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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 April 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 181 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union, in the Working Group on Geographical indications set up 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

Delegations will find attached document COM(2019) 181 final.

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Proposal for a

COUNCIL DECISION

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EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Working Group on Geographical Indications set up 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, in connection with the envisaged adoption of its Rules of Procedure ("Rules of Procedure").

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Republic of Korea Free Trade Agreement

The Free Trade Agreement between the European Union and all of its Member States, of the one part, and the Republic of Korea, of the other part ("the Agreement") is the European Union's first new generation trade agreement and also the first agreement 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 was signed on 6 October 2010 and has been provisionally applied since 1 July 2011[1].

2.2. The Working Group on Geographical Indications

Article 15.3 of the Agreement establishes Working Groups under the auspices of the Trade Committee, namely the Working Group on Geographical Indications (Article 15.3.1 (g), "GI Working Group"). The Agreement establishes the rules on Geographical Indications under Articles 10.18-10.26. The activities and functioning of the GI Working Group is regulated by Article 10.25 of the Agreement.

For the purposes of Article 10.25 of the Agreement, modifications of the Agreement through decisions of the GI Working Group shall be approved by the Commission on behalf of the European Union[2].

The GI Working Group is the forum and decision-making body, which may decide to modify the Annexes 10-A and 10-B to the Agreement. Pursuant to Article 10.25(1) the Working Group may make recommendations and adopt decisions by consensus.

2.3. The envisaged act of the Working Group on Geographical Indications

According to 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[3], and in particular Article 15.4 of

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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 (OJ L 127, 14.5.2011, p. 1–1426)

2 2011/265/EU: 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. 1–1426)

3 OJ L 58, 1.3.2013, p.9.

the Annex, each Specialised Committee and Working Group may establish its own rules of procedure which shall be reported to the Trade Committee.

On 30 May 2018, in the framework of the 6th GI Working Group meeting, the GI Working Group agreed on the adoption of a decision regarding its Rules of Procedure ("the envisaged act").

The purpose of the envisaged act is to regulate the functioning of the GI Working Group and to lay down in details especially its competence and decision making process.

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

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. Considering the envisaged act is the precondition of the satisfactory functioning of the GI Working Group, accordingly it contribute to the efficient implementation of the EU-Republic of Korea Free Trade Agreement, 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*'[4].

4.1.2. Application to the present case

The GI Working Group is a body set up by an agreement, namely the EU-Republic of Korea Free Trade Agreement.

The act which the GI Working Group is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 10.25 of the EU-Republic of 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.

[4] 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 comprises the following provisions: Article 207 of the TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

Not applicable.

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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 the first paragraph of Article 207(4) 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[1] ('the Agreement') was concluded by the Union by Council Decision (EU) 2015/2169[2] and it entered into force on 13 December 2015.

(2) Article 15.3.1 of the Agreement establishes the Working Group on Geographical Indications, under the auspices of the Trade Committee established by Article 15.1.1 of the Agreement.

(3) Pursuant to Article 15.4 of the rules of procedure of the EU-Korea Trade Committee, adopted by Decision No 1 of the EU-Korea Trade Committee of 23 December 2011[3], each Working Group may establish its own rules of procedure which shall be reported to the Trade Committee.

(4) Rules of procedure of the Working Group on Geographical Indications should be established.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Working Group on Geographical Indications as regards its rules of procedure, as these rules will be binding on the Union,

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1 OJ L 127, 14.5.2011, p. 6.

2 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 L 307, 25.11.2015, p. 2).

3 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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Working Group on Geographical Indications as regards the adoption of its rules of procedure shall be based on the draft Decision of that Working Group attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President