



Factsheet

Free Trade Agreement between the EFTA States and the Republic of Korea

Summary

The EFTA States (Switzerland, Norway, Iceland and Liechtenstein) signed a comprehensive free trade agreement with the Republic of Korea on 15 December 2005. The agreement will enter into force on 1 July 2006 subject to ratification by the contracting parties. The free trade agreement covers trade in industrial products (including processed agricultural products and fish), services, intellectual property rights, public procurement and competition. An investment agreement between Switzerland, Iceland, Liechtenstein and Korea concluded in parallel with the free trade agreement contains rules governing establishment and protection of investment. Trade in unprocessed agricultural products is subject to bilateral agreements between individual EFTA States and Korea.

The agreements concluded with Korea provide liberalized market access and legal security for exports (goods and services) and for establishment, and they guarantee protection of investments and of intellectual property rights. The agricultural agreement between Switzerland and Korea is in line with Swiss agricultural policy.

By preventing discrimination resulting from existing and future preferential agreements between Korea and other partner countries, the agreements between the EFTA States and Korea enhance the competitiveness of the Swiss economy. An additional competitive advantage results from the fact that EFTA countries obtain preferential access to the Korean market without this being the case at the time for their main competitors from the EU, the USA and Japan. To date, Korea has concluded free trade agreements with Chile and Singapore and is in negotiation with ASEAN, the USA, Japan and Canada.

Following Mexico, Chile and Singapore, Korea is the fourth overseas partner with which EFTA States concluded a comprehensive free trade agreement. GDP-wise Korea is one of the world's ten largest economies and is (after the EU) the largest free trade partner of the EFTA States. The potential for developing trade and investments resulting from the agreement with Korea is therefore important. Swiss exports to Korea amounted to about CHF 1.3 billion in 2004, and imports from Korea were above CHF 600 million. The most important products Switzerland exports to Korea are machinery, chemical and pharmaceutical products, precision instruments and watches. Swiss direct investments in Korea amount to over CHF 1 billion. In addition to manufacturing many services companies have commercial presence in Korea.

Importance of the agreements

The free trade agreement between the EFTA States (Iceland, Liechtenstein, Norway, Switzerland) and the Republic of Korea covers trade in industrial products (including processed agricultural products, fish and other maritime products), services, public procurement, intellectual property and competition. As in the other EFTA free trade agreements trade in basic agricultural products is governed by bilateral agricultural agreements between individual EFTA States and Korea, in order to take into account the particularities of the agricultural markets and policies of the different EFTA States. Since Norway did not participate in the negotiations on investment, Switzerland, Liechtenstein and Iceland concluded an investment agreement with Korea complementing the free trade agreement.

The agreements between the EFTA States and Korea comprehensively improve market access for Swiss exports of goods and services, and they ensure establishment and protection of investments and of intellectual property rights. The agreements strengthen legal security and predictability of the framework conditions for Swiss-Korean economic relations. By preventing discrimination resulting from existing and future preferential agreements between Korea and other countries the agreements not only increase the competitiveness of the Swiss economy in the Korean market. Switzerland also gains a competitive advantage due to the fact that operators from EFTA countries obtain preferential access to the Korean market while this is not currently the case for their main competitors from the EU, the USA and Japan.

The free trade agreement with Korea, following those with Mexico (in force since 1 July 2001), Singapore (1 January 2003) and Chile (1 December 2004) is the fourth concluded by the EFTA States with a partner outside Europe and the Mediterranean region. It is also the fourth EFTA free trade agreement with a comprehensive scope, containing substantial provisions not only regarding trade in goods and intellectual property, but also in the fields of trade in services, investment and public procurement. The agreement with Korea is part of EFTA's policy of extending the geographical and sectoral scope of its network of free trade agreements. In the 1990s, following the fall of the Berlin Wall and the demise of the Soviet Union, the efforts of EFTA were primarily directed towards concluding free trade agreements with the new or newly independent states of Central and Eastern Europe. Later, free trade agreements were sought with Mediterranean countries. These agreements mainly covered trade in goods and intellectual property rights. More recently, EFTA has begun to negotiate free trade agreements with overseas partners. These agreements normally also include services, investment and public procurement. With this policy, EFTA is mitigating the growing risk of discrimination resulting from the increasing worldwide tendency to conclude comprehensive preferential agreements on a regional and trans-regional level and the related risk of erosion of the competitiveness of their business locations.

