

〈특집: Current Developments in International Economic Law〉

The EU-Korea Free Trade Agreement as the First Global Europe FTA to Herald a New Era of World Trade?*

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Abstract

The Global Europe Initiative was the declaration of the European Commission to focus on the competitiveness of the EU in external trade, securing real market access. The EU-Korea Free Trade Agreement (FTA) is the first to be concluded under this new initiative. So far, the EU has concluded Regional Trade Agreements which were accession-oriented or had a particular focus on development issues. As the EU-Korea FTA is the most comprehensive free trade agreement that the EU ever negotiated, it is also a new generation FTA. Not only does it include provisions in terms of eliminating tariffs for goods and services, but the EU-Korea FTA also includes provisions on difficult areas such as investments in services and industrial sectors, as well as on protection of intellectual property, public procurement, competition rules, transparency of regulation and sustainable development. It is significant that in most areas the FTA builds on existing multilateral

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agreements and declarations within the framework of the WTO Legal System. WTO compliance is an important issue throughout the EU-Korea FTA. The analysis on selected chapters of the Agreement will show that the provisions are built on existing WTO instruments and go substantively beyond them.

In the concluding part, the question will be raised if the FTA at hand is compatible with the WTO system and if it is to herald a new era in world trade, shifting from multilateral agreements to a network of bilateral agreements.

Keywords: EU-Korea FTA, regional trade agreement, EU global europe strategy, WTO-plus provisions. mixed agreements

A. Introduction

The Council of the European Union mandated the European Commission¹⁾ for negotiations of a Free Trade Agreement with the Republic of Korea²⁾ on 23 April 2007, pursuant its ‘Global Europe’ Strategy³⁾ upon which negotiations started in Seoul in May of the same year. Notably, it took only eight rounds of talks for the agreement to be initialed by both parties already on 15 October 2009. The Council approved it on 16 September 2010 so that the Agreement could officially and solemnly be signed by both parties on the EU-Korea Summit in Brussels on 6 October 2010. The European Parliament approved⁴⁾ it on 17 February 2011 and

1) The European Commission needs to be granted a negotiating role in matters of shared or exclusive competence of EU Member States regarding the conclusion of international treaties, Art. 218 (2) TFEU; cf. T Oppermann, CD Classen and M Nettesheim, *Europarecht* (5th edn, C.H. Beck 2011) 636f.; I Smyth, ‘Mixity in Practice – A Member State Practioner’s Perspective’, in C Hillion and P Koutrakos (eds.), *Mixed Agreements Revisited* (Hart Publ 2010) 304, 305.

2) Agenda item 21 (i) on the ‘List of “A” Items’(8507/07) for the 2795th meeting of the Council of the European Union, General Affairs and External Relations, Luxembourg, 23 April 2007; also decision (same agenda item) on mandates for the same kind of negotiations also with India and ASEAN.

3) Communication of the European Commission, External Trade, *Global Europe* (October 2006), available at [<http://ec.europa.eu/trade>] visited on [7.9.2011]; see for details below under B. IV.

ratification by the National Assembly of the Republic of Korea followed in 4 May 2011. Thus, it took only about 2 years for the EU to conclude its first Global Europe Free Trade Agreement.

Application of provisions of the EU-Korea FTA entered into force officially on 1 July 2011. Yet, strictly and legally speaking, the Agreement is still not finally in force as the ratification process is still pending: In the ‘general definitions’ part of the FTA, Art. 1.2 stipulates

“the Parties mean, on the one hand, the European Union ~~or~~ its Member States or the European Union ~~and~~ its Member States within their respective areas of competence as derived from the *Treaty on European Union* and the *Treaty on the Functioning of the European Union* (hereinafter referred to as the “EU Party”), and on the other hand, Korea;” (*Emphasis added by the author*)

This formulation indicates that the EU-Korea FTA is a so-called *Mixity*: A Mixed Agreement of the European Union in its external relationship. The Principle of Enumerated Powers⁵⁾ safeguards the sovereign competences of Member States. This means for the present FTA, that all EU Member States have to ratify this Agreement according to their national constitutions,⁶⁾ which usually takes quite a bit of time.⁷⁾

In accordance with Art. 15.10.5 lit. (a) EU-Korea FTA and in virtue of Art. 218

⁴⁾ With the Treaty of Lisbon, the European Parliament has a right to be consulted relating to the conclusion of international agreements, Art. 218 (6)(b) TFEU; cf. R Mögele on Art. 218 AEUV, MN 18 in: R Streinz (ed), *EUV/AEUV* (2nd edn, C.H. Beck 2012); P Craig, *The Lisbon Treaty* (OUP 2010) 390.

