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Committee on Regional Trade Agreements

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FREE TRADE AGREEMENT BETWEEN THE UNITED KINGDOM AND THE REPUBLIC OF KOREA

QUESTIONS AND REPLIES

The following communication, dated 16 September 2022, is being circulated at the request of the delegations of the United Kingdom and the Republic of Korea.

Questions from Brazil

1.1. Concerning paragraph 3.20, could the parties please confirm which, if any, are the outward processing zones in the Korean Peninsula where materials can be processed and subsequently re-imported retaining their originating status, as well as which materials receive this specific treatment? Also, could the parties please clarify if there is any meeting of the Committee currently scheduled?

Response from the United Kingdom

There are currently no outward processing zones in the Korean Peninsula where materials can be processed and subsequently re-imported retaining their originating status. There are no meetings of the Committee currently scheduled.

Response from the Republic of Korea

The outward processing zone in the Korea Peninsula refers to the Gaeseong Industrial Complex (GIC) located in North Korea. Provision on GIC aims to enhance intra-Korean cooperation which can further promote peace and mutual prosperity in the Korean peninsula. GIC was shut down in February 2016 due to North Korea's missile launch.

As the GIC is currently not in operation, there is no meeting planned for the time being.

1.2. Regarding bilateral safeguards, paragraph 3.26 of the report indicates that the surge must be the result of the tariff liberalization. Could the parties indicate how the causal link between these two elements is determined?

Response from the United Kingdom

The Party seeking to impose a measure can use its discretion in identifying a causal link between increased imports (as a result of tariff liberalization) and serious injury or threat thereof.

Response from the Republic of Korea

According to the Article of the Agreement, an impose of a bilateral safeguard measure requires increased imports of a good as a result of the reduction or elimination of a customs duty under the agreement and such imports constitute a cause or a threat to cause serious injury to a domestic industry producing a like or directly competitive good.

The investigating authority may determine whether the causal link is established between the tariff reduction or elimination and the increase of the imports, by examining any patterns or trends in sales volume of both the imported good and the domestic like or directly competitive good. Time-series analysis may be used to see if there is sufficient evidence to decide the tariff liberalization has led to the increase of the imports.

1.3. Regarding bilateral agricultural safeguards (paragraph 3.28 of the report) why there are no price triggers? Also, could the Parties please elaborate more on the transition period for maintaining these measures? For example, what is the duration and how it was agreed upon?

Response from the United Kingdom

The UK-South Korea Free Trade Agreement (FTA) is a continuation of the EU-South Korea FTA. As such the bilateral agricultural safeguard measures are a replication of the safeguards established under that agreement and are measured in metric tonnage for consistency. The transition period for these measures varies and is dependent on the agricultural product concerned. The transition periods can last up to 25 years with the last applicable year beginning on 1 July 2035.

Response from the Republic of Korea

The Korea-UK FTA was signed with the aim of ensuring stable bilateral trade relations in response to Brexit. Most provisions of the Korea-UK FTA are in line with the Korea-EU FTA. As the trigger level of the Korea-EU FTA is established on the basis of the aggregate volume of imports, the Korea-UK FTA also sets the volume-based trigger level.

The subject goods (9 agricultural goods) and the implementation period (12~25 years)* of the Korea-UK FTA are equivalent to those set out in the Korea-EU FTA.

* We understand that transition period refers to implementation period.

Though Agricultural Safeguard Measures of the Korea-UK FTA are in line with the Korea-EU FTA, its trigger level is lowered compared to that of the Korea-EU FTA, considering the difference in the aggregate volume of imports.

1.4. Could the parties please explain why the dispute settlement provisions inscribed under Chapter 14 are not applicable to Chapter 5 (SPS) of the Agreement? What kind of mechanism to solve problems on SPS related to the implementation of the agreement and remedies are foreseen by the Parties?

Response from the United Kingdom

The purpose of the UK-South Korea FTA is to maintain continuity of the effects of the EU-South Korea FTA in a bilateral context. The UK-South Korea FTA replicates all sections of the existing EU-South FTA relevant for a bilateral agreement between the UK and Republic of Korea. As a result, the existing structure of SPS provisions have not been altered. The Agreement provides for a forum for discussion between the parties on matters of SPS implementation.

Response from the Republic of Korea

As stipulated in Article 5.11. of the Korea-UK FTA, neither party may have recourse to Chapter 14 (Dispute Settlement) for any matter arising under the Chapter 5 (Sanitary and Phytosanitary Measures). The SPS-related issues can be solved through technical consultations among the SPS experts of relevant Parties. WTO dispute settlement mechanism is more objective and receptive to domestic stakeholders.

Questions from Canada

1.5. Paragraph 4.2. of the factual presentation states: "The Parties reaffirm their rights and obligations under the WTO Agreement (Article 7.1). Chapter 7 does not apply to subsidies or grants provided by a Party, to measures affecting natural persons seeking access to the employment market of a Party, to measures regarding citizenship, residence

or employment on a permanent basis. Nothing in the Chapter shall be construed to impose any obligation with respect to government procurement."