Switzerland does not belong to a larger entity such as the EU and is heavily dependent on exports. Therefore the conclusion of free trade agreements represents, in addition to European integration and membership of multilateral economic organisations (in particular the WTO and the OECD), one of the three main pillars of its policy of market opening and improving the general conditions for foreign economic relations. Switzerland actively promotes the further extension of the network of EFTA free trade agreements. At the same time it is true that foreign economic policy interests of small and medium-sized national economies are in principle best served by liberalisation and strengthening of legal security on a multilateral level. Therefore Switzerland continues to fully support the liberalisation efforts in the framework of the WTO (in particular the Doha Round) and other multilateral organisations.

Economic relations between Switzerland and Korea

Korea is one of Switzerland's five largest trading partners in Asia and has an important growth potential. Swiss exports to Korea, which amounted to CHF 1.3 billion in 2004, represent 2.5% of our worldwide exports to countries outside the EU. The most important export products are machinery, chemical and pharmaceutical products, precision instruments and watches. Imports from Korea (2004: CHF 600 million) make up 2.7% of our total imports from outside the EU and consist mainly of automobiles, electronic devices, synthetic materials and chemical products. Swiss direct investments in Korea amount to over CHF 1 billion. In addition to companies of the machinery, equipment, instruments and watch making, chemical, pharmaceutical and food-processing industry also many businesses of the Swiss service sector (such as banks, insurance, logistics, inspection of goods and consulting companies) have a commercial presence in Korea.

Key provisions of the agreement

For **industrial products** (watches, machinery and equipment, chemical and pharmaceutical products, textiles, etc.), the free trade agreement eliminates customs duties in bilateral trade. The obligations of the parties are largely symmetrical. From the entry into force of the agreement, parties will mutually abolish customs duties for over 90% of the tariff lines. With the exception of a few items relevant to the EFTA State's agricultural policies (in particular animal feed), EFTA States will completely abolish customs duties on industrial products and fish, at the entry into force of the agreement. For products for which Korea has claimed specific sensitivities (such as a few chemical and pharmaceutical products, chipboard, ball bearings and manganese and alkaline manganese batteries) Korea was granted a transitional period of a maximum of seven years to gradually eliminate customs duties. Mutual tariff concessions were also agreed for **processed agricultural products** (e.g. chocolate, sugar products, roasted coffee, coffee extracts, soups, sauces), while the EFTA States may continue to grant compensation to exports for the higher prices of the domestic raw materials. A partially asymmetrical elimination of customs duties is provided for fish and other maritime products, where transitional periods of up to ten years and tariff quotas or review clauses for particularly sensitive products were granted to Korea.

Trade in **basic agricultural products** is subject to bilateral agreements between individual EFTA States and Korea. Korea and Switzerland mutually grant each other tariff concessions for selected products for which the other party has claimed a specific interest. Swiss concessions relate in particular to certain types of fruit, vegetables, fruit juices and spices as well as specialties such as rice wine and fermented cabbage and turnip preparations (Kim-chi). Except for these specialties, Switzerland has not granted concessions that were not already granted to other free trade partners or were autonomously granted to developing countries in conformity with the GSP (Generalized System of Preferences for developing countries). Tariff protection for products that are sensitive for Swiss agriculture is maintained. Korea grants Switzerland in return preferential tariffs for products such as cheese (progressive exemption from customs duties over ten years for an annual quota of 45 tons in the first five years, thereafter of 60 tons), red and white wine and cider (progressive exemption from customs duties within ten years), plant extracts, certain fruit juices, animal feed supplements as well as breeding cattle and bovine semen.

The Tariff concessions of Korea and of the EFTA States for processed and basic agricultural products improve the sales potential of various Swiss agricultural products (e.g. processed products and cheese) on the Korean market. The agricultural agreement with Korea is in line with Swiss agricultural policy.

As far as the **rules of origin** are concerned, the rules agreed are simplified and partly more liberal in comparison with the European model rules. For the first time in an EFTA free trade agreement a rule on direct transport was agreed which allows for the splitting up of consignments in a country of transit, thus facilitating exports via third countries. Given Switzerland's landlocked situation, this represents a significant improvement for the Swiss export industry. Under the tolerance rules applicable to outward processing, certain products assembled in the Gaesong industrial zone located near the border on North Korean territory can benefit from tariff preferences under the agreement.