⁵⁾ Art. 5 (1) cl. 1, (2) TEU; cf. R Streinz, *Europarecht* (9th edn, C.F. Müller 2012) MN 539.

⁶⁾ R Mögele on Art. 218 AEUV, MN 30 in: R Streinz (ed), *EUV/AEUV* (2nd edn, C.H. Beck 2012).

⁷⁾ e.g. the FTA with South Africa was signed in 1999 and was finally ratified in 2005, see M Cremona, ‘The European Union and Regional Trade Agreements’, 1 *EYIEL* (2010) 245, 260, FN 62; the worst example is the Agreement Establishing a Customs Union with San Marino of December 1991 which entered into force on 1 April 2002, see R Mögele on Art. 218 AEUV, FN 74 in: R Streinz (ed), *EUV/AEUV* (2nd edn, C.H. Beck 2012).

(5) Treaty on the Functioning of the European Union (TFEU), the EU Council has decided in favour of a provisional application and therefore it has entered into force provisionally. In the Preamble (9) of this Council Decision,⁸⁾ we see a very careful wording concerning the allocation of competences within the EU legal system.

“The provisional application foreseen in this Decision does not prejudice the allocation of competences between the Union and its Member States in accordance with the Treaties,”

In this regard, the EU-Korea FTA has effectively entered into force 1 July 2011.

B. New Approach

The EU-Korea FTA is certainly not the first Regional Trade Agreement (RTA)⁹⁾ the EU has negotiated, but it marks a significant *premiere*. A very brief overview¹⁰⁾ of what kind of RTAs the EU has so far concluded will reveal what is so new about the approach for the present FTA.

I. Accession-oriented Agreements

Stabilization and Association Agreements are the typical accession-oriented

⁸⁾ OJ EU 2011 L 127/1 (14 May 2011), Council Decision of 16 September 2010 (2011/265/EU).

⁹⁾ RTAs are understood and used here as a general term, embracing FTAs, customs union and similar concepts that qualify according to Art. XXIV GATT, cf. L Bartels, ‘Regional Trade Agreements’ in: R Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law*, Oxford University Press 2011, online edition, [www.mpepil.com], visited on [21.3.2012], MN 1ff.; cf. DC Horng, ‘Reshaping the EU’s FTA Policy in a Globalizing Economy: The Case of the EU-Korea FTA,’ *46 Journal of World Trade* (2012) 301, 302.

¹⁰⁾ See for more details Cremona (n 7) 250ff. DC Horng (n 9) 303.

agreements that the EU concluded with prospective Member States. The main orientation of such agreements is the preparation for a possible membership in the EU. For such, agreements focused on market freedom, meeting requirements of “community standards” or today according to the Treaty of Lisbon, “union standards”.

Quite significant among these agreements is the Ankara Agreement of 1963 with Turkey, which is the oldest of this kind, noting that Turkey is still not a member of the European Union.

II. Neighbours

RTAs with neighbouring States to the EU, such as the *European Economic Area Agreement (EEA)* devote mainly on economic integration, free trade and development issues. These States typically have decided not to become member of the EU. Whatsoever, this does not exclude that such contracting States can be prospective Member States. Austria, Finland and Sweden are examples of such parties to the EEA that have finally having acceded to the EU.

Switzerland is a special case in the EU’s RTA practice: the *EU-Swiss Bilateral Agreements* show a very high degree of economic integration with the EU; Swiss laws are practically “mirroring” EU-legislation. For instance, Switzerland adopted the Schengen *acquis*, a regulation that allows practically border free travelling, with concluding the agreements of the so-called Second Round of Bilaterals (*Bilaterale II*).

The *Euro-Mediterranean Association Agreements (EMA)* are association agreements between the EU and each of Tunisia, Morocco, Jordan, Israel, Algeria, Egypt, Lebanon and an Interim Agreement for the benefit of the Palestinian Authority which are designed to establish a framework for political dialogue, to lead to a free trade area and the possibility of trade in services and movement of capital. EMAs mainly focus on partnership and development issues.

