Free Trade Agreement between the Republic of Korea and the United States of America

The Government of the Republic of Korea (Korea) and the Government of the United States of America (United States) (the Parties):

Recognizing their longstanding and strong partnership, and desiring to strengthen their close economic relations;

Convinced that a free trade area will create an expanded and secure market for goods and services in their territories and a stable and predictable environment for investment, thus enhancing the competitiveness of their firms in global markets;

Desiring to raise living standards, promote economic growth and stability, create new employment opportunities, and improve the general welfare in their territories by liberalizing and expanding trade and investment between their territories;

Seeking to establish clear and mutually advantageous rules governing their trade and investment and to reduce or eliminate the barriers to trade and investment between their territories;

Agreeing that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement;

Resolved to contribute to the harmonious development and expansion of world trade by removing obstacles to trade through the creation of a free trade area and to avoid creating new barriers to trade or investment between their territories that could reduce the benefits of this Agreement;

Desiring to strengthen the development and enforcement of labor and environmental laws and policies, promote basic workers' rights and sustainable development, and implement this Agreement in a manner consistent with environmental protection and conservation;

Building on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral, regional, and bilateral agreements and arrangements to which they are both parties; and

Committed to furthering their economic leadership in the Asia Pacific region, in particular by seeking to reduce barriers to trade and investment in the region;

HAVE AGREED as follows:

Chapter One. INITIAL PROVISIONS AND DEFINITIONS

Section A. Initial Provisions

Article 1.1. ESTABLISHMENT OF A FREE TRADE AREA

Consistent with Article XXIV of GATT 1994 and Article V of GATS, the Parties hereby establish a free trade area in accordance with the provisions of this Agreement.

Article 1.2. RELATION TO OTHER AGREEMENTS

1. The Parties affirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.

2. For greater certainty, this Agreement shall not be construed to derogate from any international legal obligation between

the Parties that provides for more favorable treatment of goods, services, investments, or persons than that provided for under this Agreement.

Article 1.3. EXTENT OF OBLIGATIONS

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by regional levels of government.

Section B. General Definitions

Article 1.4. DEFINITIONS

For purposes of this Agreement, unless otherwise specified:

central level of government means:

(a) for Korea, the central level of government; and

(b) for the United States, the federal level of government; covered investment means, with respect to a Party, an investment, as defined in Article 11.28 (Definitions), in its territory of an investor of the other Party that is in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

customs duties includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, (1) but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article 11:2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) antidumping or countervailing duty that is applied pursuant to a Party's law; or

(c) fee or other charge in connection with importation commensurate with the cost of services rendered;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

days means calendar days;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

enterprise of a Party means an enterprise constituted or organized under a Party's law;

existing means in effect on the date this Agreement enters into force;

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;

GATS means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

goods of a Party means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

Import Licensing Agreement means the Agreement on Import Licensing Procedures, contained in Annex 1A to the WTO Agreement;

Joint Committee means the Joint Committee established under Article 22.2 (Joint Committee);

measure includes any law, regulation, procedure, requirement, or practice; national means:

(a) with respect to Korea, a Korean national within the meaning of the Nationality Act (2) and

(b) with respect to the United States, "national of the United States" as defined in the Immigration and Nationality Act;

originating means qualifying under the rules of origin set out in Chapter Four (Textiles and Apparel) or Six (Rules of Origin and Origin Procedures);

person means a natural person or an enterprise; person of a Party means a national or an enterprise of a Party;

preferential tariff treatment means the duty rate applicable under this Agreement to an originating good;

regional level of government means, for the United States, a state of the United States, the District of Columbia, or Puerto Rico; for Korea, "regional level of government" is not applicable;

remanufactured goods means goods classified in HS Chapter 84, 85, 87, or 90, or under heading 94.02 that:

(a) are entirely or partially comprised of recovered goods as defined in Article 6.22 (Definitions); and

(b) have a similar life expectancy and enjoy a factory warranty similar to such new goods;

Safeguards Agreement means the Agreement on Safeguards, contained in Annex 1A to the WTO Agreement;

sanitary or phytosanitary measure means any measure referred to in paragraph 1 of Annex A of the SPS Agreement;

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party; (3)

TBT Agreement means the Agreement on Technical Barriers to Trade, contained in Annex 1A to the WTO Agreement;

territory means:

(a) with respect to Korea, the land, maritime, and air space over which Korea exercises sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its domestic law; and

(b) with respect to the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) the foreign trade zones located in the United States and Puerto Rico; and

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise sovereign rights with respect to the seabed and subsoil and their natural resources;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement; (4)

WTO means the World Trade Organization; and

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on April 15, 1994.

(1) For greater certainty, "customs duty" includes an adjustment tariff imposed pursuant to Article 69 of Korea's Customs Act.

(2) A natural person who is domiciled in the area north of the Military Demarcation Line on the Korean Peninsula shall not be entitled to benefits under this Agreement.

(3) For greater certainty, ownership, or control through ownership interests, may be direct or indirect.

(4) For greater certainty, "TRIPS Agreement" includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

Chapter Two. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 2.1. SCOPE AND COVERAGE

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods of a Party.

Section A. National Treatment

Article 2.2. NATIONAL TREATMENT

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretive notes, and to this end Article III of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment that regional level of government accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A. Section B: Elimination of Customs Duties

Article 2.3. ELIMINATION OF CUSTOMS DUTIES

1. Except as otherwise provided in this Agreement, neither Party may increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 2-B.

