EUROPEAN COMMISSION

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COM(2010)137 final

2010/0075 (NLE)

Proposal for a

COUNCIL DECISION

concluding the Free Trade Agreement between the European Union and its Member States and the Republic of Korea

EXPLANATORY MEMORANDUM

1. BACKGROUND

The attached proposals constitute the legal instruments for conclusion of a Free Trade Agreement (FTA) between the European Union and its Member States, of the one part, and the Republic of Korea (Korea), of the other part:

- Proposal for a Council Decision concluding the FTA.

The EU-Korea FTA was negotiated in accordance with the objectives set out in the Commission's Communication "Global Europe: competing in the world"[1], which reviewed the contribution of EU trade policy to the European growth and jobs strategy. The Communication confirmed the EU's commitment to the World Trade Organisation (WTO) as the single most effective means of expanding and managing trade for the benefit of all. It stressed that the Doha Development Agenda (DDA) remains the EU's first priority. The Communication also argued that the EU should build on the platform created by the WTO to generate new opportunities for growth by opening markets further to trade and investment. The Communication set out a series of linked trade policy initiatives complementing efforts to resume negotiations in the WTO. As part of these initiatives, it proposed to negotiate carefully chosen comprehensive Free Trade Agreements (FTA).

Further to adoption of the negotiating directives by Council on 23 April 2007, the negotiations with Korea were launched in Seoul on 6 May 2007. The objective set out by the Commission in the Explanatory Memorandum accompanying the recommendation from the Commission to the Council authorising the Commission to negotiate a free trade agreement with the Republic of Korea on behalf of the European Community and its Member States was to complete the negotiations no later than two years after their effective start. The initialling of the FTA by the Trade Commissioner and the Korean Trade Minister in Brussels on 15 October 2009 marked the conclusion of negotiations after less than 2.5 years of talks.

The EU Member States were informed orally and in writing on the process of negotiations with Korea via the Council's Trade Policy Committee (ex-Article 133 Committee). The European Parliament has also been regularly informed on developments via its Committee on International Trade (INTA).

In preparation for the negotiations the Commission has drafted an impact assessment which analyses the possible impact of an FTA with South Korea. A more detailed Trade Sustainability Impact Assessment (SIA) examining the Agreement's potential economic, social and environmental effects has been conducted in parallel with the negotiations. Additional studies providing the qualitative and quantitative analysis of the FTA have also been prepared.

On 13 December 2007 the European Parliament adopted a resolution on trade and economic relations with Korea, which provided a valuable contribution to the negotiations.

[1] "Global Europe: competing in the world" - COM(2006) 567, 4.10.2006.

2. NATURE AND SCOPE OF THE AGREEMENT

As stipulated in the negotiating directives adopted by the Council, the FTA negotiations with Korea aimed at ensuring a comprehensive and balanced agreement fully consistent with WTO rules and obligations. The agreement was to provide for the progressive and reciprocal liberalisation of trade in goods and services as well as rules on trade-related issues.

The EU-Korea FTA fulfils these objectives and is the first FTA for which negotiations have been completed under the Global Europe strategy. It includes all the measures necessary to establish a Free Trade Area compatible with the provisions of Article XXIV of the General Agreement on Tariffs and Trade (GATT 1994). Both parties agreed to frontload the liberalisation commitments and will eliminate 98.7% of duties in trade value for both industry and agriculture within 5 years. The remaining portion of tariffs will be eliminated almost fully over longer transitional periods, with exception of a limited number of agricultural products such as rice or garlic.

In addition, sectoral annexes on electronics, motor vehicles and parts and pharmaceuticals and medical devices and chemicals have been negotiated to tackle non-tariff barriers. The FTA contains separate chapters covering Trade Remedies, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Customs and Trade Facilitation.

The Agreement includes also a chapter on Services, Establishment and E-Commerce and the related schedules of commitments, which go significantly beyond both parties' commitments under the General Agreement on Trade in Services (GATS) and are in conformity with Article V GATS. There is also a chapter on Current Payments and Capital Movements.

