

# UK–South Korea free trade agreement

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## Introduction

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The 2011 EU-Korea Free Trade Agreement (FTA) is a post-Lisbon free trade agreement and covers most substantive areas of the EU common external commercial competencies such as trade in goods, services and IP rights. The agreement was provisionally applied from 1st July 2011 and came fully into force on 13th December 2015 following formal ratification. In 2019 the UK government has negotiated a FTA with the South Korean government to give continuity to the existing trade relations between the two countries post-Brexit.

## Changes introduced to the 2019 UK-South Korea free trade agreement

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There are some notable differences between the 2011 EU-South Korean FTA and the 2019 UK-South Korea FTA, although many of the provisions concerning the elimination of tariffs and non-tariff barriers remain unchanged.

The most significant changes relate to technical and transitional legal matters aimed at ensuring a smooth transition between a EU-wide trade regime to a UK-Korea bilateral trade regime.<sup>1</sup> This includes modifications introduced to the UK-South Korea FTA aimed at:

- removing and replacing references to the ‘European Union’ to reflect the fact that is no longer a party;<sup>2</sup>
- changing the territorial application of the agreement;<sup>3</sup>
- modifying to the composition of the institutions and committees established under the EU-Korea FTA. This was done to reflect the fact that that agreement will no longer apply to the UK post-Brexit;<sup>4</sup>

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<sup>1</sup> See further, Department for International Trade, *Continuing the United Kingdom’s Trade Relationship with the Republic of Korea Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Korea*, September 2019, available at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830134/UK-South\\_Korea\\_trade\\_agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830134/UK-South_Korea_trade_agreement.pdf) (accessed 1 November 2019)

<sup>2</sup> *Ibid*, para. 39.

<sup>3</sup> See Article 15.15 of the 2019 UK-Korea FTA (Korea)

<sup>4</sup> Department for International Trade, note 1 above, para. 44. For example Article 15.2 of the UK- Korea Free Trade Agreement removes reference to the Joint Customs Cooperation Committee established under the Customs Agreement between the EU and Korea No. 1 (2019), London 22 August 2019 (consolidated version), available at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/831988/UK\\_Korea\\_Free\\_Trade\\_Agreement\\_v1.pt1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831988/UK_Korea_Free_Trade_Agreement_v1.pt1.pdf) (accessed 1 November 2019).



- addressing amendment clauses and subsequent negotiations to be carried out by Trade Committee created by the agreement;<sup>5</sup>
- governing the entry into force and provisional application of the agreement in the event that the EU-Korea FTA ceases to apply to the UK after Brexit;<sup>6</sup>
- removing references to EU legislation that will cease to apply to the UK post Brexit;<sup>7</sup>
- inserting a review clause establishing that both Korea and the UK will commence a subsequent negotiation to build on this agreement no later than two years following the date of entry into force of this agreement.<sup>8</sup>

There were other significant substantive changes to the scope of the agreement as regards Tariff Rate Quotas ('TRQs'), Rules of Origin ('RO'), Technical Barriers to Trade ('TBT'), Intellectual Property ('IP') (including geographical indication); and government procurement concerning the operation of WTO's Government Procurement Agreement ('GPA').

TRQs allow a certain quantity of a product to enter the market at a zero or reduced tariff rate.<sup>9</sup> To reflect the fact that the UK is a smaller importer and exporter than the EU28, TRQs administered by the UK and by FTA partners in 'continuity agreements' have been re-sized. The UK and Korean governments have agreed to set quotas to a sufficient level aimed at providing for continuity of almost all historical trade flows from UK exporters.

As regards rules of origin, as one of the EU member states all UK content is currently considered as "originating" in the EU and UK exports are designated as "EU origin." After Brexit goods originating in the UK will no longer be of 'EU origin. To address these implications and to provide maximum continuity for business, it has been agreed in the UK-Korea Free Trade Agreement that EU materials and processing can be recognised (i.e. cumulated) in UK and Korea exports to one another for 3 years after entry into force.<sup>10</sup> However, after the first 3 years the UK would need to reach an agreement with South Korea in order to maintain existing tariff-free access for UK goods with significant EU components.<sup>11</sup>

Although changes to the TBT provisions brought under the UK-Korea FTA have been limited to non-substantive technical changes with no trade impact, the UK Government added a side minute stating that the UK intends for a limited time to continue to accept Korean goods that meet EU regulatory requirements.<sup>12</sup> This is an interesting development given that UK government's official position is that it

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<sup>5</sup> See Article 15.5.2 of the UK-Korea FTA. See also, *ibid* para. 46

<sup>6</sup> See Department for International Trade, note 1, paras. 47 and 51.