Does this chapter apply to sub central governments?

Response from the United Kingdom

Chapter 7 applies to measures adopted or maintained by central, regional or local governments and authorities, as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities (per Article 7.2(b)).

Response from the Republic of Korea

Chapter 7 of the Korea-UK FTA is applied to measures of the Parties. According to Article 7.2, 'measures adopted of maintained by a Party' is defined as measures taken by (i) central, regional, or local governments and authorities, and (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

1.6. Paragraph 4.4. of the factual presentation states: "The Agreement does not contain a specific provision on denial of benefits but, as customary in trade agreements of the EU, a Party may deny the benefits of Chapter 7 to a juridical person, registered in the UK or in Korea, if it does not engage in substantive business operations (Article 7.2)."

Can the Parties confirm if this only applies to juridical persons of the parties or does this also apply to juridical persons of a third party?

Joint response from the Parties

The benefits conferred by Chapter 7 may be denied if a juridical person does not meet the test of conducting 'substantive business operation' in the territory of a Party that is required for them to be regarded as a "juridical person of a party" in Article 7.2(f)) and benefit from the rights under the agreement. It is the consistent treaty practice of the UK and Korea that an enterprise shall be deemed to be 'of a Party' if they carry out substantive business activities / operations in the territory of the contracting Parties.

1.7. Paragraph 4.16 of the factual presentation states: "Under the Agreement, Korea maintains a different set of horizontal limitations on market access for mode 3 with respect to i) the acquisition of outstanding stocks of existing domestic companies in areas such as energy and aviation, ii) the transfer of equity interests or assets held by state enterprises or governmental authorities and the privatization of services provided in the exercise of governmental authority, iii) the rights or preferences granted to socially or economically disadvantaged groups and iv) measures related to state-owned electronic information systems. Horizontal limitations on national treatment are also maintained for measures with respect to i) the acquisition of arms (for modes 1, 2 and 3), ii) the export of controlled commodities, software, and technology (for modes 1 and 2) and iii) the acquisition of land in certain situations (for mode 3). Horizontal limitations are also registered for mode 4."

Can Korea please explain in what regard these horizontal commitments differ from its GATS horizontal commitments? Does this reflect changes in Korea's domestic regime?

Response from the Republic of Korea

Korea's horizontal commitments from GATS and the Korea-UK FTA each reflect Korea's domestic regime at the time when the commitments were made. In other words, the differences in these commitments reflect changes in Korea's domestic regime.

1.8. Paragraph 4.46 of the factual presentation states: "The Agreement requests the Parties to encourage their relevant national representative professional bodies to jointly develop and provide recommendations to the Trade Committee on mutual recognition (Article 7.21). If the recommendation is consistent with the Agreement and there is a sufficient level of correspondence between the Parties' relevant regulations, they shall,

through their competent authorities, negotiate an agreement on mutual recognition (MRA) of requirements, qualifications, licences and other regulations. The Agreement also establishes a Working Group on MRAs to consider mutual recognition-related matters and act as a contact point for issues relating to mutual recognition raised by relevant representative bodies in either Party."

Can the Parties explain the difference between the Working Group on MRAs and the Trade Committee on Mutual Recognition given that recognition remains contingent on correspondence between the Parties' relevant regulatory bodies? Is this done for transparency reasons?

Response from the United Kingdom

For clarity, there is no specific "Trade Committee on mutual recognition" established in this agreement. There is a Trade Committee and a Working Group on MRA established under the auspices of the Trade Committee" (Article 15.3.1).

As the factual presentation describes, the Trade Committee considers recommendations on mutual recognition made by relevant representative professional bodies to determine whether they are consistent with the Agreement (Article 7.21(1)-(3)). If consistent, and if there is sufficient level of correspondence between the Parties' relevant regulations, the Parties shall, through their competent authorities, negotiate an agreement on mutual recognition (MRA) of requirements, qualifications, licences and other regulations (Article 7.21(4)).

According to Article 7.21.6 the Working Group on MRA's function is to facilitate the Trade Committee's work in considering recommendations on mutual recognition. This includes by providing a contact point for relevant representative bodies and through developing procedures to encourage relevant representative bodies to make representations on mutual recognition (Article 7.21(6)(a)-(b).

Response from the Republic of Korea

The Trade Committee is established under Article 15.1 of the Korea-UK FTA, and is responsible for supervising the implementation and application of the Agreement.

The Working Group on MRA is established under Article 15.3, in accordance with Article 7.21.6. It was established in order to ensure sufficient discussions on MRA, and functions as a contact point for issues related to mutual recognition.