As far as rules are concerned, the FTA provides for far reaching commitments in area of Competition including state aid, Intellectual Property including enforcement and Public Procurement. Enhanced and binding horizontal provisions on regulatory transparency in areas relevant for mutual trade and investment have been also incorporated into the agreement.

The Agreement incorporates Protocols concerning Rules of Origin and Administrative Assistance on Customs matters, which contains provisions defining the origin of the products that is needed to determine the duties applicable to these products when traded, on the 'proofs of origin' and on arrangements for cooperation between customs authorities.

The FTA includes as well a dedicated protocol on cultural cooperation, which sets a framework to engage in policy dialogue and cooperate in facilitating exchanges regarding cultural activities. This framework entails an institutional set-up for the implementation that is independent from the FTA, notably through the establishment of a separate committee and a specific dispute settlement mechanism.

Finally, Trade and Sustainable Development chapter covering both social and environmental dimensions has been negotiated. This chapter includes co-operation provisions and establishes novel monitoring mechanism involving civil society through a Civil Society Forum.

The institutional provisions foresee establishment of a Trade Committee to supervise the implementation of the FTA and consider ways to further enhance trade relations between the Parties. An efficient dispute settlement mechanism is included. The Trade Committee shall be composed of representatives of the European Union and of Korea. The Trade Committee shall report to the Joint Committee established under the updated Framework Agreement on its

activities and those of its specialised committees, working groups and other bodies. The updated Framework Agreement along with the FTA signal an important upgrade of the EU-Korea relationship. As requested by the Council, the two agreements are legally and institutionally linked.

The Commission is of the view that the EU-Korea FTA is, to the largest extent feasible, in accordance with the negotiating directives approved by the Council and the recommendations of the European Parliament in its resolution of 13 December 2007.

3. PROCEDURES

Pending the entry into force of the FTA, the Agreement foresees the provisional application of the Agreement.

The Commission has judged the results of the negotiations to be satisfactory and requests the Council:

– to conclude the FTA on behalf of the Union.

The European Parliament will be called upon to give its consent to the conclusion of the FTA.

The Member States are also parties to the Agreement, which therefore needs to be ratified by them according to their internal procedures.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 91, 100(2), 167(3) and 207 in conjunction with 218(6)(a)(v) thereof,

Having regard to the proposal from the Commission[2],

Having regard to the consent of the European Parliament[3],

Whereas:

(1) On 23 April 2007 the Council authorised the Commission to negotiate a free trade agreement with the Republic of Korea on behalf of the European Union and its Member States.

(2) These negotiations have been concluded and the Free Trade Agreement between the European Union and its Member States and the Republic of Korea (hereinafter referred to as the Agreement) was initialled on 15 October 2009.

(3) The Agreement was signed on behalf of the European Union on […] and applied on a provisional basis subject to its conclusion at a later date.

(4) The Agreement should be approved.

(5) This Agreement does not affect the rights of investors of the Member States of the European Union to benefit from any more favourable treatment provided for in any agreement related to investment to which a Member State and Korea are Parties.

(6) Pursuant to Article 218(7) of the Treaty, it is appropriate for the Council to authorise the Commission to approve certain limited modifications to the Agreement. The Commission should be authorised to bring about the termination of the entitlement to co-productions as provided for in Article 5 of the Protocol on Cultural Co-operation unless the Commission determines that the entitlement should be continued and this is approved by the Council pursuant to a specific procedure necessitated by the sensitive nature of this element of the agreement which is to be concluded by the European Union and its Member States. In addition, the Commission should be authorised to

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[2] OJ C , , p. .
[3] OJ C , , p. .

approve modifications to be adopted by the Working Group on Geographical Indications pursuant to Article 10.25 of the Agreement.

