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Subject: RELATIONS WITH THE REPUBLIC OF KOREA:

Draft decision of the Council authorising the Commission to negotiate an updating of the Framework Agreement for Trade and Cooperation between the European Community and its Member States, of the one part, and the Republic of Korea, of the other part or a new Partnership and Cooperation Agreement with the Republic of Korea to replace the aforementioned Framework Agreement

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 May 2008

9083/08

RESTREINT UE

**ASIE 49
PVD 27**

"I/A" ITEM NOTE

From : General Secretariat of the Council
To : COREPER/Council

Subject : RELATIONS WITH THE REPUBLIC OF KOREA:

Draft decision of the Council authorising the Commission to negotiate an updating of the Framework Agreement for Trade and Cooperation between the European Community and its Member States, of the one part, and the Republic of Korea, of the other part or a new Partnership and Cooperation Agreement with the Republic of Korea to replace the aforementioned Framework Agreement

1. On 23 April 2007, the Council authorised the Commission to negotiate a Free-Trade Agreement (FTA) with Korea. In doing so, the Council expressed support for the Commission's view that this new FTA should form part of an overall and coherent framework for bilateral relations with Korea, and its interest in achieving a further strengthening of political ties. The conclusions adopted by the Council on that occasion underlined its interest in moving ahead swiftly with negotiations on a new Partnership and Cooperation Agreement or an updating of the Framework Agreement, including the political clauses.

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2. Following exploratory talks with the Korean side, on 7 December the Commission presented a recommendation to the Council authorising the Commission to negotiate an updating of the abovementioned Framework Agreement with Korea or a new Partnership and Cooperation Agreement to replace it.

3. The Asia-Oceania Working Party has examined these texts on a number of occasions and finalised the texts attached.

4. It is therefore suggested that COREPER:

A. Recommends to the Council and the representatives of the Member States meeting with the Council:

- to adopt the attached draft decision authorising the Commission to negotiate in this regard, as well as the associated negotiating directives (Annex I).
- to agree to enter to the Council minutes the attached Commission statement (Annex II).

B. Notes the following, in line with its discussion on 18 April 2007, ahead of the adoption of Council Conclusions on the FTA:

"There shall be clear legal and institutional linkage between the FTA and the updated Framework Agreement (or new Partnership and Cooperation Agreement). Such legal and institutional linkage would entail, *inter alia*, that the FTA could be totally or partially suspended if the conditions for such suspension under the updated Framework Agreement (or new Partnership and Cooperation Agreement) apply, and that there would be a coherent institutional framework for the administration of the agreements."

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Annex I

DECISION

The Council:

- authorises the Commission to negotiate, on behalf of the European Community and its Member States, either:
 - an updating of the Framework Agreement for Trade and Cooperation between the European Community and its Member States, of the one part, and the Republic of Korea, of the other part or
 - a new Partnership and Cooperation Agreement with the Republic of Korea to replace the aforementioned Framework Agreement;for matters coming within Titles V and VI of the EU Treaty (CFSP and police and judicial cooperation in criminal matters), the negotiations shall be conducted with the Presidency, assisted by the SG/HR. in full respect of their respective responsibilities set out in the relevant treaty provisions;
- appoints a special Committee (Asia-Oceania Working Group) to assist it in this task; and
- issues the attached negotiating directives.

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DIRECTIVES FOR THE NEGOTIATION OF AN UPDATING OF THE FRAMEWORK AGREEMENT FOR TRADE AND COOPERATION BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART, AND THE REPUBLIC OF KOREA, OF THE OTHER PART OR OF A NEW PARTNERSHIP AND COOPERATION AGREEMENT WITH THE REPUBLIC OF KOREA TO REPLACE THE AFOREMENTIONED FRAMEWORK AGREEMENT

Preamble

The Preamble of the existing agreement should be expanded to include additional references to:

- rule of law and good governance
- sustainable development in all its dimensions (economic, social and environmental)
- environmental protection and cooperation to combat climate change
- support for fair globalisation and the goals of full and productive employment and decent work for all
- cooperation in the field of justice, freedom and security
- the fight against terrorism
- the importance of prosecuting those accused of the most serious crimes of concern to the international community
- commitment to the fight against proliferation of WMDs
- reference to strengthening relations on the basis of key principles such as respect for sovereignty, equality, non-discrimination, respect for the natural environment and mutual benefit

Trade-related references in the Preamble should also be adjusted, and where appropriate simplified, to take account of the expected outcome of FTA negotiations with Korea.

The positions of the UK, Ireland and Denmark in relation to Title IV of the Treaty establishing the European Community shall be recalled in the Preamble.

Basis for cooperation

As in the existing Framework Agreement, respect for democratic principles and human rights, as well as respect for the rule of law, shall be referenced, including the fact that this constitutes an essential element of the agreement.

