BUSINESSEUROPE

POSITION PAPER

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COMMENTS ON IMPLEMENTATION OF THE EU-KOREA FREE TRADE AGREEMENT

The EU-South Korea Free Trade Agreement will bring significant benefits to European firms and is a key step forward for Europe's broad trade strategy. BUSINESSEUROPE supports its ratification provided it is accompanied by strong implementing measures. These must address the concerns of parts of the business community by using all avenues provided under the terms of the agreement. The measures must ensure that both parties abide fully by their commitments - especially in the removal of non-tariff barriers and regulatory cooperation - and that safeguard procedures are enforceable and duly applied where justified. The agreement needs to enter into force by the end of the year.[1]

These comments outline BUSINESSEUROPE's views on implementing provisions. As an overall remark, much more clarity is needed before key decisions are taken in the Council and Parliament on the way that all of the provisions will work in practice. Apart from the proposal for a safeguard regulation, information so far provided has been at a general level.

The bilateral safeguard clause

The primary concern of the business community regarding the safeguard mechanism is that EU authorities may refrain from employing it even when its use would be duly justified. Companies must be reassured that the safeguard will be used when needed. The regulation on the safeguard mechanism must ensure, therefore, that its procedures are simple and swift and that decisions are based entirely on economic grounds.

BUSINESSEUROPE notes the proposal made by the Commission on February 9[2]. It has a number of interesting elements, improving on the general safeguard procedure used by the European Union[3] in terms of clarity and timing and by removing some political discretion. Nonetheless we believe the following points need to be taken into account by the Council and the Parliament as they examine the regulation:

1. *Timing and deadlines*

   The proposal has shorter timelines (one month to initiate plus six to nine months to investigate and conclude) than in standard EU safeguards (up to a year in total). This is a positive step but BUSINESSEUROPE believes that the period could be shortened to ensure a rapid response. The maximum length of time that provisional measures can be applied is 200 days. The full investigation should be the same length.

[1] Confindustria does not subscribe to this paragraph since, while largely sharing its content, not all of its concerns are reflected.

[2] COM (2010) 49

[3] Regulation (EC) 260/2009

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In addition, there is a lack of clarity about the step between the initiation of a proceeding (Article 3) and the investigation itself (Article 4). The regulation should make clear that the six to nine month period for the investigation is measured from the moment a decision to initiate is taken. As the text currently stands, Article 4.1 simply reads that the investigation must begin "[f]ollowing" the decision to initiate proceedings.

2. *Evidence*

The type of evidence to be considered when deciding to initiate a proceeding is not defined. Examples of evidence are provided for the investigation stage, (import figures, market share and company figures such as sales, production, productivity, capacity utilisation, profits and losses and employment) but it is not clear that this applies also to the initiation. This is insufficient to provide certainty for affected industries.

3. *Industry participation*

The proposal is unclear as to how EU industry should participate. Clearly the first actors to feel the impact of an import surge will be EU producers. Producers will also, no doubt, be called on to provide much of the evidence for the investigation. Yet there is no formal entrance point for industry besides the reference to "interested parties" who are to be consulted during the investigation.

Under the standard safeguard an informal mechanism exists to allow companies to present a "duly substantiated request"[4] to one or more Member States. The Korea regulation should build on this by referring to this procedure in the text of the regulation. It should also oblige Member States to publish contact points for delivery of requests and require the Commission itself to accept such requests. Member States and the Commission should be obliged to provide a reaction to an industry request within a short deadline. If evidence is more clearly defined as in point 2 above the task of preparing requests will be easier for affected industries.

Easy and timely access to all relevant information in connection with ongoing or pending investigations will be vital for companies. Article 4.6 foresees the sharing of the information provided by interested parties between them. We would suggest the creation of on an online platform accessible by all interested parties through which all non-confidential submitted information would be shared. The platform should continuously be updated with the latest information regarding safeguard investigation proceedings.

4. *Comitology process*

The decision making procedures for initiating proceedings, provisional measures, termination of an investigation without measures and imposition of definitive measures are all defined relative to the current comitology decision[5].

[4] DG Trade website
[5] 1999/468/EC

The final text will need to ensure that any changes arising from the imminent comitology reform do not weaken the Korea safeguard.