Agreements with States of the former Soviet Union called *Partnership and Cooperation Agreements (PCA)* focusing on reciprocal abolition of quantitative restrictions and safeguard, anti-dumping and “infant-industry” clauses follow the strategy to develop a partnership with emphasis on assistance and aid in establishing

the rule of law and human rights protection. Strictly speaking, PCAs are not characterized as RTAs which are understood to trigger the Art. XXIV GATT or Art. V GATS mechanism, but contain clauses for later FTAs.

III. Development: Economic Partnership Agreements (EPA)

Partners for EPAs are typically developing countries, called ACP countries: African, Caribbean and Pacific States most of which are within the framework of the *Cotonou Convention*. A total of 78 ACP parties have concluded six EPAs with an overt focus on development whereas Free Trade Agreements with Mexico and Chile are examples¹¹⁾ where regional trade integration outweighs the development aspect.

IV. Global Market Access

As just shown, the EU has mainly concluded Regional Trade Agreements with potential Member States with a particular focus on stabilization, association and a final possible accession to the EU. Another major part of RTAs underlined the EUs external policy of development aid, regional stabilization and integration as well as good interstate relations.

A new approach was presented in October 2006 when the European Commission (so-called Barroso-I-Commission) presented its policy in external trade through a publication entitled “*Global Europe, competing in the world – A Contribution to the EU’s Growth and Jobs Strategy*”.¹²⁾ With this communication the Commission set new goals in negotiating Regional Trade Agreements. It is frequently referred to as “Global Europe Initiative” and “Global Europe Strategy” of the European Commission.

The Global Strategy is an integrated approach to trade policy, linking the

¹¹⁾ These agreements are presented as supporting regional integration among Latin American states, but not yet following a market access objective; cf. Cremona, (n 7) 260.

¹²⁾ Communication of the European Commission, External Trade, *Global Europe* (October 2006), available at [<http://ec.europa.eu/trade>] visited on [7.9.2011].

internal and external aspects of the EU's competitiveness. The EU has recognized that its openness and commitment to development by themselves have not done any favour neither for its trade balances nor global competitiveness. The Strategy Report¹³⁾ formulates eight specific areas of action:

1. The WTO Doha Development Agenda (DDA)
2. Launch of new competitiveness-driven FTAs
3. Transatlantic trade and competitiveness
4. China
5. Intellectual Property Rights enforcement
6. Renewed Market Access Strategy (Identification of key barriers/Implementing appropriate measures to eliminate such barriers)
7. Public Procurement
8. Review of the Trade Defence Instruments

Of these eight areas, the new strategy approach will be presented on the selected first two areas, the WTO Doha Development Agenda (1) and the new competitiveness-driven FTAs (2).

▮ The WTO Doha Development Agenda (DDA):

A successful conclusion of the DDA, even according to the assessment of the European Commission,¹⁴⁾ seems to remain out of reach after the failure of Cancun in 2004 and further attempts initiated by the EU.¹⁵⁾ The EU so far was a strong advocator of multilateral trade agreements and was therefore very keen on carrying the commitments to the WTO arena.

¹³⁾ *Report on Progress Achieved on the Global Europe Strategy, 2006-2010* of the European Commission, SEC(2010) 1268/2, available at [http://ec.europa.eu/trade/index_en.htm] visited on [25.8.2011] 4.

¹⁴⁾ See Report of the European Commission (n 13) 4-5.

¹⁵⁾ See for details of the failure of the Doha Round: SJ Cho, 'Is the WTO Passe?: Exploring the Meaning of the Doha Debacle' (1 May 2009) available at [<http://ssrn.com/abstract=1403464>] visited on [21.3.2012] 10-25.

The United States on the other hand, has gone forward shortly after the failure to conclude the Doha Round, to give priority to bilateral and regional trade agreements in preference to multilateral instruments.¹⁶⁾

As there is no foreseeable reinvigoration of the stagnated DDA process, the EU, later than the US, seems to end the *de facto* moratorium on launching new (bilateral) free trade agreements.¹⁷⁾ However the EU is not tired in emphasizing with this new approach that “[t]here will be no European retreat from multilateralism.”¹⁸⁾

1. New competitiveness-driven FTAs:

The EU in its *Strategy for Growth and Jobs* now strives for a new priority on highly emerging markets. The approach is “deepening” and “widening” the partnership.¹⁹⁾ Partners for negotiations are thoroughly chosen based on their high market potential (in terms of economic size and growth) and significant economic benefits in eliminating tariffs as well as non-tariff barriers.²⁰⁾ “Deepening” refers to going beyond simple removal of tariffs and quotas to elimination of non-tariff barriers and going beyond trade in goods to services and direct investments while “widening” means integrating development, social and environmental concerns into trade liberalization and market opening objectives.

