EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (DEFINITION OF TREATIES) (REPUBLIC OF KOREA FREE TRADE AGREEMENT) ORDER 2011

2011 No. [xxxx]

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument is intended to give effect under domestic law to the Free Trade Agreement (FTA) between the European Union (EU) and its Member States, of one part and the Republic of Korea, on the other part. The Agreement is designed to be a World Trade Organisation (WTO) compatible Agreement. As some elements of the Agreement fall under the exclusive competence of Member States, it requires ratification by all Member States before it can fully enter into force.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Agreement will need to be specified as an EU Treaty by Order in Council in accordance with section 1 (3) of the European Communities Act 1972 in order to have legal effect in the UK but will not require any new legislation to be introduced by the United Kingdom. No other implementation is required for the UK.

4.2 The Order is intended to give effect under domestic law to the Agreement on the grounds that it is a mixed competence agreement which is binding on Member States under Article 218(5) Treaty on the Functioning of the European Union (TFEU) and to which the UK must give effect.

4.3 The Agreement has been published in full in a Command Paper.

4.4 Procedurally, the Commission has already presented a proposal for a Decision by the Council and the representatives of the Governments of the Member States, which when adopted, will complete the decision-making process for the conclusion and ratification of the Agreement on behalf of the EU and its Member States.

4.5 Signature of the FTA is not subject to any procedure in the European Parliament (Article 218(5) TFEU). Conclusion of the FTA is subject to the European Parliament's consent under Article 218(6)(v) TFEU.

4.6 The European Parliament gave its consent to the FTA on 17 February 2011 and the FTA will provisionally enter into force on 1 July 2011.

4.7 The decision will only be adopted by the Council and the Representatives of Governments of the Member States once all Member States' parliamentary procedures for ratification of the Agreement are complete. Only then will the full Agreement will enter into force.

5. Territorial Extent and Application

5.1 The instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Employment Relations, Consumer and Postal Affairs at the Department for Business, Innovation and Skills has made the following statement regarding Human Rights

"In my view the provisions of the European Union (Definition of Treaties) (Republic of Korea Free Trade Agreement) Order 2011 are compatible with the Convention rights."

7. Policy Background

7.1 The Agreement presented in this instrument represents the outcome of the FTA negotiations undertaken by the European Commission (acting on behalf of the European Union and its Member States) with the Republic of South Korea. The Agreement delivers on the negotiating directives approved by the Council in 2007, and the European Parliament's objectives (2007/2186(INI)) have been addressed.

7.2 On 23 April 2007 the Council authorised the Commission to open negotiations with the Republic of South Korea with a view to concluding an EU-Republic of Korea FTA. Following the conclusion of negotiation in summer 2009, the Agreement was signed by Member States on 16 September 2010 and by the South Korean Trade Minister, the European Commission and Belgian Presidency on 6 October 2010. The European Parliament then gave its consent to both the Agreement and the Bilateral Safeguard clause on 17 February 2011.

7.3 South Korea is the world's 13th largest economy, and the UK's 26th largest export market. Exported UK goods and services are worth approximately £1.3 billion annually. However, UK exporters currently face high barriers to trade with the country: tariffs average 6.8% for industrial and 48.3% for agricultural goods. Regulatory barriers are extensive. The Agreement presented in the instrument addresses these issues.

7.4 The FTA will boost growth and create jobs and is estimated to bring £500 million of benefits to the UK per year. The Agreement is comprehensive and includes provisions in the following areas which are fully outlined in the Explanatory Memorandum accompanying the Command Paper: Trade in Goods; Trade Remedies; Technical Barriers to Trade; Sanitary and Phytosanitary Measures; Customs and Trade Facilitation; Trade in Services and Investment, Establishment and E-Commerce; Payments and Capital Movements; Government Procurement; Intellectual Property; Competition; Transparency; Trade & Sustainable Development; and Dispute Settlement. The provisions in these areas will facilitate trade between the EU and Korea, and create new opportunities for EU and UK businesses for key sectors.

7.5 The liberalisation of Korean tariffs on industrial goods scheduled in the FTA will save EU exporters approximately €1.2bn (£1.07bn) in duties annually, half of which will be immediate. The Agreement delivers on a key priority for the UK throughout the negotiations which was the removal of tariffs on critical export products such as pharmaceuticals, electronics, cars and car parts and whisky (total exports of these products to Korea were worth £808m in 2008). The FTA will also fully liberalise tariffs on nearly all of the EU's €1.1 billion annual agricultural exports to South Korea saving EU exporters a further €380m (£339m) in duties annually.

7.6 The Agreement's provisions on trade in services will provide liberalisation of trade in services and establishment as well as regulatory provisions on certain aspects of establishment and services trade. The FTA will address the extensive regulatory barriers faced by EU companies when exporting goods and services to South Korea. The Agreement includes innovative approaches to removing non-tariff barriers. For example, in addition to eliminating the need for retesting in some sectors including electronics and automotives, mechanisms for more effective and enforceable transparency in Korean pricing decisions for pharmaceuticals are included in the Agreement. These provisions will make the trading environment in Korea more predictable, helping to avoid uncertainty and increase business confidence.

7.7 The UK believes the Agreement represents a balanced outcome of negotiations and one that is fully consistent with the UK's policy on FTAs and beneficial for the UK overall

7.8 Consolidation – not applicable

8. Consultation outcome

8.1 The Parliamentary Scrutiny and Select Committees have been consulted on the proposals relating to signature, provisional application and conclusion of this Agreement.

8.2 Throughout the negotiations for the FTA, BIS has actively engaged and consulted with business, across Government and has represented agreed UK policy to the European Commission.

8.3 UK Government officials who have been consulted on this substance of this Explanatory Memorandum include the Foreign and Commonwealth Office, Department for International Development, Department for Environment Food and Rural Affairs, HM Treasury, Department for Culture, Media and Sport, Intellectual Property Office and the Home Office. UK representatives based in South Korea and in Brussels have also been consulted.

9. Guidance

9.1 This Agreement will not lead to any new regulatory measures and therefore there is no need for new guidance.

9.2 UK Trade and Investment (UKTI) held a business open day on 15 March 2010. The event outlined the opportunities available to businesses as a result of the EU-South Korea FTA and featured case studies of UK companies successfully operating in South Korea. UKTI also produced a guide for businesses entitled "South Korea - Open for Business: 100 Opportunities for UK companies in South Korea following the EU-South Korea Free Trade Agreement".

10. Impact

10.1 The financial implications of this FTA have been considered by economists within BIS and the assessment is that there is unlikely to be significant impact on business and the public purse.

10.2 Dismantling of tariffs in the automotive sector may increase competitive pressures on UK and EU automotive industry. However, these reductions will be phased in slowly with critical safeguards in place to protect manufacturers. Furthermore, UK automotive sector exporters can benefit significantly from the removal of technical barriers to trade in South Korea.

10.3 An impact assessment has been prepared on the EU-Republic of Korea FTA and this is attached.

11. Regulating Small Business

11.1 The Agreement will not lead to any new regulatory measures and there is no regulatory impact on small business.

12. Monitoring and Review

12.1 The FTA incorporates clauses in the Agreement which state that there are mechanisms by which to monitor and review the impact of the different chapters following entry into force of the Agreement.

13. Contact

13.1 Any queries regarding the instrument can be directed to Sim Dhensa or Esther Williams in the Trade Policy Unit at the Department for Business, Innovation and Skills. Their contact details are as follows:

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