5. *Duty drawback*
   A final concern relates to the relationship between the safeguard clause and the duty drawback special clause. Given that the mechanism to deal with duty drawback will not come into force for five years the safeguard may need to be used to tackle any distortions arising due to the use of drawback during that period. The Commission should therefore begin monitoring Korean published import figures for the range of products potentially affected by duty drawback from entry into force of the agreement.

Duty drawback special clause

The continuation of duty drawback under the agreement is a controversial element for the business community and more detail is needed on the functioning of the special clause. The Commission must reveal these details as quickly as possible and, once the agreement is applied, robustly employ the mechanisms in the special clause to reduce potential drawback-related distortions.

As a first step, and as outlined above, the safeguard procedure can be used where necessary to counter distortions caused by drawback in the five year period leading up to the usability of mechanism. Thereafter, should the EU become aware of continuing negative impacts which the drawback instrument is inadequate to address, the safeguard procedure should continue to be invoked. BUSINESSEUROPE insists that the Commission should also be open to assessing verifiable data it may receive from industry regarding the impact of duty drawback in this light. The formalised “duly substantiated request” procedure (point 3 above) should apply equally to safeguard actions required to tackle the impact of drawback.

Regarding the instrument itself, BUSINESSEUROPE requests that the EU use the flexibility provided in the text to broaden the scope of routinely monitored tariff lines to include other important goods, such as those of the textiles industry or, indeed, key automotive components not already covered. Furthermore, statistics provided by Korea under the agreement should be shared with the business community. In addition to EU-Korea trade statistics, the Commission should provide for Korean trade statistics with its major trading partners listing finished and semi-finished products to ensure an effective control of the DDB usage. Finally, as in the case of the safeguard mechanism, a complaint procedure for industry should be established.

Procedure on derogations from the rules of origin

The textiles and clothing industry is best placed to comment on the mechanisms to handle rules of origin derogations in that sector. Suffice it to say, the burdensome nature of the procedure will require full cooperation between Korean and European business and authorities.

Committee and Advisory Group Structures

The committees established by the agreement will be vital to securing market access in practice for European exporters. In order to be effective, their meetings must be regular

and their work based on a real relationship of cooperation between Korean and European authorities.

Business must be given the opportunity to provide its input in a regular fashion in advance of the work of the implementing committees. BUSINESSEUROPE would be happy to help facilitate industry input but also supports the idea of using existing structures such as market access teams to feed into this process. Locally established EU business will indeed be a vital source of information for action. The EU will also need to have mechanisms to take account of the concerns of Europe-based exporters through close dialogue with BUSINESSEUROPE, sectoral associations and Member States.

The best way to ensure cooperation in the preparation of committee or working group meetings will be timely notice about scheduled meetings – at least four weeks in advance – and full access to relevant information. Provision for comment in writing and in person should also be made. Confidential business information, naturally, should be fully protected in such dialogue.

Companies will certainly participate in the domestic advisory groups on sustainable development issues. All reasonable concerns put forward by advisory groups should be taken into account by the EU and Korean authorities. All such concerns should however be based on verifiable information and action should proceed in a spirit of cooperation.

Dispute settlement procedures

BUSINESSEUROPE believes the agreement's dispute settlement mechanism is robust. It is also positive that the non-tariff barrier mediation mechanism, originally an idea of BUSINESSEUROPE, has been included in an agreement for the first time. For both of these to be effective, however, the EU must be prepared to use them to full effect meaning that the Commission must be prepared to act on presentation of detailed justification from business. Business should also be closely involved in proceedings where they have a direct interest.

Choice of different enforcement tools

In terms of the different tools available to tackle potential market access problems, BUSINESSEUROPE believes that each case should be treated on its own merits. A given issue should not have to pass through a graduated list of procedures. If dispute settlement is merited by the terms of the case, for example, it should be used from the outset.

Conclusion

The EU-Korea FTA, as the first in the new generation of EU commercial agreements, is something of a test case. The EU must ensure effective implementation of its conditions to guarantee the maximum opportunities for European companies. The continuing support of the business community for the overall EU FTA strategy will depend on having confidence that all instruments, either offensive or defensive, are fully used. BUSINESSEUROPE will closely monitor this process