This is the result that the EU’s trade policy instruments were rather aimed on development and stability through prosperity (by trade) and therefore deemed less important for the EU’s own competitiveness.

Overall, it is significant that not a word is mentioned with regards to cooperation with the US in the Global Europe Strategy. Alas, a concerted economic cooperation between the EU and the US is even expressed as “wishful thinking” by some scholars²¹⁾ as both economic superpowers are acting independently from each other.

¹⁶⁾ M Bungenberg, ‘Going Global? The EU Common Commercial Policy After Lisbon’, *I EYIEL* (2010) 123, 124.

¹⁷⁾ WH Cooper and others, ‘The EU-South Korea Free Trade Agreement and Its Implications for the United States’, CRS Report for Congress R41534 (16 June 2011) available at [www.crs.gov] visited on [28.7.2011] 5.

¹⁸⁾ Communication of the European Commission (n 12) 10.

¹⁹⁾ Cf. Cremona (n 7) 247.

²⁰⁾ Report of the European Commission (n 13) 6.

Moreover, the strategy paper shows the taking on the competition by the EU with the US and China for a better position in highly emerging markets, such as Asia and in particular, Korea.

C. New Generation

Not only for the EU, but for all other global players of the FTA/RTA game, the agreements shifted significantly after the Conference of Cancun 2004 to a new generation. FTAs from the 90s and early 2000s mainly focused on elimination of tariffs and were limited to the trade of goods. There were hardly any additional elements than the WTO *acquis* of the Uruguay Round.

Among the newly negotiated so-called ‘WTO*plus* FTAs’, the EU-Korea FTA sets a new mark in the FTA world; some even see it as important as NAFTA in the past that “worked as the model template for [...] customization”,²²⁾ assuming that the EU-Korea FTA might “become an important predecessor for subsequent FTA negotiations involving the EU”.²³⁾ Chances are quite high as both parties are very busy FTA negotiators.²⁴⁾

For the EU-Korea FTA, WTO standards, agreements and declarations have quite obviously served as the basic rules and as a framework for ongoing negotiations.²⁵⁾

²¹⁾ Bungenberg (n 16) 124.

²²⁾ D Ahn, ‘Legal and Institutional Issues of Korea-EU FTA: New Model for Post-NAFTA FTAs?’ Sciences-Po/GEM Policy Brief October 2010, available at [http://gem.sciences-po.fr/content/publications/pdf/AHN_KOREU%20FTA%20201010.pdf] visited on [21.3.2012] p.2; cf. also CM Brown, ‘The European Union and Regional Trade Agreements: A Case Study of the EU-Korea FTA’ 2 *EYIEL* (2011) 297, 298.

²³⁾ Ahn (n 22).

²⁴⁾ The EU is negotiating with trading partners such as Canada, India, Singapore and MERCOSUR; Korea’s FTA with the US is in force as of 15 March 2012; Korea is further negotiating with partners such as Canada and Australia and considers launching negotiations with China, Japan and MERCOSUR.

²⁵⁾ Cremona (n 7) 246.

I. Overview of the EU-Korea FTA:

The EU-Korea FTA consists of 15 Chapters, 3 Protocols and 4 Understandings. An elimination of 98.7% of duties in trade value within 5 years is foreseen, following a tariff elimination schedule consisting of immediate elimination of customs duties for the majority of goods. Only on sectors that are reciprocally acknowledged as sensitive, elimination schemes of 2, 5, and 7 years with a transitional regulation, that lowers exiting duties gradually to the mark of zero, are provided. Only very few items (less than 4 %)²⁶⁾ have either a longer transitional period or are excluded from the leverage.

The EU-Korea FTA covers in its chapters:

- trade in goods (including market access, technical barriers to trade, trade remedies, sanitary and phytosanitary measures and customs and trade facilitation),
- trade in services and establishment (i.e. investment),
- capital movement,
- public procurement,
- intellectual property,
- competition, transparency and trade and sustainable development and
- a dispute settlement mechanism body.

