IPRs, the EU is aiming at a similar quality of agreement as with Korea. There will definitely be a chapter on Geographical Indications as this is a priority of the EU. If the protection of intellectual property rights might not be a difficult issue at first sight in Singapore, ensuring a good enforcement of these rights is essential in view of the many goods that transit through Singapore from other countries.

¹⁸⁰ WTO, Lamy suggests “trade in value-added” as a better measurement of world trade, 6 June 2011, http://www.wto.org/english/news_e/news11_e/miwi_06jun11_e.htm

¹⁸¹ IBEC, *Quarterly trade bulletin*

Furthermore, the issue of IPRs is more problematic in other ASEAN countries and in this area also, the EU-Singapore FTA will play an important role in setting scene for the negotiations of future bilateral FTAs between the EU and other ASEAN states.

- Competition

Likewise, the EU Singapore FTA will include a competition chapter covering both anti-trust, subsidy and transparency issues in the competition field. In 2004, Singapore introduced a competition law and created a competition commission and it is expected that in the framework of the FTA, dialogue and cooperation could be enhanced on competition policy issues, in particular on the issue of government monopolies and subsidies.

- Public procurement

The area of public procurements is also a priority of the EU and a further opening up of access to Singapore public procurements along the line of the KOREU FTA may be expected. Public procurements constitute an important part of Singapore's GDP. The EU therefore aims at getting a better access to this area of opportunities for European companies.

- Services

Under an FTA, the most important sector affected, both in the EU and Singapore, will be the services sector and in particular financial and professional services. On the EU side, trade-in-services would appear to be a sector where the EU could potentially benefit from an FTA with Singapore. In particular, even if the Singapore market is relatively open, European firms are put in a less advantageous position than companies originating from countries such as the US, Australia and New Zealand that already concluded FTAs covering services with Singapore.

An EUSFTA would help address this imbalance.

This is why in the area of services, the EU will aim at a high degree of liberalization and at least the same commitments as the ones obtained by other FTA partners of Singapore. It is in particular expected that the EU will seek improved market access for services including financial, legal and environmental.

The European services industry has declared itself "strongly in favour of a free trade agreement with Singapore, which can serve as an ambitious benchmark for future agreements in the region".¹⁸² It has pronounced itself in favour of the use of the negative list approach in the services negotiations with Singapore. It also called for the removal of all equity caps that may remain in Singapore, the removal of all nationality and residency requirements for members of executive boards of branches, subsidiaries and joint-ventures.¹⁸³

In particular, the EU will likely insist on getting the same treatment as US banks. Under the US-Singapore FTA, US banks can establish as many branches as a local Singaporean bank while other "foreign full banks" may not increase their number of places of business without approval of the Monetary Authority of Singapore". In addition, "they may only establish to up to a total of 25 branches and offsite ATMs".¹⁸⁴

In the insurance sector also, restrictions apply to the operation of European insurance companies. As mentioned by the European Services Forum, "market access for European insurances is still limited by foreign equity cap of 49%". In addition, EU insurance companies are not free to establish

¹⁸² European Services Forum, *European Services Industry Priorities on EU-Singapore FTA*, 12 July 2010, p.1

¹⁸³ *Ibid.*, p.4

¹⁸⁴ *Ibid.*

new subsidiaries and branches or to participate in joint ventures.¹⁸⁵

Access to the postal services market is may also be an area where negotiations may be difficult. Likewise, the issue of the recognition of education diplomas and qualifications in professional services will likely be an important area of negotiations. The sectors of architectural and legal services have been identified as problematic.

As Singapore is “essentially a services economy, it would also greatly benefit from a further opening of the services market in the EU and is said to have sent an ambitious request to the EU”.¹⁸⁶ One issue in relation to the EU financial services sector was highlighted by the impact assessment study commissioned by the European Commission, that is, “the absence of convergence in regulation among member states including accounting standards and differences in the implementation of the Basle-II framework for banks, as well as different regulatory requirements for banking and other financial services.”¹⁸⁷ The study qualified it as “a major non-tariff barrier”.¹⁸⁸

- Investment

As already mentioned, the EU has since the entry into force of the Lisbon treaty an exclusive competence in both the area of market access liberalisation and investment protection. The original negotiation mandate did not include investment protection but the EU Commission services stated that the Commission has requested to the Council an extension of the negotiation mandate relating to investment protection and expect the Council to take a

¹⁸⁵ *Ibid.*

¹⁸⁶ IBEC *trade update March 2011*,

¹⁸⁷ European Commission, *Annex one*, p. 3

¹⁸⁸ *Ibid.*

decision shortly.¹⁸⁹ This would allow the Commission to negotiate with Singapore a chapter on investment covering both areas of market access liberalisation and investment protection.