Definitions, obligations and the liberalisation method for **services** follow the approach of the WTO General Agreement on Trade in Services (GATS). Certain GATS provisions were made clearer or have been simplified. The agreement refers to the most important rules and definitions of the GATS, including the four modes of supply of services (cross-border supply, consumption abroad, supply of services through commercial presence and through temporary movement of persons) and the liberalisation method (positive lists for market access commitments). The specific commitments on market access and national treatment contained in the agreement go beyond the existing level of the GATS. They largely correspond to Switzerland's and Korea's revised Doha offers. The new Korean commitments pertain particularly to natural persons supplying services under contract (such as engineers, architects, management and high-tech consultants, auditors and accountants, as well as installation and repair specialists), financial services (asset management, securities management), environmental services, cargo inspection services and aircraft maintenance and repair services. Switzerland has, in particular, broadened its commitments regarding natural persons supplying services under contract, abolished the nationality requirement for board members of certain types of juridical persons and adjusted its commitments concerning the financial sector to developments in its domestic legislation. The agreement also contains specific rules governing telecommunication services, mutual recognition of qualifications and co production of television programmes.

Investment provisions are subject to a separate agreement, which the EFTA States Switzerland, Iceland and Liechtenstein concluded with Korea. Investments enjoy comprehensive protection both regarding establishment (pre-establishment phase of investment) and operation (post-establishment phase). In comparison with bilateral investment agreements concluded by Switzerland with other countries, the most important addition of the agreement with Korea consists in the provision of non-discriminatory market access for investments. This entitles natural persons and companies of the contracting parties to invest under the same terms and conditions as domestic investors (national treatment) or, if this is more advantageous, as investors from third countries (most-favoured-nation treatment). Deviations from the principle of national treatment are recorded in reservation lists, which will be reviewed periodically. Special protection provisions apply to expropriation (only permitted if justified by public interest and if compensation is paid) and to international transfers (right of repatriation of earnings, proceeds of liquidation, etc.). The protection provisions are more comprehensive and precise compared to those in the Swiss-Korean Bilateral Investment Protection Agreement of 1971, which is replaced by the new agreement. Another improvement of the new investment agreement in comparison with the bilateral agreement of 1971 consists in the opportunity given to investors to request consultations directly with the government of the host country in the event of a dispute. If the consultations are inconclusive, investors can resort to international arbitration. If the dispute is about establishment, the host country's consent is required before a cause can be brought to arbitration.

In the field of **public procurement**, the free trade agreement foresees cooperation between the parties in the framework of the Joint Committee with a view to further liberalize and open up public procurement markets. Given the ongoing negotiations under the plurilateral WTO

Agreement on Government Procurement (GPA), the parties have, for the time being, refrained from stipulating further liberalisations under the free trade agreement. However, the agreement foresees an early implementation of additional liberalisations resulting from the GPA negotiations (“early harvest”).

In relation to the protection of **intellectual property rights** (such as patents, designs and trademarks) the parties commit themselves to implement high international standards in conformity with the principles of most-favoured-nation and national treatment. Intellectual property rights have to be enforced, especially in the fight against counterfeiting and piracy. These specific commitments exceeding the level of protection of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) were agreed in particular in relation to the exclusions from patentability of biotechnological inventions, the compensatory certificate for patents in the fields of pharmaceutical and plant protection products, and the term of protection of confidential test data that need to be submitted in the context of market approval procedures. In addition, a protection duration for designs of at least 15 years is foreseen. Furthermore, negotiations on a supplementary agreement on mutual recognition and protection of geographical indications shall begin within three years after the entry into force of the agreement.

The aim of the provisions on **competition** is to prevent anti-competitive corporate behaviour that impair the advantages resulting from the agreement. The provisions stipulate that certain anti-competitive practices (cartels, abuse of dominant positions) adversely affecting trade are incompatible with the agreement. The disciplines on competition apply to all economic activities covered by the agreement and apply to both private and public companies. The contracting parties are obliged to apply their national competition legislation accordingly and to hold consultations if necessary.

In the event that the application of the agreement should lead to **disputes**, the parties are required to seek a settlement through consultations. If consultations are not successful, either party may resort to an international arbitration procedure, the details of which are regulated in the agreement. The arbitration ruling is binding and final for the parties to the dispute.

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Legal texts:

<http://secretariat.efta.int/Web/ExternalRelations/PartnerCountries/Korea>