II. WTOplus Character

Some selected examples of the EU-Korea FTA will show that the Agreement set new standards going beyond existing and binding WTO obligations.²⁷⁾ For this reason, these are also called *WTOplus* provisions: These norms refer to pertinent WTO instruments, already binding on both parties (somewhat like a common denominator) but then formulating provisions that substantially go beyond the

²⁶⁾ E.g. fisheries products, rice and other agricultural products.

²⁷⁾ See DC Horng (n 9) 315; on WTO-plus elements: see M Kawai and G Wignaraja, 'Multilateralizing regional trade arrangement in Asia' in: R Baldwin and P Low (eds), *Multilateralizing Regionalism* (CUP 2009) 495, 515ff.

existing, making them legally binding between the two sides.

1. Trade in Goods:

▮ Art. 2.1 FTA:

“The parties shall progressively and reciprocally liberalise trade in goods [...] in accordance with this Agreement and **in conformity with Article XXIV of GATT 1994.**” (emphasis added)

Of particular significance is Section C of Chapter 2, Art. 2.14 FTA: Elimination of Sectoral Non-Tariff Measures, Annexes 2-B through 2-E.

▮ Art. 1 (1) of Annex 2-B:

“Recalling the obligations of the Parties under the WTO Agreement, in particular the TBT (Technical Barriers to Trade) Agreement, and recognizing the importance of electronics [...]”

▮ Art. 1 (1)(d) Annex 2-B:

“promoting ‘one test’ and, where practicable, a supplier's declaration of conformity through elimination of duplicative and unnecessary burdensome conformity assessment procedures;”

▮ Art. 2 (2) Annex 2-B:

“Where relevant international standards established by the ISO (International Organisation for Standards), IEC (International Electrotechnical Commission) and ITU (International Telecommunication Union) exist, the Parties shall use these international standards or the relevant parts of them as a basis for any standard, technical regulation or conformity assessment procedure.”

The major innovation is not as obvious as it seems: It is the very first time that an EU trade agreement explicitly addresses specific sectoral non-tariff barriers.²⁸⁾ This results from lessons learned in the past: Elimination of tariff barriers does

²⁸⁾ Brown (n 22) 301.

not necessarily mean unbarred real market access. Largely varying standardization rules can cause the same consequences. With this FTA, international standard setting bodies now have to be considered equivalent to Korean standards; another possibility of protective regulation is thus removed. These rules apply, as shown, for electronics (B), and in a similar way for motor vehicle and parts (C), pharmaceutical products and medical devices (D), and chemicals (E).

2. Trade in Services:

In a similar manner as in the trade in goods section, the parties are generally committed to liberalization of trade in services in accordance with Art. V GATS, another pillar of WTO agreements of 1994.

Market access commitments of the EU-Korea FTA go beyond GATS obligations regarding liberalization of establishment (investment) in both most of the services sector and most of the non-services sector. The FTA's scope includes transport (postal, courier and international maritime), telecommunications, finance, environmental services, construction and legal services.

An interesting observation can be made in the sectoral commitment on access to the Korean legal services market.

┃ Art 7.7 (1) FTA:

“The sectors liberalised by each Party pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and service suppliers of the other Party in those sectors are set out in the lists of commitments included in Annex 7-A.”

Annex 7-A-4 under “Legal Services” provides for limitations to Market Access and MFN standard that can be simplified for a better understanding to the following: Immediately after entry into force of the EU-Korea FTA, lawyers and EU law firms may establish a branch office to offer advice in foreign and international law, i.e. which allows to provide legal services in areas outside Korean domestic law.

After two years after entry into force of the FTA (2 year scheme) a foreign

law firm may fee share with a Korean law firm, either on a project-by-project basis or on an ongoing basis. Finally five years after the FAT's entry into force Korean and foreign lawyers may go into partnerships and foreign law firms may employ Korean lawyers.

However, representation for juridical or statutory procedures in courts and other government agencies as well as preparation of legal documents are explicitly excluded from liberalization. Furthermore, legal representation for the entrustment of the preparation of notarial deeds, activities concerning labour affairs and consulting services on real property in Korea, intellectual property rights and other rights requiring registration as well as legal cases concerning family relations or inheritance are still kept exclusively for Korean lawyers.

Therefore, it is a significant step for Korea in opening its legal services market,²⁹⁾ but it is still far from being liberalized in its sense though we certainly have to take into account that providing legal services belongs to the very national oriented fields of profession.