(7) It is appropriate to set out the relevant procedures for the protection of Geographical Indications which are given protection pursuant to the Agreement,

(8) In the execution of its role, pursuant to Article 17 of the Treaty on European Union, the Commission is committed to activate the procedures relating to limitations on duty drawback, safeguard and dispute settlement whenever the conditions established in the relevant provisions are met. As regards implementation of Article 14 (Drawback of, or exemption from customs duties) of the Protocol concerning the definition of 'originating products' and methods of administrative co-operation of the Agreement the Commission will be guided by the declaration the Commission has made accompanying the adoption of this decision,

HAS ADOPTED THIS DECISION:

Article 1

The Free Trade Agreement between the European Union and its Member States and the Republic of Korea is hereby concluded on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union to give the notification referred to in Article 15.10.2 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

1. The Commission shall provide notice to Korea of the European Union's intention not to extend the period of entitlement to co-production pursuant to Article 5 of the Protocol on Cultural Co-operation following the procedure set out in Article 5(8) of the said Protocol unless, on a proposal from the Commission, the Council agrees four months before the end of such period of entitlement to continue the entitlement. If the Council agrees to continue the entitlement then this provision will again become applicable at the end of the renewed period of entitlement. For the specific purposes of deciding on the continuation of the period of entitlement, the Council shall act by unanimity.

2. For the purpose of applying Article 10.25 of the Agreement, modifications of the Agreement through decisions of the Working Group on Geographical Indications shall be approved by the Commission on behalf of the European Union. Where interested parties cannot reach agreement following objections relating to a Geographical Indication, the Commission shall adopt such a position on the basis of the procedure laid down in Article 15(2) of Council Regulation (EC) No. 510/2006.

The period referred to in Article 4 (3) of Decision 1999/468/EC shall be set at one month.

Article 4

1. A name protected under Sub-Section C "Geographical Indications" of Chapter 10 of the Agreement may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

2. The institutions of the European Union and Member States shall enforce the protection provided for in Articles 10.18 to 10.23 of the Agreement also at the request of an interested party.

Article 5

The position to be taken by the Committee on Cultural Cooperation on decisions having legal effects shall be determined by the Council acting in accordance with the Treaty. The representatives of the European Union in the Committee on Cultural Cooperation shall comprise senior officials from within the administration of both the Commission and the Member States who have expertise and experience in cultural matters and practices, and who shall present the position of the European Union in accordance with the Treaty.

Article 6

The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Annex II(a) of the Protocol concerning the definition of 'Originating Products" and Methods of Administrative Co-operation of the Agreement is Article 247a of Regulation (EEC) No 2913/92 of 12 October 1992.

Article 7

This Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked in European Union or Member State courts.

Done at Brussels, […]

For the Council
The President
[…]

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE

1. NAME OF THE PROPOSAL:

COUNCIL DECISION concluding the Free Trade Agreement between the European Union and the Republic of Korea.

2. BUDGET LINES:

Chapter and Article: 12 0

Amount budgeted for the end of the implementation period

3. FINANCIAL IMPACT

☐ Proposal has no financial implications

☒ Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€ million to one decimal place)

Budget line	Revenue[4]	12 month period, starting dd/mm/yyyy	[Year n]
Article …	*Impact on own resources*		801.2

Situation following action					
	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
Article …					
Article …					

[4] Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs.

4. ANTI-FRAUD MEASURES

In order to protect the European Union's Own Resources, the Agreement contains provisions aimed at ensuring the correct application by the partner country of the conditions laid down for application of the trade concessions under §3 "Financial Impact", in particular in Protocol 1 on Rules of Origin and Protocol 2 on Mutual Administrative Assistance in Customs Matters. These provisions complement EU customs legislation applicable to all imported goods (in particular the EU's Customs Code and Implementing Provisions) and that on Member States' responsibilities with respect to the control of Own Resources (in particular Council Reg. 1150/2000).

5. OTHER REMARKS

This estimation is based on the average imports for the period 2004-06. This should reflect more realistically the evolution of the imports from Korea. It does not take in account, however, the likely increase in imports of products that will have duties reduced in stages that will partly compensate the lost of revenues.