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COM(2022) 446 final

2022/0266 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Trade Committee 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, as regards the amendment of the Annexes 10-A and 10-B of the Agreement**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision on the position to be taken on the Union's behalf in the Trade Committee established by the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea ('Korea'), of the other part<sup>1</sup>, ('the Agreement', the parties to which are referred to as 'the Parties') in connection with the envisaged adoption of the amendment of Annexes 10-A and 10-B ('the Amendment') of the Agreement.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The EU-Korea Free Trade Agreement**

The Agreement is the European Union's first new generation trade agreement and the first concluded with an Asian country. The aim of the Agreement is to boost bilateral trade and economic growth in both the EU and Korea.

The Agreement has been provisionally applied since 1 July 2011<sup>2</sup> and entered into force on 13 December 2015.

#### **2.2. The Trade Committee**

Article 15.1 of the Agreement establishes the Trade Committee. Pursuant to Article 15.1.4(c) of the Agreement, the Trade Committee may consider amendments to the Agreement or amend provisions of the Agreement in cases specifically provided for in the Agreement. Article 15.5.2 of the Agreement provides that a decision of the Trade Committee to amend the Annexes, Appendices, Protocols and Notes to the Agreement may be adopted by the Parties, subject to their respective applicable legal requirements and procedures.

The Agreement establishes the rules on geographical indications under Articles 10.18-10.26. Based on Article 10.24 of the Agreement, the European Union and Korea agree to add geographical indications to be protected to the Annexes 10-A and 10-B in accordance with the procedure set out in Article 10.25.

Pursuant to Article 10.25.1 the Working Group on Geographical Indications ('GI Working Group'), which is established pursuant to Article 15.3.1(g) under the auspices of the Trade Committee, may make recommendations and adopt decisions by consensus. Pursuant to Article 15.3.5 of the Agreement and Article 5.3 of the Rules of Procedure of the Working Group on Geographical Indications<sup>3</sup>, the Trade Committee may undertake the task assigned to the GI Working Group and amend Annexes 10-A and 10-B pursuant to Article 15.5.2 of the Agreement.

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<sup>1</sup> Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ L 127, 14.5.2011, p. 6).

<sup>2</sup> 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 (OJ L 127, 14.5.2011, p. 1).

<sup>3</sup> Decision No 1/2019 of the EU-Korea Working Group on Geographical Indications of 17 September 2019 concerning the adoption of its rules of procedure and Council Decision (EU) 2019/845 of 17 May 2019 on the position to be taken on behalf of the European Union, within the Working Group on Geographical Indications established by 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, as regards the adoption of its rules of procedure (OJ L 138, 24.5.2019, p. 84).

### **2.3. The envisaged act of the Trade Committee**

On 25 November 2021, in the framework of the 8<sup>th</sup> GI Working Group meeting, the Parties reached an agreement to extend the list of geographical indications (GIs) protected in the Annexes 10-A and 10-B of the Agreement. The Trade Committee, pursuant to Article 15.5.2 of the Agreement, may adopt a decision to amend Annexes 10-A and 10-B ('the envisaged act').

The amendment of Annexes 10-A and 10-B consists of, *inter alia*, the update of legislative references, the removal of those geographical indications which are no longer protected in the EU, the modification of certain geographical indications, in particular where the name has changed, and the enlargement of the number of geographical indications protected by the Annexes of the Agreement by adding 43 European Union GIs and 41 Korean GIs.

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

The proposed Council Decision establishes the position to be adopted on the Union's behalf in the Trade Committee regarding the amendment of Annexes 10-A and 10-B. The position shall be based on the draft Decision of the Trade Committee attached as Annex to the proposed Council Decision

The Treaties bestow on the Union an exclusive competence for the common commercial policy, which includes the Union's autonomous trade policy as well as the conclusion of international trade agreements. The envisaged act implements the Agreement and the adoption of the envisaged act fits the objectives of the Union trade policy.

### **4. LEGAL BASIS**

#### **4.1. Procedural legal basis**

##### *4.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'.<sup>4</sup>

##### *4.1.2. Application to the present case*

The Trade Committee is a body set up by the Agreement. The decision, which the Trade Committee is called upon to adopt, constitutes an act having legal effects.

The envisaged act will be binding under international law in accordance with Article 15.5.2 of the EU-Korea Free Trade Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

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<sup>4</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

## **4.2. Substantive legal basis**

### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

## **4.3. Conclusion**

The legal basis of the proposed decision should be Article 207(4) first subparagraph TFEU, in conjunction with Article 218(9) TFEU.

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the act of the Trade Committee will amend the Annexes 10-A and 10-B of the Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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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 Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) 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 Agreement”) signed on 6 October 2010, was concluded by the Union by Council Decision (EU) 2015/2169<sup>1</sup>. It has been provisionally applied since 1 July 2011<sup>2</sup> and entered into force on 13 December 2015<sup>3</sup>.
- (2) Article 15.1 of the Agreement establishes a Trade Committee comprising representatives of the Union and the Republic of Korea respectively.
- (3) According to Article 15.3.1(g) of the Agreement, the Working Group on Geographical Indications (“GI Working Group”) is established under the auspices of the Trade Committee.
- (4) On 25 November 2021, in the framework of the 8<sup>th</sup> GI Working Group meeting, the Parties reached an agreement to extend the list of geographical indications (“GIs”) protected in the Annexes 10-A and 10-B of the Agreement. The amendment of Annexes 10-A and 10-B consists of, *inter alia*, the update of legislative references, the removal of those geographical indications which are no longer protected in the Union, the modification of certain geographical indications, in particular where the name has changed, and the enlargement of the number of geographical indications protected by the Annexes of the Agreement by adding 43 Union GIs and 41 Korean GIs.

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<sup>1</sup> Council Decision (EU) 2015/2169 of 1 October 2015 on the conclusion 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 (OJ L307, 25.11.2015, p. 2).

<sup>2</sup> Notice concerning the 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 (OJ L 168, 28.6.2011, p. 1).

<sup>3</sup> 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 (OJ L 307, 25.11.2015, p. 1).

- (5) Pursuant to Article 15.3.5 of the Agreement, the Trade Committee may undertake the work of the Working Group on Geographical Indications.
- (6) Pursuant to Article 12.2 of the Annex to Decision No 1 of the Trade Committee of 23 December 2011 on the adoption of the rules of procedure of the Trade Committee<sup>4</sup>, the Trade Committee may adopt decisions by written procedure, if both Parties agree, in the period between the meetings.
- (7) At one of its upcoming meetings, or by written procedure, the Trade Committee is to adopt the agreement reached on 25 November 2021.
- (8) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Trade Committee, as the Decision will be binding on the Union,
- (9) In order to ensure the proper implementation of the protection of GIs under the Agreement, the Trade Committee should update Annexes 10-A and 10-B to the Agreement. The Union's position within the Trade Committee should be based on the draft attached to this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf in the Trade Committee established by Article 15.1 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, as regards the amendment to Annexes 10-A and 10-B of the Agreement shall be based on the draft Decision of the Trade Committee attached as Annex to this Decision.

#### *Article 2*

The Decision of the Trade Committee shall be published in the Official Journal of the European Union.

#### *Article 3*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*

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<sup>4</sup> Decision No 1 of the EU-Korea Trade Committee of 23 December 2011 on the adoption of the rules of procedure of the Trade Committee (OJ L 58, 1.3.2013, p. 9).