3. Government Procurement

Another innovative feature of the EU-Korea FTA is the chapter on government procurement, Chapter 9 FTA:

┃ Art. 9.1 (1) FTA:

“The Parties reaffirm their rights and obligations under the Agreement on Government Procurement contained in Annex 4 to the WTO Agreement (GPA 1994) [...]”

┃ Art. 9.1. (3) FTA:

“Nothing in this Chapter shall be construed to derogate from either Party's rights or obligations under the GPA 1994, or from an agreement which replaces it.”

┃ Art. 9.1. (4) FTA:

“For all procurement covered by this Chapter, the Parties shall apply the provisionally agreed revised GPA text (“revised GPA”) [...]”

²⁹⁾ Cf. Horng (n 9) 313f.

The EU-Korea FTA is the first international agreement to make effective the so-called WTO Agreement on Government Procurement (GPA) in its revised form.³⁰⁾ No other chapter of the present FTA makes it clearer how a sectoral agreement is 'simply' built on existing (and binding) commitment on multilateral level.

4. Intellectual Property Rights

The EU Korea FTA goes significantly beyond WTO TRIPS Agreement which becomes also immanent in closer looking at this provision:

▮ Art. 10.2 (1) Cl. 2 FTA:

“The provisions of this Chapter shall complement and specify the rights and obligations between the Parties under the TRIPS Agreement.”

Furthermore, Chapter 10 dealing with Intellectual Property is by far the most detailed part within the FTA. Particularly provisions on copyright and the protection guaranteed for right holders are more than extensive. It is for the reason of these protective measures that the EU-Korea FTA turns out to be a *Mixity* as shown above. It includes provisions on civil and criminal enforcement measures which remain in the national competences of EU Member States.³¹⁾

Another significant *WTOplus*- feature is the extensive list of *Geographical Indications (GIs)*. GIs in Europe are well known by legal disputes over rights to name products according to their geographical provenance such as *Emmenthal* or *Camembert* Cheese or *Cognac* and *Champagne*. The list in the FTA contains already over 200 entries, including *Bayerisches Bier* and *Münchner Bier* as well as all sorts of agricultural products from Europe and Korea. The provisions permit new entries onto the list.

III. A Specific European “New Generation”

The entry into force of the Treaty of Lisbon (1 December 2009) came in timely

³⁰⁾ Brown (n 22) 303.

³¹⁾ Cf. (n 5).

matters right before the FTA was ready for signature (6 October 2010). The Treaty of Lisbon has changed the exercise of EU competences regarding the Common Commercial Policy so significantly that some even call it a “new era for the orientation of the commercial policy”.³²⁾

With the Lisbon Treaty the Union gained explicit legal personality by virtue of Art. 47 Treaty on European Union (TEU).³³⁾ This concept is nothing really new as the European Community (EC) had undoubtedly legal personality, though it has been disputed if the EU had legal personality in its sense. With Art. 47 TEU, it is set clear that the EU is a legal person in Public International Law within the legal frame of the principle of enumerated powers.³⁴⁾ However, the European Council is very thorough on behalf of the Member States which can be seen in No. 24 of Declarations annexed to the Lisbon Final Act³⁵⁾ :

“The Conference confirms that the fact that the European Union has a legal personality will not in any way authorises the Union to legislate or to act **beyond the competences** conferred upon it by the Member States in the Treaties.”

(emphasis added)

After the Treaty of Lisbon, the EU gained exclusive competences, particularly in all matters concerning the Union’s external commercial policy (Art. 3 TFEU). In the past, RTAs were always *Mixities* triggering a vast amount of competence norms of the Treaty and making their entry into force an unforeseeable matter of time.³⁶⁾ Since Lisbon, most of the substantive competences have shifted to the Union such as all commercial matters, including matters of foreign direct investments.

³²⁾ A Dimopoulos, ‘The Effects of the Lisbon Treaty on the Principles and Objectives of the Common Commercial Policy’, *15 EFAR* (2010) 153, 169.

³³⁾ See Streinz (n 5) MN 1180f.; R Streinz, C Ohler and C Herrmann, *Der Vertrag von Lissabon zur Reform der EU* (3rd edn, C.H. Beck 2010) 132.

³⁴⁾ cf. Art. 5 (1)(1), (2)(2) TEU, Art. 7 TFEU.

³⁵⁾ OJ EU (2010) C 83/346 (20.3.2010), Declarations Annexed to the Final Act of the Intergovernmental Conference which Adopted the Treaty of Lisbon, signed on 13 December 2007.