3. On the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2-B. An agreement by the Parties to accelerate the elimination of a customs duty on a good shall supercede any duty rate or staging category determined pursuant to their Schedules to Annex 2-B for that good when approved by each Party in accordance with its applicable legal procedures.

4. For greater certainty, a Party may:

(a) raise a customs duty to the level established in its Schedule to Annex 2-B following a unilateral reduction; or

(b) maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO.

Section C. Special Regimes

Article 2.4. WAIVER OF CUSTOMS DUTIES

1. Neither Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement.

2. Neither Party may, explicitly or implicitly, condition on the fulfillment of a performance requirement the continuation of any existing waiver of customs duties.

Article 2.5. TEMPORARY ADMISSION OF GOODS

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and

cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration;

(c) commercial samples and advertising films and recordings; and

(d) goods admitted for sports purposes.

2. Each Party shall, at the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party may condition the duty-free temporary admission of a good referred to in paragraph 1, other than to require that the good:

(a) be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;

(b) not be sold or leased while in its territory;

(c) be accompanied by a security in an amount no greater than 110 percent of the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(d) be capable of identification when exported;

(e) be exported on the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, or within one year, unless extended;

(f) be admitted in no greater quantity than is reasonable for its intended use; and

(g) be otherwise admissible into the Party's territory under its law.

4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good plus any other charges or penalties provided for under its law.

5. Each Party shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.

7. Each Party shall provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services):

(a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such container;

(b) neither Party may require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;

(c) neither Party may condition the release of any obligation, including any security, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and

(d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes the container to the territory of the other Party.

Article 2.6. GOODS RE-ENTERED AFTER REPAIR OR ALTERATION

1. Neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether the repair or alteration:

(a) could be performed in the territory of the Party from which the good was exported for repair or alteration; or

(b) has increased the value of the good.

2. Neither Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

3. For purposes of this Article, "repair or alteration" does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

Article 2.7. DUTY-FREE ENTRY OF COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE AND PRINTED ADVERTISING MATERIALS

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

(a) the samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of the other Party or a non-Party; or

(b) the advertising materials be imported in packets that each contain no more than one copy of each such material and that neither the materials nor the packets form part of a larger consignment.

Section D. Non-Tariff Measures

Article 2.8. IMPORT AND EXPORT RESTRICTIONS

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, mutatis mutandis. (1)

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;

(b) import licensing conditioned on the fulfillment of a performance tequirement; or

(c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

(a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or

(b) requiring as a condition for exporting the good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

5. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in the territory of the other Party.

6. Neither Party may, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

7. For greater certainty, paragraph 6 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purpose of facilitating communications between its regulatory authorities and that person.

8. For purposes of paragraph 6, distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.

(1) For greater certainty, paragraph 1 applies, inter alia, to prohibitions or restrictions on the importation of remanufactured goods.

Article 2.9. IMPORT LICENSING

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement. (2)

2. (a) Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing import licensing procedures, if any. The notification shall:

(i) include the information specified in Article 5 of the Import Licensing Agreement; and

(ii) be without prejudice as to whether the import licensing procedure is consistent with this Agreement.

(b) Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government Internet site or in a single official journal. To the extent possible, the Party shall do so at least 20 days before the new procedure or modification takes effect.

3. Neither Party may apply an import licensing procedure to a good of the other Party unless the Party has complied with the requirements of paragraph 2 with respect to that procedure.

(2) For purposes of paragraph 1 and for greater certainty, in determining whether a measure is inconsistent with the Import Licensing Agreement, the Parties shall apply the definition of "import licensing" contained in that Agreement.

Article 2.10. ADMINISTRATIVE FEES AND FORMALITIES

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article I:2 of GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

3. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

4. Neither Party may adopt or maintain a merchandise processing fee on originating goods.

Article 2.11. EXPORT DUTIES, TAXES, OR OTHER CHARGES

Neither Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

Article 2.12. ENGINE DISPLACEMENT TAXES

1. Korea:

(a) shall amend the Special Consumption Tax, established under Article 1 of the Special Consumption Tax Act, to provide that:

(i) vehicles with engines of 1000 cubic centimeters (ccs) or less are not taxed, vehicles with engines of between 1001 ccs and 2000 ccs are taxed at a single rate of no more than 5 percent, (3) and vehicles with engines of more than 2000 ccs are taxed at a single rate of no more than 8 percent; and

(ii) within 3 years of the date this Agreement enters into force, vehicles with engines of more than 1000 ccs are taxed at a single rate of no more than 5 percent;

(b) shall amend the Annual Vehicle Tax, established under Article 196-5 of the Local Tax Act, to provide that vehicles with engines of 1000 ccs or less are taxed at a single rate of no more than 80 Korean won per cc, vehicles with engines of between 1001 ccs and 1600 ccs are taxed at a single rate of no more than 140 Korean won per cc, and vehicles with engines of more than 1600 ccs are taxed at a single rate of no more than 200 Korean won per cc; and

(c) may not modify its Subway Bonds or Regional Development Bonds (4) so as to increase the existing disparity in bond purchase rates between categories of vehicles.

2. Korea shall make the rate reduction prescribed by paragraph 1(a)(ii) for vehicles with engines of more than 2000 ccs in three equal annual stages. Each annual stage of reduction made after the date this Agreement enters into force shall take effect on January 1 of the relevant year.

3. Korea may not adopt new taxes based on vehicle engine displacement or modify an existing tax to increase the disparity in tax rates between categories of vehicles.

