

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 16 September 2010

on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part

(2011/265/EU)

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 Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 23 April 2007 the Council authorised the Commission to negotiate a free trade agreement with the Republic of Korea, hereinafter referred to as 'Korea', on behalf of the European Union and its Member States.
- (2) Those negotiations have been concluded and a Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, hereinafter referred to as 'the Agreement', was initialled on 15 October 2009.
- (3) Article 15.10.5 of the Agreement provides for its provisional application.
- (4) The Agreement should be signed on behalf of the Union and applied on a provisional basis, pending the completion of the procedures for its conclusion.
- (5) The Agreement does not affect the rights of investors of the Member States 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 Cooperation unless the Commission determines that the entitlement should be continued and this is approved by the Council pursuant to a specific procedure necessitated both by the sensitive nature of this element of the Agreement and by the fact that the Agreement is to be concluded by the Union and its Member States. In addition, the Commission should be authorised to 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) The Union should activate the procedures relating to limitations on duty drawback, safeguard and dispute settlement whenever the conditions established in the relevant provisions of the Agreement are met. The rights of the Union provided for in Article 14 (Drawback of, or exemption from, customs duties) of the Protocol concerning the definition of 'originating products' and methods of administrative cooperation of the Agreement should be exercised in accordance with the relevant provisions to be contained in the Regulation of the European Parliament and of the Council implementing the bilateral safeguard clause of the EU-Korea Free Trade Agreement.
- (9) 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,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union subject to its conclusion.

Article 3

1. The Agreement shall be applied on a provisional basis by the Union as provided for in Article 15.10.5 of the Agreement, pending the completion of the procedures for its conclusion. The following provisions shall not be provisionally applied:

— Articles 10.54 to 10.61 (criminal enforcement of intellectual property rights),

— Articles 4(3), 5(2), 6(1), 6(2), 6(4), 6(5), 8, 9 and 10 of the Protocol on cultural cooperation.

2. In order to determine the date of provisional application the Council shall fix the date by which the notification referred to in Article 15.10.5 of the Agreement is to be sent to Korea. That notification shall include references to those provisions which cannot be provisionally applied.

The Council shall coordinate the effective date of provisional application with the date of the entry into force of the proposed Regulation of the European Parliament and of the Council implementing the bilateral safeguard clause of the EU-Korea Free Trade Agreement.

3. The date from which the Agreement will be provisionally applied will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 4

1. The Commission shall provide notice to Korea of the Union's intention not to extend the period of entitlement to co-production pursuant to Article 5 of the Protocol on cultural cooperation following the procedure set out in Article 5(8) thereof 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 this provision shall 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 purposes of 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 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 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽¹⁾. The period referred to in Article 5(6) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²⁾ shall be set at one month.

Article 5

1. A name protected under Sub-Section C 'Geographical indications' of Chapter Ten 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 Member States and the institutions of the Union shall enforce the protection provided for in Articles 10.18 to 10.23 of the Agreement, including at the request of an interested party.

Article 6

The position to be taken by the Union in 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 Union in the Committee on Cultural Cooperation shall comprise senior officials 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 Union in accordance with the Treaty.

Article 7

The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Annex II(a) to the Protocol concerning the definition of 'originating products' and methods of administrative cooperation of the Agreement is Article 247a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾.

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 302, 19.10.1992, p. 1.

Article 8

The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.

Article 9

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 16 September 2010.

For the Council
The President
S. VANACKERE