<sup>7</sup> *Ibid* 58

<sup>8</sup> *Ibid*, para. 60. See also, Article 15.5bis of the UK-Korea FTA.

<sup>9</sup> *Ibid*, para. 65.

<sup>10</sup> *Ibid*, para. 75.

<sup>11</sup> See also, Jung-a, Rovnick, Giles, *South Korea agrees deal with UK for post-Brexit trade*, Financial Times 10 June 2019

<sup>12</sup> Department for International Trade, note 1 above, para 90.



wishes to maintain regulatory autonomy when negotiating FTAs with other countries post-Brexit.

Other more significant changes relate to the protection of intellectual property rights (particular artist resale), including geographical position,<sup>13</sup> and public procurement. As regards the latter, the UK-Korea Free Trade Agreement has retained the commitments on public procurement that were set out in the EU-Korea Free Trade Agreement. Yet since the UK intends to accede to the GPA in its own right post-Brexit (see the Trade Bill 2017-2019),<sup>14</sup> the UK-Korea Free Trade Agreement will rely on the UK's GPA Schedules once they come into force.<sup>15</sup>

However, arguably the most significant and remarkable difference between the EU-Korea and UK-Korea FTA is that the latter no longer includes legally binding provisions relating to environmental protection, human rights and labour standards, which appear instead in a non-binding *UK-Republic of Korea joint statement on shared values, ever growing partnership*.<sup>16</sup> This difference is particularly notable given that the 'second wave' of EU FTAs negotiated with third countries from the mid 2000s (particularly developing countries) have tended to include clauses on environmental standards, labour rights and human rights.<sup>17</sup> This significant reform under the UK-Korea FTA may be a reflection of three main interconnected factors:

- 1) the UK's weaker negotiating position when negotiating post-Brexit FTAs with its trading partners, given that the EU is a bigger market and holds a stronger bargaining position when negotiating FTAs
- 2) The short timeframe available for negotiation of the 'continuity' FTAs. This arguably has placed the UK in a weaker negotiating position.
- 3) A final factor is the current UK government's position in relation to environmental standards, labour rights and human rights (to be contrasted with the Labour Party's position which emphasises the importance of those standards both domestically and in the UK's external relations).

Yet as discussed above a review clause in the UK-Korea FTA foresees enables the parties to renegotiate their commitments under the agreement within two years from the entry into force of the agreement. Hence is possible that the clauses relating to environmental, labour and human rights standards in the EU-Korea FTA will be re-introduced into the UK-Korea agreement in future.<sup>18</sup>

In contrast, the EU-Korea FTA provisions on customs and trade facilitation,<sup>19</sup> competition and subsidies,<sup>20</sup>

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<sup>13</sup> Ibid, paras 98-99 and 101-102. See also Article 10.10. of the UK-Korea FTA.

<sup>14</sup> <https://services.parliament.uk/bills/2017-19/trade.html> (accessed 1 November 2019)

<sup>15</sup> 107-108

<sup>16</sup> See *UK-Republic of Korea joint statement on shared values, ever growing partnership.*, in Department for International Trade, note 1 above.

<sup>17</sup> Stephen Woolcock, 'EU Policy on Preferential Trade Agreements in the 2000s: A Reorientation towards Commercial Aims', *European Law Journal*, Vol. 20, No. 6, November 2014, 718-732

<sup>18</sup> See Article 15.5.2

<sup>19</sup> Department for International Trade, note 1, para. 85.

<sup>20</sup> Ibid, para. 111.



services<sup>21</sup> (including audio-visual services),<sup>22</sup> trade remedies,<sup>23</sup> sanitary and phytosanitary measures,<sup>24</sup> have largely been transitioned into the UK-Korea FTA with minor or no modifications.

It is also notable that the EU-Korea FTA does not contain an investment chapter,<sup>25</sup> unlike other post-Lisbon FTAs negotiated by the EU with third countries such as the EU-Singapore FTA. It is likely that the two parties will continue to rely on the investment protection provisions under the 1976 Korea – UK bilateral investment treaty (BIT), but it is also possible that they may wish to renegotiate the UK-Korea FTA for the purposes of inserting an investment chapter.

### **3. The impacts of UK-South Korea FTA in the UK and Wales**

For the most part, the UK government's own assessments of the impacts of UK-Korea FTA have focused on the implications of not ratifying the agreement, rather than the impacts that the agreement – taking account of the modifications highlighted above - would have on the UK or the devolved administrations. It is expected that if the 'continuity agreement' with South Korea is ratified before Brexit, the status quo of the UK-Korea trade relations will be largely maintained, subject to any subsequent amendments to or renegotiations of the treaty. Yet since that the UK-Korea FTA does not include chapters on sustainable development, human rights or labour rights, this could lead to the lowering of those standards - in so far as the bilateral UK and South Korean trade relations are concerned - and hence to a race to the bottom.