4. The Parties recognized that consumers in Korea are eligible for a refund of approximately 80 percent (5) of Subway Bonds and Regional Development Bonds immediately on the purchase of a new motor vehicle. Korea will take steps to promote public awareness of these refund programs, including by ensuring that information on how to obtain a refund is made publicly available, including on the Internet.

(3) The percentages referred to in subparagraph (a) are percentages of the value of the vehicle, determined in accordance with the Special Consumption Tax Act.

(4) Subway Bonds are established under Article 13.1 (2) and Article 13.2 of the Urban Railroad Act and Article 12.1 of the Presidential Decree of the Urban Railroad Act. Regional Development Bonds are established under the following local government ordinances: Article 6 of the Ulsan Metropolitan City Ordinance for Regional Development Fund, Article 7 of the Gyeonggi-do Ordinance for Regional Development Fund, Article 5 of the Gyeongsangnam-do Ordinance for Regional Development Fund, Article 5 of the Gyeongsangbuk-do Ordinance for Regional Development Fund, Article 6 of the Jeollabuk- do Ordinance for Regional Development Fund, Article 7 of the Jeollanam-do Ordinance for Regional Development Fund, Article 7 of the Chungcheongbuk-do Ordinance for Regional Development Fund, Article 5 of the Chungcheongnam-do Ordinance for Regional Development Fund, Article 5 of the Gangwon-do Ordinance for Regional Development Fund, and Article 9 of the Jeju-do Ordinance for Regional Development Fund.

(5) The percentage available for refund varies depending on the prevailing market interest rate for bonds.

Section E. Other Measures

Article 2.13. DISTINCTIVE PRODUCTS

1. Korea shall recognize Bourbon Whiskey and Tennessee Whiskey, which is a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee, as distinctive products of the United States. Accordingly, Korea shall not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey, if it has not been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey.

2. The United States shall recognize Andong Soju and Gyeongju Beopju as distinctive products of Korea. Accordingly, the United States shall not permit the sale of any product as Andong Soju or Gyeongju Beopju, if it has not been manufactured in Korea in accordance with the laws and regulations of Korea governing the manufacture of Andong Soju and Gyeongju Beopju.

3. Promptly after this Agreement enters into force, each Party shall notify the other Party of its existing laws and regulations governing the manufacture of these products, and thereafter shall notify the other Party of any modifications it makes to those laws and regulations.

4. For greater certainty, nothing in this Article shall be construed to create or confer any right relating to a trademark or geographical indication.

Section F. Institutional Provisions

Article 2. COMMITTEE ON TRADE IN GOODS

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party. 2. The Committee shall meet on the request of a Party or the Joint Committee to consider any matter arising under this Chapter, Chapter Six (Rules of Origin and Origin Procedures), or Chapter Seven (Customs Administration and Trade Facilitation).

3. The Committee's functions shall include:

(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate; and

(b) addressing tariff and non-tariff barriers to trade in goods between the Parties and, if appropriate, referring such matters to the Joint Committee for its consideration.

4. The Committee shall also:

(a) discuss and endeavor to resolve any difference that may arise between the Parties on matters related to the classification of goods under the Harmonized System;

(b) review conversion to the Harmonized System 2007 nomenclature and its subsequent revisions to ensure that each Party's obligations under this Agreement are not altered, and consult to resolve any conflicts between,

(i) the Harmonized System 2007 or subsequent nomenclature and Annex 2-B; and

(ii) Annex 2-B and national nomenclatures; and

(c) discuss any matter arising under Article 7.2 (Release of Goods) or 7.5 (Cooperation), including procedures for the expedited release of goods and matters related to risk management.

The Committee may convene a subcommittee on customs matters to assist the Committee in its work under this paragraph.

Section G. Definitions

Article 2.15. DEFINITIONS

For purposes of this Chapter:

AD Agreement means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

commercial samples of negligible value means commercial samples having a value, individually or in the aggregate as shipped, of not more than the amount specified in a Party's laws, regulations, or procedures governing temporary admission, or so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or use except as commercial samples;

consular transactions means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

consumed means

(a) actually consumed; or

(b) further processed or manufactured so as to result in a substantial change in the value, form, or use of the good or in the production of another good;

duty-free means free of customs duty;

goods intended for display or demonstration includes their component parts, ancillary apparatus, and accessories;

goods temporarily admitted for sports purposes means sports requisites for use in sports contests, demonstrations, or training in the territory of the Party into whose territory such goods are admitted;

import licensing means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the territory of the importing Party;

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting a waiver of customs duties or an import license be substituted for imported goods;

(c) a person benefiting from a waiver of customs duties or an import license purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;

(d) a person benefiting from a waiver of customs duties or an import license produce goods or supply services, in the territory of the Party granting the waiver of customs duties or the import license, with a given level or percentage of domestic content; or

(ce) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that an imported good be: (63) subsequently exported;

(g) used as a material in the production of another good that is subsequently exported;

(h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(i) substituted by an identical or similar good that is subsequently exported;

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials, and posters, that are used to promote, publicize, or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge; and

SCM Agreement means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement.

Chapter Three. AGRICULTURE

Article 3.1. SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party relating to trade in agricultural goods. (1)

2. In addition, Article 3.2 shall apply with respect to all goods included in Appendix 2-B-1 of a Party's Schedule to Annex 2-B (Tariff Elimination), whether or not those goods are agricultural goods.

(1) For greater clarity, Article 3.1 is subject to paragraph 3(1) of the General Notes accompanying Korea's Schedule to Annex 2-B.