- Sustainable development

As in the KOREU FTA, the future EU Singapore FTA will contain a chapter on sustainable development covering commitments on both high labour standards and environmental standards. Although Singapore has signed up to the core ILO conventions and has ratified the major conventions in the area of environment, the European Commission underlined the importance to include in the FTA measures to promote high levels of labour and environmental standards, “not only for Singapore itself but as an important example for future bilateral FTA”.¹⁹⁰

The European Chamber of Commerce in Singapore mentioned the issue of environmental standards as one area of concern and said that negotiations should “aim for Singapore to adopt the EU environmental standards and industry standards on sustainability”.¹⁹¹

CONCLUSION

According to a recent statement by the EU chief negotiator, “the EU-Singapore Free Trade Agreement discussions is anticipated to conclude over the next few months and will come into effect by the second- half of 2012”.¹⁹² The

¹⁸⁹ European Commission, Directorate General for Trade, *Civil Society Meeting, Bilateral Trade Negotiations: state of play*, 9 February 2011

¹⁹⁰ European Commission, *Annex one*, p. 4

¹⁹¹ EuroCham, EU-Singapore FTA, a business primer

¹⁹² Shamsiah Tengku Abdullah, TN, “EU-Singapore set to complete FTA negotiations, says Chief negotiator”, *Bernama*, 8 June 2011:

negotiations are going well and are on track, with “the chapters on tariffs and regulatory aspects are making significant progress”.¹⁹³ Difficult issues however still lie ahead, especially on the issues of “rules of origin, procurement and technical norms”.¹⁹⁴

In addition, the EU and Singapore will also need to conclude the negotiations of a Partnership and Cooperation Agreement (PCA). PCAs are comprehensive agreements providing the legal basis for both parties to cooperate in a wide range of economic and non-economic areas and provide the strategic framework for cooperation between two partners. In particular, PCAs normally include significant political clauses, including the respect for democratic principles, fundamental human rights and the principle of the rule of law.

As recalled recently by the EU Trade Commissioner Karel De Gucht, “before entering into FTA talks with any country, the EU first insists on a Partnership and Cooperation Agreement”.¹⁹⁵ Negotiations of the EU-Singapore PCA were launched back in 2004 but the negotiations still need to be “wrapped up” as told by the EU ambassador to Singapore.¹⁹⁶

The conclusion of both agreements will lead to a further enhancement of the EU-Singapore partnership. The EU Singapore FTA, in particular,

<http://www.bernama.com/bernama/v5/newsindex.php?id=592344>

¹⁹³ European Commission, Directorate General for Trade, *Civil Society Meeting, Bilateral Trade Negotiations: state of play*, 9 February 2011

¹⁹⁴ Shamsiah Tengku Abdullah, TN, EU-Singapore set to complete FTA negotiations, says Chief negotiator

¹⁹⁵ Reuters, *EU expects to agree Singapore FTA this year, more in 2012*, 8 June 2011,

<http://singaporebusiness.asia/eu-expects-to-agree-singapore-fta-this-year-more-in-2012/>

¹⁹⁶ Lee U-W., “S’pore EU free trade pact likely in next few months”, *The Straits Times*,

<http://www.eucentre.sg/details.php?i=35>

will be an important achievement for the trade and investment relations between both partners and is presented by the EU Chief Negotiator as “the most comprehensive and advance for both parties”.¹⁹⁷ It will further provide a “valuable point of reference also for other FTA negotiations”, especially for agreements with other ASEAN members.¹⁹⁸ As emphasized by the Commission, “the merit of FTA negotiations with Singapore lies as much in the intrinsic commercial benefit of such a deal, as in the systemic value of establishing a good precedent of what a comprehensive 21st century FTA should look like”.¹⁹⁹ The EU-Singapore FTA is therefore critical for both the trade and investment relations between the EU and Singapore as well as for future trade relations with ASEAN as a whole.

¹⁹⁷ Shamsiah Tengku Abdullah, TN, “EU-Singapore set to complete FTA negotiations, says Chief negotiator”

¹⁹⁸ European Commission, Directorate General for Trade, *Civil Society Meeting, Bilateral Trade Negotiations: state of play*, 9 February 2011

¹⁹⁹ European Commission, *Annex one*, p.1

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