According to the UK government's assessment, not being able to ratify the UK-Korea Free Trade Agreement would result in UK businesses losing the preferences negotiated in the EU-Korea Free Trade Agreement.<sup>26</sup> This would include the re-imposition of many tariffs, returning to Most Favoured Nation (MFN) treatment with Korea (that is, trading on WTO terms). This could lead to the reversal of the benefits derived from trading under preferences within the Free Trade Agreement, such as the increases in trade flows between the UK and South Korea since the adoption of the EU-Korea FTA.

Moreover, in relation to TRQs the UK government's own assessment suggests that without transitioning rules or any other mitigating actions, goods exported to Korea from the UK that are currently covered by TRQs in the EU-Korea Free Trade Agreement could face MFN tariffs.<sup>27</sup> The extent of this impact will depend

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<sup>21</sup> Ibid, para. 115-116

<sup>22</sup> Ibid. para. 122-123

<sup>23</sup> Ibid. para. 54-55

<sup>24</sup> Ibid, para. 96

<sup>25</sup> Ibid, 125. However, Article 7.16 of the EU-Korea Free Trade Agreement provided for a review of the investment legal framework to begin no later than three years after the entry into force of this Agreement. These changes may be reflected in the UK-Korea Free Trade Agreement (see Article 15.5bis).

<sup>26</sup> Department for International Trade, note 1, para. 24.

<sup>27</sup> Ibid., 69.



on a number of factors, including existing trading patterns and the behavior and responsiveness of domestic consumers and businesses to the change in tariff.<sup>28</sup>

In relation to the rules of origin, it should be noted that the UK-Korea FTA provides only for rules governing trade between the UK and Korea and does not contain provisions addressing either party's direct trade with the EU, including, for example, where UK and Korea-based exporters use content from each other in exports to the EU.<sup>29</sup> According to the UK Government, if cumulating EU content for the UK and Korea were not permitted under the UK-Korea Free Trade Agreement at entry into force, some UK and Korean based exporters might find themselves unable to access preferences as they are currently able to under the EU-Korea Trade Agreement.<sup>30</sup> UK exporters to Korea who rely on EU content might have to revert to paying MFN tariff rates, if they continued using EU content, or they might have to review and reassess their existing supply and value chains as a result of this immediate change to existing terms. According to the UK government, the impact of this would vary across sectors.<sup>31</sup>

Furthermore, the British government has estimated the impacts of the UK-Korea FTA in relation to some specific measures or sectors, such as agriculture. In relation to 'Agricultural Safeguard Measures,' under Annex 3 of the EU-Korea Free Trade Agreement they should gradually be reduced to zero over a number of years. These measures have been transitioned to the UK-Korea Free Trade Agreement and have been resized to reflect the fact that the UK is a smaller importer and exporter than the EU28.<sup>32</sup> Although the UK government does not expect this change to have any impact, it may be pertinent for the Welsh Government and legislature to conduct further studies assessing the impacts of those changes to the bilateral trade relations in agricultural commodities between Wales and South Korea.

#### **4. Concluding remarks**

Although the UK-Korea FTA may mitigate some of economic impacts of Brexit as far as the bilateral trade relations between the two countries is concerned, there are still some areas of uncertainty, not least whether the agreement will be ratified by the British and South Korean Parliaments ahead of the anticipated Brexit date of 31<sup>st</sup> January 2020.

The UK-Korea FTA only introduces incremental solutions to transitional legal issues surrounding important areas such as TRQs and Rules of Origin, although these could have significant implications for UK/Welsh trade with South Korea. However, the most notable changes in the UK-Korea FTA relate to the transfer of the provisions on environmental protection, labour rights and human rights protection to a non-binding intergovernmental statement. This development could lead to the lowering of those standards and race to the bottom. However, the existence of the EU-South Korea FTA - and subject to the outcome of the current Brexit negotiations, a future UK-EU FTA – could mitigate concerns over a possible race to the bottom in the trade relations between UK and South

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<sup>28</sup> Ibid

<sup>29</sup> Ibid, 79.

<sup>30</sup> Ibid, 78.

<sup>31</sup> Ibid, paras. 71 and 78.

<sup>32</sup> Ibid.



Korea as regards environmental, labour and human rights standards.

Finally, it should be noted that one of the impacts of the adoption of the UK-Korea FTA is that it can only lower tariffs between the two countries, and could not mitigate the impacts that a 'hard Brexit' may have in so far as the (MFN) tariffs applicable to EU-UK trade are concerned.

