



Council of the  
European Union

Brussels, 13 November 2019  
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11277/1/09  
REV 1 DCL 1

DROIPEN 48  
WTO 121  
COASI 109

## DECLASSIFICATION

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Subject: Free Trade Agreement with Korea.  
- Draft position of the Member States of the European Union on criminal provisions (Sub-section 2 - criminal enforcement) to be included in the Free-Trade agreement with South Korea

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

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

# RESTREINT UE



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 30 June 2009**

**11277/1/09  
REV 1**

**RESTREINT UE**

**DROIPEN 48  
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## **"I" NOTE**

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from : Presidency  
to : Coreper

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Subject : Free Trade Agreement with Korea.  
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On 7 April 2009 the Permanent Representatives Committee (Part II) reached consensus on the text of criminal provisions (Sub-section 2 - Criminal enforcement) to be included in the Free-Trade Agreement (FTA), currently under negotiation with South Korea, as set out in document 8602/09 DROIPEN 21 WTO 70 COASI 56 RESTREINT UE.

The above mentioned text of criminal provisions was sent to the Korean side, which reacted by sending a counter-proposal, which was communicated by the Presidency to the delegations on 12 June 2009 with a request for comments expiring on Thursday 18 June 2009.

On the basis of these comments received by Member States, the Czech Presidency prepared a text of the Sub-section 2 - Criminal enforcement, as set out in the Annex to document 11277/09 DROIPEN 48 WTO 121 COASI 109 RESTREINT UE.

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At its meeting on 29 June 2009 the JHA-counsellors examined this revised text, together with a Swedish non-paper proposing a slightly revised wording for Article 10.24.1.

Member States agreed on the text set out in the Annex, subject to confirmation by COREPER.

COREPER is invited to confirm the agreement on the text as set out in the Annex to this document, in view of the finalization of the entire FTA at the meeting of the 133 Committee (full members) on 10 July.

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ANNEX

## SUB-SECTION 2 CRIMINAL ENFORCEMENT

### ARTICLE 10.24.1 SCOPE OF CRIMINAL ENFORCEMENT

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting and copyright and related rights<sup>1</sup> piracy on a commercial scale.

### ARTICLE 10.24.2. GEOGRAPHICAL INDICATIONS AND DESIGNS COUNTERFEITING

Subject to its national or constitutional law and regulations, each Party shall consider adopting measures to establish the criminal liability for counterfeiting geographical indications and designs.

### ARTICLE 10.24.3 LIABILITY OF LEGAL PERSONS

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the offences referred to in Article 10.24.1.
2. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

### ARTICLE 10.24.4 AIDING AND ABETTING

The provisions of this sub-section shall apply to aiding and abetting of the offences referred to in Article 10.24.1.

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<sup>1</sup> The term “related rights” is defined by each party in accordance with its international obligations.

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## **ARTICLE 10.24.5 SEIZURE**

In case of an offence referred to in Article 10.24.1, each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements predominantly used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and any assets derived from, or obtained directly or indirectly through the infringing activity.

## **ARTICLE 10.24.6 PENALTIES**

For the offences referred to in Article 10.24.1, each Party shall provide for penalties that include sentences of imprisonment and/or monetary fines that are effective, proportionate and dissuasive ;

## **ARTICLE 10.24.7 CONFISCATION**

1. For the offences referred to in Article 10.24.1, each Party shall provide that its competent authorities shall have the authority to order confiscation and/or destruction of all counterfeit trademark goods or pirated copyright goods, materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and the assets derived from, or obtained directly or indirectly, through the infringing activity.
2. Each Party shall ensure that the counterfeit trademark goods and pirated copyright goods that have been confiscated under this Article shall, if not destroyed, be disposed outside the channels of commerce, under the condition that the goods are not dangerous for the health and security of persons.
3. Each Party shall further ensure that confiscation and destruction under this Article shall occur without compensation of any kind of the defendant.

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4. Each Party may provide that its judicial authorities have the authority to order the confiscation of assets the value of which corresponds to that of such assets derived from or obtained directly or indirectly through the infringing activity.

## ARTICLE 10.24.8 RIGHTS OF THIRD PARTIES

Each Party shall ensure that the rights of third parties shall be duly protected and guaranteed.

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