The basis for cooperation should be further expanded, where relevant, by including references in particular to:

- Shared values as expressed in the Charter of the UN
- Shared attachment to the comprehensive nature of bilateral relations

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- Cooperation in addressing global environmental challenges, in particular climate change
- Attachment to principles of good governance, rule of law, independence of judiciary, fight against corruption
- Implementation of this agreement based on principles of equality and mutual benefit

Aims of cooperation

The current provisions of the Framework Agreement (Article 2) are limited in scope and some aspects will be partly superseded by the ongoing FTA negotiations. They should be adjusted and expanded, in particular by incorporating appropriate provisions notably on:

- Human rights and legal affairs
- Cooperation on non-proliferation of WMDs
- Cooperation on counter-terrorism and transnational crime
- Raising the profile of Korea in the EU and of the EU in Korea
- Promoting people-to-people links and contacts
- Establishing cooperation bilaterally and in all relevant regional and international forums and organisations
- Sustainably developing trade and investment to mutual advantage
- Expanding the illustrative list of sectors for economic cooperation (currently limited to S&T and industrial cooperation)
- Migration

Political dialogue

The existing provisions referring to Political Dialogue between Korea and the EU should be updated and incorporated into the body of the agreement.

Countering the proliferation of WMDs

An article should be included on the basis of the standard approach in this area.

Most serious crimes of concern to the international community

A provision should be included highlighting the Parties' commitment to the International Criminal Court and/or to its main objectives, consistent with the approach taken in other similar agreements.

Combating terrorism

A provision should be included on the basis of the standard approach in this area.

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Cooperation in regional and international organisations

A provision should be included calling for the parties to undertake to exchange views and cooperate within the framework of relevant regional and international forums.

Cooperation on trade and investment

Trade and trade-related areas of cooperation (in particular, under Articles 4-11 and 19 of the Framework Agreement)

Trade-related provisions of the Framework Agreement should be adjusted to take account of intervening developments. They should be rendered fully consistent with the expected content of the FTA. Overlaps should be minimised and the highest possible degree of legal certainty should be ensured.

Cooperation on justice, freedom and security

Rule of law and legal cooperation (not currently covered):

A provision should be included underlining the importance attached by the Parties to the rule of law and providing for the possibility of cooperation on the effective functioning of institutions at all levels in the areas of law enforcement and the administration of justice.

Personal data protection (not currently covered):

A provision should be included committing the Parties to cooperate, in order to improve the level of protection of personal data to the highest international standards, thus working towards the elimination of obstacles to the flow of personal data between the Parties.

Migration (not currently covered):

A provision should be included on the basis of the standard approach in this area.

Combating organised crime and corruption (not currently covered):

The agreement shall include a provision on cooperation aimed at implementing and promoting relevant international standards and instruments in this field.

Illicit drugs and money laundering (Framework Agreement, Article 13):

The existing Article 13 of the Framework Agreement should be split into two articles.

On drugs, the existing provisions shall be expanded and updated, in particular to cite the outcome of the 20th UNGASS as the basis for cooperation in this field.

On money laundering, the existing provisions shall be expanded and updated. In particular, the financing of terrorism shall be brought within their scope. Cooperation on the recovery of assets or funds derived from the proceeds of crime shall also be referred to.

Combating terrorism

A provision should be included consistent with the approach taken in other similar agreements.

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Cooperation in other sectors

Agriculture and rural development; Marine and fisheries (Framework Agreement, Article 6):

In addition to addressing overlaps with the expected content of the FTA, the existing provisions should be expanded and updated, in particular to refer to the possibility of cooperation on rural development policy and sustainable agriculture.

In the marine and fisheries fields, supporting sustainable and responsible long-term marine and fisheries policy and promoting efforts to counter illegal, unreported and unregulated fishing practices should be included as possible areas for cooperation.

Transport (not currently covered in Framework Agreement, except for Article 7 on maritime transport)

Regarding general cooperation in the field of transport, a provision should be included covering matters such as a dialogue in the field of civil aviation; exchange of information on respective transport policies and practices; and implementation of security, safety and pollution prevention standards. A suitable cross-reference to the Cooperation Agreement on the civil Global Navigation Satellite System (GNSS) could be envisaged.

On maritime transport, the existing provisions, referring to the goal of unrestricted access to the international maritime market and traffic based on fair competition on a commercial basis, should be maintained subject to necessary updating to take account of intervening developments. [If appropriate Joint declaration relating to Article 7 could be introduced into the body of the agreement.]

Tourism (not currently covered)

A provision should be included, calling for efforts to improve the exchange of information and best practice in order to ensure a balanced and sustainable development of tourism and for cooperation on other related issues.

Economic policy dialogue (not currently covered)

A provision should be included calling for intensified exchange of information and sharing of experiences on economic trends and policies; and for closer dialogue on economic matters.

Good governance in the tax area (not currently covered):

A provision should be included expressing commitment to implement the principles of good governance in the tax area and calling for improved international cooperation in this field.

Economic and industrial cooperation (Framework Agreement, Article 12)

Existing provisions should be expanded and adjusted to include, in particular, a reference to the promotion of SME competitiveness and to exchanging good practice on access to finance, as well as questions of corporate social responsibility and accountability.