Article 3.2. ADMINISTRATION AND IMPLEMENTATION OF TARIFF-RATE QUOTAS

1. Each Party shall implement and administer the tariff-rate quotas set out in Appendix 2-B-1 of its Schedule to Annex 2-B (Tariff Elimination) (TRQs) in accordance with Article XII of GATT 1994, including its interpretive notes, and the Import Licensing Agreement.

2. Each Party shall ensure that:

(a) its procedures for administering its TRQs are transparent, made available to the public, timely, non-discriminatory, responsive to market conditions, minimally burdensome to trade, and reflect end-user preferences;

(b) any person of a Party that fulfills the importing Party's legal and administrative requirements shall be eligible to apply and to be considered for a quota allocation under the Party's TRQs. Unless the Parties otherwise agree, any processor, retailer, restaurant, hotel, food service distributor or institution, or other person is eligible to apply and to be considered to receive a quota allocation. Any fees charged for services related to an application for a quota allocation shall be limited to the actual cost of the service rendered;

(c) except as specified in Appendix 2-B-1 of its Schedule to Annex 2-B, it does not allocate any portion of a quota to a producer group, condition access to a quota allocation on the purchase of domestic production, or limit access to a quota allocation to processors; and

(d) it allocates quotas in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request. Except as otherwise provided in each TRQ provision and the applicable tariff line in Appendix 2-B-1 of a Party's Schedule to Annex 2-B, each quota allocation shall be valid for any item or mixture of items subject to a particular TRQ, regardless of the item's or mixture's specification or grade, and shall not be conditioned on the item's or mixture's intended end-use or package size.

3. Each Party shall identify the entities responsible for administering its TRQs.

4. Each Party shall make every effort to administer its TRQs in a manner that allows importers to fully utilize quota quantities.

5. Neither Party may condition application for, or utilization of, quota allocations under a TRQ on the re-export of a good.

6. On the written request of either Party, the Parties shall consult regarding a Party's administration of its TRQs.

7. Except as otherwise provided in Appendix 2-B-1 of its Schedule to Annex 2-B, each Party shall make the entire quota quantity established in that Appendix available to quota applicants beginning on the date the Agreement enters into force during the first year, and on the first business day of each year thereafter. Over the course of each year, the importing Party's administering authority shall publish, in a timely fashion on its designated publicly available Internet site, utilization rates and remaining available quantities for each TRQ.

Article 3.3. AGRICULTURAL SAFEGUARD MEASURES

1. Notwithstanding Article 2.3 (Elimination of Customs Duties), a Party may apply a measure in the form of a higher import duty on an originating agricultural good listed in that Party's Schedule to Annex 3-A, consistent with paragraphs 2 through 8 if the aggregate volume of imports of that good in any year exceeds a trigger level as set out in its Schedule to Annex 3-A (trigger level).

2. The duty under paragraph 1 shall not exceed the lesser of the prevailing most-favoured-nation (MFN) applied rate, or the MFN applied rate of duty in effect on the day immediately preceding the date this Agreement enters into force, or the tariff rate set out in its Schedule to Annex 3-A.

3. The duties each Party applies under paragraph 1 shall be set according to its Schedule to Annex 3-A.

4. Neither Party may apply or maintain an agricultural safeguard measure under this Article and at the same time apply or maintain, with respect to the same good:

(a) a safeguard measure under Chapter Ten (Trade Remedies); or

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

5. A Party shall implement any agricultural safeguard measure in a transparent manner. Within 60 days after imposing an agricultural safeguard measure, the Party applying the measure shall notify the other Party in writing and provide the other Party with relevant data concerning the measure. On the written request of the exporting Party, the Parties shall consult regarding application of the measure.

6. The Joint Committee or the Committee on Agricultural Trade established under Article 3.4 may review and discuss the implementation and operation of this Article.

7. Neither Party may apply or maintain an agricultural safeguard measure on an originating agricultural good:

(a) if the period specified in the agricultural safeguard provisions of the Party's Schedule to Annex 3-A has expired; or

(b) if the measure increases the in-quota duty on a good subject to a TRQ set out in Appendix 2-B-1 of its Schedule to Annex 2-B.

8. Originating agricultural goods from either Party shall not be subject to any duties applied pursuant to any agricultural safeguard measure taken under the Agriculture Agreement.

Article 3.4. COMMITTEE ON AGRICULTURAL TRADE

1. Not later than 90 days after the date this Agreement enters into force, the Parties shall establish a Committee on Agricultural Trade, comprising representatives of each Party.

2. The Committee shall provide a forum for:

(a) monitoring and promoting cooperation on the implementation and administration of this Chapter;

(b) consulting on matters related to this Chapter in coordination with other committees, subcommittees, working groups, or other bodies established under this Agreement; and

(c) undertaking any additional work that the Joint Committee may assign.

3. The Committee shall meet at least once a year unless the Parties otherwise agree. Meetings of the Committee shall be chaired by the representatives of the Party hosting the meeting.

Article 3.5. DEFINITIONS

For purposes of this Chapter:

Agriculture Agreement means the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement; and

agricultural goods means those goods referred to in Article 2 of the Agriculture Agreement.

Chapter Four. TEXTILES AND APPAREL

Article 4.1. BILATERAL EMERGENCY ACTIONS

1. If, as a result of the reduction or elimination of a duty under this Agreement, a textile or apparel good benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such time as may be necessary to prevent or remedy such damage and to facilitate adjustment by the domestic industry:

(a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or

(b) increase the rate of customs duty on the good to a level not to exceed the lesser of

(i) the most-favored-nation (MFN) applied rate of duty on the good in effect at the time the action is taken; and

(ii) the MFN applied rate of duty on the good in effect on the date this Agreement enters into force.

