

SOUTH KOREA



Notice of 25.11.2015
[OJL 307/1 of 25.11.2015](#)

Council Decision of 16.09.2010
[OJL 127/1 of 14.05.2011](#)

Agreement: Art. 6.14
[OJL 127/23 of 14.05.2011](#)

Protocol
[OJL 127/1415 of 14.05.2011](#)

Notice concerning the entry into force 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

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 (¹), signed in Brussels on 6 October 2010, will enter into force on 13 December 2015.

¹ OJ L 127, 14.5.2011, p. 6.

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 [\(3\)](#).

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

(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.](#)

FREE TRADE AGREEMENT

between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part

(...)

THE EUROPEAN UNION,

of the one part, and

THE REPUBLIC OF KOREA, hereinafter referred to as 'Korea',

of the other part,

RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the Framework Agreement;

DESIRING to further strengthen their close economic relationship as part of and in a manner coherent with their overall relations, and convinced that this Agreement will create a new climate for the development of trade and investment between the Parties;

CONVINCED that this Agreement will create an expanded and secure market for goods and services and a stable and predictable environment for investment, thus enhancing the competitiveness of their firms in global markets;

REAFFIRMING their commitment to the Charter of the United Nations signed in San Francisco on 26 June 1945 and the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948;

REAFFIRMING their commitment to sustainable development and convinced of the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, poverty reduction, full and productive employment and decent work for all as well as the protection and preservation of the environment and natural resources;

RECOGNISING the right of the Parties to take measures necessary to achieve legitimate public policy objectives on the basis of the level of protection that they deem appropriate, provided that such measures do not constitute a means of unjustifiable discrimination or a disguised restriction on international trade, as reflected in this Agreement;

RESOLVED to promote transparency as regards all relevant interested parties, including the private sector and civil society organisations;

DESIRING to raise living standards, promote economic growth and stability, create new employment opportunities and improve the general welfare by liberalising and expanding mutual trade and investment;

SEEKING to establish clear and mutually advantageous rules governing their trade and investment and to reduce or eliminate the barriers to mutual trade and investment;

RESOLVED to contribute to the harmonious development and expansion of world trade by removing obstacles to trade through this Agreement and to avoid creating new barriers to trade or investment between their territories that could reduce the benefits of this Agreement;

DESIRING to strengthen the development and enforcement of labour and environmental laws and policies, promote basic workers' rights and sustainable development and implement this Agreement in a manner consistent with these objectives; and

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organisation, done on 15 April 1994 (hereinafter referred to as the 'WTO Agreement') and other multilateral, regional and bilateral agreements and arrangements to which they are party;

HAVE AGREED AS FOLLOWS:

(...)

Article 6.14

Mutual administrative assistance in customs matters

1. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions laid down in the Protocol on Mutual Administrative Assistance in Customs Matters.
2. Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) under this Agreement for matters covered by Article 9.1 of the Protocol on Mutual Administrative Assistance in Customs Matters.

PROTOCOL

on mutual administrative assistance in customs matters

Article 1

Definitions

For the purposes of this Protocol:

- (a) customs legislation shall mean any legal or regulatory provisions applicable in the territories of the Parties, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) applicant authority shall mean a competent administrative authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) requested authority shall mean a competent administrative authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Protocol;
- (d) personal data shall mean all information relating to an identified or identifiable individual;
- (e) operation in breach of customs legislation shall mean any violation or attempted violation of customs legislation.

Article 2

Scope

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.
3. Assistance to recover duties, taxes or fines is not covered by this Protocol.

Article 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the applicant authority, the requested authority shall inform it:
 - (a) whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
 - (b) whether goods imported into the territory of one of the Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:
 - (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
 - (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
 - (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation;
 - (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

Article 4

Spontaneous assistance

The Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- (a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party;
- (b) new means or methods employed in carrying out operations in breach of customs legislation;
- (c) goods known to be subject to operations in breach of customs legislation;

- (d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 5

Delivery, notification

At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- (a) to deliver any documents; or
- (b) to notify any decisions,

emanating from the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

Article 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the applicant authority;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the legal or regulatory provisions and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority.
4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be ordered.

Article 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.
3. Duly authorised officials of a Party may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.
4. Duly authorised officials of a Party involved may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

Article 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items.
2. This information may be in computerised form.
3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

Article 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Protocol would:

- (a) be likely to prejudice the sovereignty of a Member State of the European Union or that of Korea which has been requested to provide assistance under this Protocol; or
- (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10.2; or
- (c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated to the applicant authority without delay.

Article 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each Party. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it and the corresponding provisions applying to European Union authorities.

2. Personal data may be exchanged only where the Party which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

Article 11

Experts and witnesses

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

Article 12

Assistance expenses

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

Article 13

Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of Korea and on the other hand to the competent services of the European Commission and the customs authorities of the Member States of the European Union as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.
2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

Article 14

Other agreements

1. Taking into account the respective competences of the European Union and the Member States of the European Union, the provisions of this Protocol shall:

- (a) not affect the obligations of the Parties under any other international agreement or convention;
- (b) be deemed complementary to agreements on mutual assistance which have been or may be concluded between individual Member States of the European Union and Korea; and
- (c) not affect the European Union provisions governing the communication between the competent services of the European Commission and the customs authorities of the Member States of the European Union of any information obtained under this Protocol which could be of interest to the European Union.

2. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral agreement on mutual assistance which has been or may be concluded between individual Member States of the European Union and Korea insofar as the provisions of the latter are incompatible with those of this Protocol.

3. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Customs Committee set up under Article 6.16 (Customs Committee) of this Agreement.