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Information Society (not currently covered)

A provision should be included calling for exchange of views on the various aspects of policies in the field of the Information Society.

Science and Technology (Framework Agreement, Article 14)

The existing provisions should be adjusted to take into account the entry into force in March 2007 of the Agreement on Scientific and Technological Cooperation between the EC and Korea. A suitable cross-reference to the latter agreement could be included.

Energy (Framework Agreement, Article 16)

The existing provisions should be adjusted, in particular by including a reference to the objectives of improving security of supply, energy efficiency and cooperation to combat climate change.

Education, culture, information and communication (Framework Agreement, Article 17)

The existing provisions should be expanded, in particular by including references to mutually beneficial cooperation in the field of education and training, exchanges of students and faculty, and to cultural diversity.

Environment and natural resources (Framework Agreement, Article 15)

The existing provisions should be expanded and updated. In particular, references should be included specifying that the outcome of the World Summit on Sustainable Development and the implementation of multilateral environmental agreements form the basis for bilateral cooperation in the environmental field. Provisions should also be inserted relating to cooperation in the following areas:

- climate change,
- preserving biodiversity,
- promoting environmental technologies,
- prevention of illegal transboundary movement of hazardous substances and waste

Provisions in this field should be complementary to the provisions on Trade and Sustainable Development contained in the future FTA

Development cooperation (Framework Agreement, Article 18):

The existing provisions should be maintained.

Civil Society (not currently covered):

A provision should be included recognising the role and potential contribution of organised civil society, including the social partners, in the dialogue and cooperation process under the agreement, and committing to promote effective dialogue with organised civil society and its effective participation.

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Cooperation on public administration (not currently covered):

A provision should be included providing for the possibility of consultations and exchange of information on good practices in the field of public administration.

Health (not currently covered):

A provision should be included calling on the parties to cooperate on and share experience in the health sector.

Statistics (not currently covered):

A provision should be included whereby the Parties agree to promote the harmonisation of statistical methods and practice including the gathering and dissemination of statistics.

Employment and social affairs (not currently covered):

A provision should be included whereby the Parties agree to enhance cooperation in the field of employment and social affairs, with a view to strengthening the social dimension of globalisation and promoting principles of sustainable development, in particular its economic and social dimensions. The Parties should also reaffirm their commitments to promote and effectively implement internationally recognised labour and social standards and to take account of the implementation of relevant multilateral social and labour agreements in all activities undertaken under this Agreement. It would also be desirable to address questions relating to labour/economic migration.

Provisions in this field should be complementary to the provisions on Trade and Sustainable Development contained in the future FTA.

Cooperation in the field of consumer protection (not currently covered):

A provision may be included providing for cooperation in this field, in particular through exchange of information on respective policies.

Institutional framework and final provisions:

Bilateral institutions

Provisions could be added as appropriate referring to the main bilateral institutions (including those currently referred to only in the Joint Declaration - summit, Ministerial meeting)

Joint Committee

The provisions relating to the role and functioning of the Joint Committee should be adjusted to ensure full complementarity with committees established under sectoral agreements, such as the Trade Commission foreseen under the FTA. In particular, the respective roles of the various bodies and their inter-relationship should be clarified and overlaps should be minimised, bearing in mind the commitment to ensure a coherent and efficient institutional framework.

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Non-execution of the agreement / Dispute settlement:

The provisions relating to non-execution of the Framework Agreement should be brought into line with those found in other recent agreements, in particular by clarifying the role of the Joint Committee and by defining what is intended by “circumstances of special urgency”.

Given the existence of specific dispute settlement provisions in the future FTA, a provision should be added to rule on the relation between the respective provisions in the two agreements. The objective would be to ensure that, in case of overlapping obligations, the dispute settlement rules under the FTA shall prevail.

Other

Other institutional and final provisions such as the language clause should be maintained.

Conduct of negotiations

The European Commission will be in charge of the overall negotiations. The Commission shall conduct the negotiations in consultation with the Asia-Oceania Working Group, as a special committee appointed by the Council to assist the Commission in this task, and within the framework of these directives.

The Commission shall report regularly to the special committee on the progress of the negotiations. On matters falling within their competence, Member States may attend the negotiating sessions and will be consulted for the establishment of negotiating documents and negotiations will take place on the basis of positions coordinated in advance through the Asia-Oceania Working Group.

Statement by the Commission to the minutes of the Council

Subject: Draft Decision of the Council authorising the Commission to negotiate an updating of the Framework Agreement for Trade and Cooperation between the European Community and its Member States, of the one part, and the Republic of Korea, of the other part of a new Partnership and Cooperation Agreement with the Republic of Korea to replace the aforementioned Framework Agreement.

**Korea Negotiating Directives (doc 8721/08) - Conduct of Negotiations (page 9).
Commission interpretation on the conduct of negotiations on matters falling within
the competence of the Member States.**

"The Commission confirms that negotiating documents which are being drafted on matters falling within the competence of the Member States will be established in advance through the Asia-Oceania Working Group."