2. In determining serious damage, or actual threat thereof, the importing Party:

(a) shall examine the effect of increased imports of the good from the exporting Party on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(b) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

3. The importing Party may take an emergency action under this Article only following an investigation. The importing Party shall:

(a) carry out any investigation under this Article in accordance with procedures it has established; and

(b) transmit its procedures to the other Party on the date this Agreement enters into force or before it initiates an investigation under this Article.

4. The importing Party shall deliver to the exporting Party, without delay, written notice of its intent to take emergency action and, on the request of the exporting Party, shall enter into consultations with that Party regarding the matter.

5. An importing Party:

(a) may not maintain an emergency action for a period exceeding two years except that the period may be extended by up to two years;

(b) may not take or maintain an emergency action against a good beyond ten years after the date the Party must eliminate its customs duties on that good pursuant to this Agreement;

(c) may not take an emergency action more than once against the same good of the other Party; and

(d) shall, on termination of the emergency action, apply to the good that was subject to the emergency action the rate of customs duty that would have been in effect but for the action.

6. The Party taking an emergency action under this Article shall provide to the exporting Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. Such concessions shall be limited to textile or apparel goods, unless the Parties otherwise agree. If the Parties are unable to agree on compensation within 30 days of the application of an emergency action, the Party against whose good the emergency action is taken may take tariff action having trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. The tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action shall apply the tariff action only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate on the date the emergency action terminates.

7. Neither Party may take or maintain, with respect to the same good at the same time, an emergency action under this Article and:

(a) a safeguard measure under Chapter Ten (Trade Remedies); or

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Article 4.2. RULES OF ORIGIN AND RELATED MATTERS

Application of Chapter Six

1. Except as provided in this Chapter, including Annexes 4-A and 4-B, Chapter Six (Rules of Origin and Origin Procedures) applies to textile or apparel goods.

2. The rules of origin set forth in this Agreement shall not apply in determining the country of origin of a textile or apparel good for non-preferential purposes.

Consultations

3. On the request of either Party, the Parties shall consult to consider whether the rules of origin applicable to a particular textile or apparel good should be revised to address issues of availability of supply of fibers, yarns, or fabrics in the territories of the Parties.

4. In the consultations referred to in paragraph 3, each Party shall consider all data presented by the other Party that demonstrate substantial production in its territory of a particular fiber, yarn, or fabric. The Parties shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn, or fabric in a timely manner.

5. The Parties shall endeavor to conclude consultations within 60 days after delivery of a request under paragraph 3. If the Parties agree in the consultations to revise a rule of origin, the revision shall supersede any prior rule of origin for such good when approved by the Parties in accordance with Article 24.2 (Amendments).

Transitional Procedures for Goods Containing Fibers, Yarns, and Fabrics Not Available in Commercial Quantities

6. Annex 4-B sets out provisions applicable to certain goods containing fibers, yarns, or fabrics that are not available in commercial quantities in a timely manner in a Party's territory.

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7. A textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. Notwithstanding the preceding sentence, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed and finished in the territory of a Party. (1)

Treatment of Sets

8. Notwithstanding the specific rules of origin set out in Annex 4-A, textile or apparel goods classifiable under General Rule of Interpretation 3 of the Harmonized System as goods put up in sets for retail sale shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the customs value of the set.

(1) For purposes of paragraph 7, wholly formed and finished means all production processes and finishing operations, beginning with the extrusion of filaments, strips, film, or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

Article 4.3. CUSTOMS COOPERATION FOR TEXTILE OR APPAREL GOODS

1. The Parties shall cooperate for purposes of:

(a) enforcing or assisting in the enforcement of their respective measures affecting trade in textile or apparel goods;

(b) verifying and ensuring the accuracy of claims of origin;

(c) enforcing, or assisting in the enforcement of, measures implementing international agreements affecting trade in textile or apparel goods; and

(d) preventing circumvention of international agreements affecting trade in textile or apparel goods.

2. (a) Except as provided in subparagraphs (b) and (c), Korea shall obtain and update annually, through its competent authority, (2) the following information concerning each person engaged in the production of textile or apparel goods in its territory:

(i) the name and address of the person, including the location of all textile or apparel facilities owned or operated by that person in the territory of Korea;

(ii) the telephone number, facsimile number, and e-mail address of the person;

(iii) in the case of an enterprise, the names and nationalities of the owners, directors, and corporate officers, and their positions within the enterprise;

(iv) the number of employees the person employs and their occupations;

(v) a general description of the textile or apparel goods the person produces and the person's production capacity;

(vi) the number and type of machines the person uses to produce textile or apparel goods;

(vii) the approximate number of hours the machines operate per week;

(viii) the identity of any supplier to that person of textile or apparel goods, or fabrics, yarns, or fibers used in the production of those goods; and

(ix) the name of, and contact information for, each of the person's customers in the United States.

Korea shall provide this information to the United States annually, beginning within one year of the date this Agreement enters into force.

(b) Korea shall not be required to obtain and provide to the United States the information specified in subparagraph (a) with respect to any person that is engaged solely in the production of:

(i) textile or apparel goods, or fibers, yarns, or fabrics used in the production of those goods, that are not exported to the United States; or

(ii) with respect to goods classified under HS Chapter 61 or 62 that are exported to the United States, goods not used in the component that determines the tariff classification of the good, other than fabric used as visible lining material that satisfies the requirements of

(A) Chapter Rule 1 for Chapter 61 of Annex 4-A, in the case of a good classified under HS Chapter 61; or

(B) Chapter Rule 1 for Chapter 62 of Annex 4-A, in the case of a good classified under HS Chapter 62.