1.9. Article 7.20.2 of the Agreement states: "No later than two years after the conclusion of the negotiations pursuant to Article XIX of GATS and to the Ministerial Declaration of the WTO Ministerial Conference adopted on 14 November 2001, the Trade Committee shall adopt a decision containing a list of commitments concerning the access of contractual service suppliers and independent professionals of a Party to the territory of the other Party. Taking into account the results of those GATS negotiations, the commitments shall be mutually beneficial and commercially meaningful.

Can the Parties please describe how it will assess market access commitments for contractual services suppliers and independent professionals to be "commercially meaningful." For example, would this criterion require additional market access for contractual service suppliers and independent professionals than will have been provided by the GATS negotiations?

Joint response from the Parties

Article 7.20(2) reaffirms the commitments made by the Parties under GATS with regards to contractual service suppliers and independent professionals whilst noting the role of the Trade Committee to explore liberalisation beyond GATS. As it stands, no further liberalisation has been agreed.

Questions from the United States[1]

Environment and labour

1.10. Paragraph 5.38 states that "Chapter 13 of this agreement applies to measures adopted or maintained by the Parties affecting trade-related aspects of labour and environmental issues (Article 13.2). The Parties stress that labour and environmental standards should not be used for protectionist purposes. Articles 13.3, 13.4 and 13.5 recognize the Parties' right to regulate and establish levels of labor and environmental protection and the value of international co-operation and agreement on employment and labor affairs … They commit to upholding levels of labor and environmental protection in the application and enforcement of laws, regulations or standards (Article 13.7)."

Would the Parties to this agreement please explain the importance and rationale for including such language in this bilateral agreement?

Response from the United Kingdom

Bilateral trade agreements are an important driver for sustainable growth both in the UK and in partner countries. UK citizens rightly expect that UK trade agreements with our international partners should support workers' rights, environmental and climate objectives. Environment, Climate and Labour are key objectives for UK trade policy, and the UK is therefore committed to including Environment, Climate, Labour and Sustainability provisions in free trade agreements such as this one.

Response from the Republic of Korea

The text is to prohibit an impact on trade and investment that results from not having effectively enforced national environmental and labor laws, regulations, practices and policies. In addition, it explicitly states that it should not be used for trade protectionist purposes to ensure to create a virtuous cycle from export to production, to employment and to growth through FTA.

The text is the same as Article 19.3 Application and Enforcement of Labor Laws of KOR-US FTA and it has the same importance and rationale as Article 20.3 Application and Enforcement of Environmental Laws of KOR-US FTA.

1.11. Paragraph 5.40 states that "dispute settlement mechanism of the Agreement is not applicable to matters arising under the Chapter. Disputes on environmental issues shall be resolved only through Government consultations (Article 13.14), and a panel of experts, if the issue has not been satisfactorily addressed through Government consultations (Article 13.15)."

Is there a mechanism in this agreement to address labour? If not, could the Parties please explain the rationale for excluding such a mechanism?

Response from the United Kingdom

The Trade and Sustainable Development Chapter covers both trade-related aspects of labour and environmental issues. Where a dispute arises on a matter of mutual interest under this Chapter, including on relevant labour matters, then Articles 13.14 and 13.15 apply. They provide for seeking a mutually satisfactory resolution of the matter through Government consultations, and, if the matter is not satisfactorily resolved through this, then a panel of experts may be convened to consider the matter.

Response from the Republic of Korea

The Chapter 13 (Trade and Sustainable Development) in the KOR-UK FTA addresses both labor and environment. In Chapter 13, the Article 14 (Government Consultation) and the Article 15 (A Panel of Experts) apply the same to labor and environment.

[1] **Questions were submitted to the Parties on 29 August 2022 (three weeks, three days before the meeting).**

Government Procurement

1.12. Article IV:2 of the WTO GPA reads: "With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not: a) treat a locally established supplier less favorably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party." It seems an important guarantee against discrimination in government procurement. The United States includes this language in USMCA.

Could the authorities provide the rationale for not including Article IV:2 of the WTO GPA in the Government Procurement chapter of the FTA?

Response from the United Kingdom

The EU and Korea began their negotiations for the EU-Korea FTA in 2007, the agreement was then signed in 2009 and provisionally applied from 2011 before entering into force in 2015. During this period, the Government Procurement Agreement 1994 was renegotiated and became the Government Procurement Agreement 2012, however it was the Government Procurement Agreement of 1994 that was referenced in the EU-Korea FTA.

The UK-Korea FTA retains the commitments on public procurement that were set out in the EU-Korea FTA that are based on the EU's 1994 Government Procurement Agreement schedules. Article 9 in the UK-Korea FTA states that the procurement covered by the agreement will be all procurement covered by the WTO's' Government Procurement Agreement 1994 including their amendments or replacements. This should be interpreted to include the revised GPA as agreed in 2012.

Response from the Republic of Korea

The Government Procurement Chapter of Free Trade Agreement between the United Kingdom and the Republic of Korea was adapted to the same text of Free Trade Agreement between EU and the Republic of Korea, for continuity and to avoid the cliff edge of trade since The UK left the EU.