³⁶⁾ Cf. above (n 7).

This makes the EU-Korea FTA provisionally applicable for the major part of the agreement which fall under the exclusive competence of the EU.³⁷⁾

In addition, the European Parliament acted for the first time as co-legislator in commercial matters together with the Council in approving the FTA.³⁸⁾ This is significant because it is the first trade agreement for which the European Parliament made use of its new competence under the Treaty of Lisbon.

D. Conclusion and Outlook: A New Era?

As mentioned, the EU-Korea FTA is the most ambitious and comprehensive agreement both parties have negotiated. It is to note that in the opinion of scholars, it is a bilateral free trade agreement that is second in significance only to NAFTA,³⁹⁾ with a potential to act as a new model and therefore to herald a new era of world trade.

The failure of the Conference of Cancun marked the failure of the Doha Round and a couple of years later it turns out that further achievement cannot be reached on a multilateral stage. Bilateral free trade agreements carry a great potential for the parties, but carry also a potential threat to the multilateral system.⁴⁰⁾

An easily understandable example is the Most-Favoured-Nation (MFN) clause. The MFN principle in the trading system is understood as a universal principle, providing trade on the basis of non-discrimination. GATT in Art XXIV and GATS in Art. V provide clauses for cases of free trade agreements and customs unions that exempt contracting states from the MFN principle.⁴¹⁾

³⁷⁾ Nevertheless, RTAs will most likely remain Mixities, cf. M Cremona, 'Balancing Union and Member State interests: Opinion 1/2008, Choice of Legal Base and the Common Commercial Policy under the Treaty of Lisbon', 35 *E.L.Rev.* (2010) 678, 692.

³⁸⁾ Art. 207(2) TFEU.

³⁹⁾ Brown (n 22) 298.

⁴⁰⁾ See also Cho (n 15) 34 f.

⁴¹⁾ Similarly, see SJ Cho, 'Breaking the Barrier Between Regionalism and Multilateralism: A New Perspective on Trade Regionalism' 42 *HarvILJ* (2001) 436-7.

However, with the immense increase of FTAs being concluded⁴²⁾ one might question the proper meaning of the MFN principle if a majority of financially strong States can easily fall back to its network of FTAs that it has concluded with other financially strong States that probably make up the majority of each other's trade volumes. The principle becomes more than questionable as soon as the relation of rules and exceptions on WTO principles flips. It cannot be advocated for a rule that has been overruled by such a great number of exceptions that practically annul the achievements of the rule. With a network of bilateral agreements there will be more States that fall behind making them more vulnerable and dependent on strong countries or those that have negotiated a FTA network at the right time.

A different approach supports the EU's new view on the bilateral agreements. As declared that "there will be no European retreat from multilateralism",⁴³⁾ the European approach sees FTAs include issues not yet covered by rules for trade relations. With the *Global Strategy* the EU has recognized the multilateral system being stalled and that no further achievements could be reached on that stage. Nonetheless the problems the EU also estimated in FTA proliferation in the past, now is being advocated for with the argument that under the right conditions, FTAs can "build on" the WTO and "prepare the ground" for multinational liberalization, acting as a stepping stone rather than a stumbling block⁴⁴⁾ and can even be regarded as "test laboratories for the multilateral trading system".⁴⁵⁾

States on the one hand, that have already concluded a network of FTAs of WTO^{plus} character won't bar for the same content on multilateral level and States on the other hand that have fallen back in FTA negotiations will feel the need to move forward to a more liberalized world trade. Thus, today, it is not to negate that world trade needs further improvements and a further liberalized market to persist in the more and more globalized and competitive world.

⁴²⁾ Over 214 RTAs currently in force; cf. 'List of all RTAs in force' by the WTO, available at [<http://rtais.wto.org/UI/PublicAllRTAList.aspx>] visited on [21.3.2012].

⁴³⁾ See (n 12).

⁴⁴⁾ Cf. Cremona (n 7) 246 cf. also Horng (n 9) 326.

⁴⁵⁾ Cho (n 41), 433.

The Doha Round being stalled, FTAs seem to cause problems in the multilateral system on first sight. On the long-run, however, it can be concluded that FTAs with provisions going beyond WTO will one day lead to a new stage of multilateral agreements and a new deal on the Doha Development Agenda. In this development, the EU-Korea FTA indeed could well be regarded as a model FTA so as with enough potential to herald a new era of world trade.

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