(c) Korea shall not be required to obtain and provide to the United States the information specified in subparagraph (a)(vii) through (ix) with respect to any small- or medium-sized enterprise that does not contract directly for the sale of its goods with an importer in the United States. (3)

(d) Korea may obtain the information required under subparagraph (a) from a representative industry association, provided that Korea takes appropriate steps to verify the accuracy of the information.

(e) Article 7.6 (Confidentiality) shall apply to any information provided in accordance with this paragraph that Korea designates as confidential.

3. On the request of the importing Party, the exporting Party shall conduct a verification for purposes of enabling the importing Party to determine that a claim of origin for a textile or apparel good is accurate. The exporting Party shall conduct such a verification, regardless of whether an importer claims preferential tariff treatment for the good. The exporting Party also may conduct such a verification on its own initiative.

4. On the request of a Party, the other Party shall endeavor to examine transshipped textile or apparel goods.(4)

5. Where the importing Party has a reasonable suspicion that a person of the exporting Party is engaging in unlawful activity relating to trade in textile or apparel goods, the exporting Party shall conduct, on the request of the importing Party, a verification for purposes of enabling the importing Party to determine that the person is complying with applicable customs measures affecting trade in textile or apparel goods, including measures that the exporting Party adopts and maintains pursuant to this Agreement and measures of either Party implementing any other international agreement regarding trade in textile or apparel goods, or to determine that a claim of origin regarding a textile or apparel good exported or produced by that person is accurate. For purposes of this paragraph, reasonable suspicion means a suspicion based on relevant factual information of the type set forth in Article 7.5 (Cooperation) or factors that indicate:

(a) circumvention by an enterprise of applicable customs measures affecting trade in textile or apparel goods, including measures adopted to implement this Agreement; or

(b) the existence of conduct that would facilitate the violation of measures relating to other international agreements affecting trade in textile or apparel goods or that would otherwise facilitate the nullification or impairment of rights or benefits accruing to a Party under those agreements.

6. The exporting Party, through its competent authorities, shall permit the importing Party, through its competent authorities, to assist in a verification conducted pursuant to paragraph 3 or 5, including by conducting, along with the competent authorities of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other person that may have evidence that is relevant to the verification. Any such visit should occur without providing prior notification to the exporter, producer, or other person. (5) The exporting Party shall seek permission to conduct the site visit from the person at the time of the visit. If an exporter, producer, or other person refuses to consent to a visit by the appropriate officials of the importing Party, the importing Party may consider that the verification cannot be completed and the determination described in paragraph 3 or 5 cannot be made and may take appropriate action as described in paragraph 10.

7. Each Party shall provide to the other Party, consistent with its law, production, trade, and transit documents, and other information necessary to conduct a verification under paragraph 3 or 5. Each Party shall consider any documents or information exchanged between the Parties in the course of such a verification to have been designated as confidential within the meaning of Article 7.6 (Confidentiality). Notwithstanding the preceding sentence and Article 7.6, a governmental entity of a Party may share information provided to it under this Article with other governmental entities of that Party for a purpose set forth in paragraph 1.

8. While a verification is being conducted, the importing Party may, consistent with its law, take appropriate action, which may include suspending the application of preferential tariff treatment to:

(a) the textile or apparel good for which a claim of origin has been made, in the case of a verification under paragraph 3; or

(b) any textile or apparel goods exported or produced by the person subject to a verification under paragraph 5, where the suspicion of unlawful activity relates to those goods. (6)

9. The Party conducting a verification under paragraph 3 or 5 shall provide the other Party with a written report on the results of the verification, which shall include all documents and facts supporting any conclusion that the Party reaches. Article 7.6 (Confidentiality) shall apply to any information contained in the report that the Party providing the report designates as confidential.

10. (a) If the importing Party is unable to make the determination described in paragraph 3 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its law, take appropriate action, including denying preferential tariff treatment to the textile or apparel good subject to the verification, and to similar goods exported or produced by the person that exported or produced the good.

(b) If the importing Party is unable to make one of the determinations described in paragraph 5 within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its law, take appropriate action, including denying preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification.

11. Before taking any action under paragraph 10, the importing Party shall notify the exporting Party. The importing Party may continue to take action under paragraph 10 until it receives information sufficient to enable it to make the determination described in paragraph 3 or 5, as the case may be. A Party may, consistent with its law, make public the identity of a person that the Party has determined to be engaged in circumvention as provided under this Article or that has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

12. On the request of either Party, the Parties shall consult to resolve any technical or interpretive difficulties that may arise under this Article or to discuss ways to improve the effectiveness of their cooperative efforts. In addition, either Party may request technical or other assistance from the other Party in implementing this Article. The Party receiving a request under this paragraph shall make every effort to respond favorably and promptly to it.

13. Any request for cooperation under this Article shall be made in writing and shall include a brief statement of the matter at issue and the cooperation requested.

(2) For purposes of paragraph 2, Korea's competent authority is the Ministry of Commerce, Industry and Energy or its successor.

(3) With respect to any small- or medium-sized enterprise, Korea may obtain the information required under subparagraph (a)(i) through (vi) from the producer of the end product in which the production of the small- or medium-sized enterprise is used.

(4) Paragraph 4 does not require the exporting Party to take any action with regard to transshipped textile or apparel goods that are not subject to a claim of origin, and that do not undergo processing or manipulation in its territory, other than to share information about those goods with the importing Party.

(5) In carrying out paragraph 6, Korea shall presume, due to the risk that the person would destroy or alter relevant evidence, that the purpose of the verification would not be achieved if its officials provided prior notice to the person.

(6) For greater certainty, nothing in paragraph 8 shall be construed to preclude the release of goods in accordance with Article 7.2 (Release of Goods).

Article 4.4. COMMITTEE ON TEXTILE AND APPAREL TRADE MATTERS

The Parties hereby establish a Committee on Textile and Apparel Trade Matters comprising representatives of each Party. The Committee shall meet on the request of either Party or the Joint Committee to consider any matter arising under this

Chapter.

Article 4.5. DEFINITIONS for Purposes of this Chapter:

Agreement on Textiles and Clothing means the Agreement on Textiles and Clothing, contained in Annex 1A to the WTO Agreement;

claim of origin means a claim that a textile or apparel good is an originating good or a good of a Party;

exporting Party means the Party from whose territory a textile or apparel good is exported;

importing Party means the Party into whose territory a textile or apparel good is imported;

small- or medium-sized enterprise means an enterprise that employs fewer than 50 employees;

textile or apparel good means a good listed in the Annex to the Agreement on Textiles and Clothing; and

transshipped means the removal of a good from the conveyance on which it was brought into the territory of a Party and the placement of the good on the same or another conveyance for the purpose of taking it out of the territory of the Party.

Chapter Five. PHARMACEUTICAL PRODUCTS AND MEDICAL DEVICES

Article 5.1. GENERAL PROVISIONS

The Parties recognize that while there are differences between each Party's health care system, the Parties share a commitment to promoting the development of and facilitating access to high-quality patented and generic pharmaceutical products and medical devices, as a means of continuing to improve the health of their nationals. In pursuing these objectives, the Parties affirm the importance of:

(a) adequate access to pharmaceutical products and medical devices in providing high quality health care;

(b) patented and generic pharmaceutical products and medical devices in reducing other more costly medical expenditures;

(c) sound economic incentives and competitive markets for the efficient development of and access to patented and generic pharmaceutical products and medical devices;

(d) appropriate government support of research and development in academic and commercial laboratories, intellectual property protections, and other incentives for innovation in the research and development of pharmaceutical products and medical devices;

(e) promoting innovation and timely and affordable access to safe and effective pharmaceutical products and medical devices through transparent and accountable procedures, without impeding a Party's ability to apply appropriate standards of quality, safety, and efficacy;

(f) ethical practices by pharmaceutical and medical device manufacturers and suppliers and by health care providers on a global basis in order to achieve open, transparent, accountable, and reasonable health care decision-making; and

(g) cooperation between the Parties, including each Party's regulatory authorities, to improve the safety and efficacy of pharmaceutical products and medical devices.

Article 5.2. ACCESS TO INNOVATION

To the extent that health care authorities at a Party’s central level of government operate or maintain procedures for listing pharmaceutical products, medical devices, or indications for reimbursement, or setting the amount of reimbursement for indications for reimbursement, or setting the amount of reimbursement for pharmaceutical products or medical devices, under health care programs operated by its central level of government, (1) the Party shall:

(a) ensure that the procedures, rules, criteria, and guidelines that apply to the listing of pharmaceutical products, medical devices, or indications for reimbursement, or setting the amount of reimbursement for pharmaceutical products or medical devices are fair, reasonable, and non-discriminatory;

(b) ensure that the Party's determination, if any, of the reimbursement amount for a pharmaceutical product or medical device, once approved by the appropriate regulatory authority as safe and effective, is based on competitive market-derived

prices; or if its determination is not based on competitive market-derived prices, then that Party shall:

(i) appropriately recognize the value of the patented pharmaceutical product or medical device in the amount of reimbursement it provides;

(ii) permit a manufacturer of the pharmaceutical product or medical device to apply, based on evidence of safety or efficacy, for an increased amount of reimbursement over that provided for comparator products, if any, used to determine the amount of reimbursement; and

(iii) permit a manufacturer of the pharmaceutical product or medical device, after a decision on a reimbursement amount is made, to apply for an increased amount of reimbursement for the product based on evidence the manufacturer provides on the product's safety or efficacy; and

(c) permit a manufacturer of the pharmaceutical product or medical device to apply for reimbursement of additional medical indications for the product, based on evidence the manufacturer provides on the product's safety or efficacy.

(1) Pharmaceutical formulary development and management shall be considered to be an aspect of government procurement of pharmaceutical products for health care agencies that engage in government procurement. Chapter Seventeen (Government Procurement), rather than this Chapter, shall apply to government procurement of pharmaceutical products.

Article 5.3. TRANSPARENCY

1. Each Party shall ensure that its laws, regulations, and procedures of general application respecting any matter related to the pricing, reimbursement, or regulation of pharmaceutical products or medical devices are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measures that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

3. With respect to proposed regulations of general application of its central level of government respecting any matter related to the pricing, reimbursement, or regulation of pharmaceutical products or medical devices that are published in accordance with paragraph 2(a), each Party:

(a) shall publish the proposed regulations, including an explanation of the purpose of those regulations, in a single official journal of national circulation,â and encourage their distribution through additional outlets;

(b) should in most cases publish the proposed regulations not less than 60 days before the date public comments are due; and

(c) shall, at the time it adopts final regulations, address in writing significant, substantive comments received from interested persons during the comment period and explain any substantive revision it made to the proposed regulations.

4. To the extent possible, each Party should allow reasonable time between publication of final regulations of general application of its central level of government respecting any matter related to the pricing, reimbursement, or regulation of pharmaceutical products or medical devices and their effective date.

5. To the extent that health care authorities at a Party's central level of government operate or maintain procedures for listing pharmaceutical products, medical devices, or indications for reimbursement, or setting the amount of reimbursement for pharmaceutical products or medical devices, under health care programs operated by its central level of government, a Party shall:

(a) ensure that consideration of all formal requests for the pricing or approval of pharmaceutical products or medical devices for reimbursement is completed within a reasonable, specified period;

(b) disclose to applicants within a reasonable, specified period all procedural tules, methodologies, principles, criteria (including those used, if any, to determine comparator products), and guidelines used to determine pricing and reimbursement of pharmaceutical products or medical devices;

(c) afford applicants timely and meaningful opportunities to provide comments at relevant points in the pricing and

reimbursement decision- making processes for pharmaceutical products or medical devices;

2 Notwithstanding subparagraph (a), health care authorities at a Party's central level of government that are not authorized under the Party's law to publish their regulations in the official journal shall publish their proposed regulations, including explanations of the purpose of the proposed regulations, on prominent locations on their official Internet sites.

(d) within a reasonable, specified period, provide applicants with meaningful, detailed written information regarding the basis for recommendations or determinations of the pricing and reimbursement of pharmaceutical products or medical devices, including citations to any expert opinions or academic studies relied upon in making such recommendations or determinations;

(e) make available an independent review process that may be invoked at the request of an applicant directly affected by a recommendation or determination;

(f) make all reimbursement decision-making bodies open to all stakeholders, including innovative and generic companies; and

(g) make publicly available the membership list of all committees related to pricing or reimbursement of pharmaceutical products or medical devices.

6. Each Party shall ensure that all measures of general application respecting any matter related to the pricing, reimbursement, or regulation of pharmaceutical products or medical devices are administered in a reasonable, objective, and impartial manner.

Article 5.4. DISSEMINATION OF INFORMATION

Each Party shall permit a pharmaceutical manufacturer to disseminate through the manufacturer's official Internet site registered in the Party's territory and through medical journal Internet sites registered in the Party's territory, that include direct links to the manufacturer's official Internet site, truthful and not misleading information regarding the manufacturer's pharmaceutical product, provided that the product has marketing approval in the Party's territory and the information includes a balance of risks and benefits and is limited to indications for which the Party's competent regulatory authorities have granted market approval for that product.

Article 5.5. ETHICAL BUSINESS PRACTICES

1. Each Party shall adopt or maintain appropriate measures to prohibit pharmaceutical product or medical device manufacturers and suppliers from providing improper inducements to health care professionals or institutions for the listing, purchasing, or prescribing of pharmaceutical or medical device products eligible for reimbursement under health care programs operated by its central level of government.

2. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the measures that it adopts or maintains in conformity with paragraph 1.

Article 5.6. REGULATORY COOPERATION

1. Consistent with Article 9.8 (Committee on Technical Barriers to Trade), a Party will facilitate consideration of a request to recognize the results of conformity assessment procedures conducted by bodies in the other Party's territory, including a request for the negotiation of an agreement with respect to Good Manufacturing Practices, Good Laboratory Practices, and marketing approval of generic drugs.

2. The Parties shall report on the feasibility and appropriateness of granting any such request to the Medicines and Medical Devices Committee and to the Committee on Technical Barriers to Trade established under Article 9.8.

Article 5.7. MEDICINES AND MEDICAL DEVICES COMMITTEE

1, The Parties hereby establish a Medicines and Medical Devices Committee.

2. The functions of the Committee shall be to:

(a) monitor and support the implementation of this Chapter;

(b) promote discussion and mutual understanding of issues related to this Chapter; and

(c) explore opportunities for collaboration on issues related to this Chapter.

3. The Committee shall:

(a) comprise officials of central level government agencies responsible for central level health care programs and other appropriate central level government officials, and shall be co-chaired by health and trade officials of each Party;

(b) meet at least once a year unless the Parties otherwise agree; and

(c) report the results of each meeting to the Joint Committee.

4. The Committee may establish, and determine the scope and mandate of, working groups to address technical aspects of issues related to this Chapter, including those related to regulatory cooperation.

Article 5.8. DEFINITIONS

For purposes of this Chapter:

health care authorities at a Party's central level of government means entities that are part of or have been established by a Party's central level of government to operate or administer its health care programs;

health care programs operated by a Party's central level of government means health care programs in which the health care authorities of a Party's central level of government make the decisions regarding matters to which this Chapter applies; (3) and

pharmaceutical product or medical device means a pharmaceutical, biologic, medical device, or diagnostic product.

(3) For greater certainty, Medicaid is a regional level of government health care program in the United States, not a central level of government program.

Chapter Six. RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A. Rules of Origin

Article 6.1. ORIGINATING GOODS (1)

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where it is:

(a) a good wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) produced entirely in the territory of one or both of the Parties and (i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4-A (Specific Rules of Origin for Textile or Apparel Goods) or Annex 6-A, or

(ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4-A or Annex 6-A,

and the good satisfies all other applicable requirements of this Chapter; or

(c) produced entirely in the territory of one or both of the Parties exclusively from originating materials.

(1) For greater certainty, whether a good is originating is not determinative of whether the good is also admissible.

Article 6.2. REGIONAL VALUE CONTENT.

1. Where Annex 6-A specifies a regional value content test to determine whether a good is originating, each Party shall provide that the importer, exporter, or producer may calculate regional value content based on one or the other of the following methods:

(a) Method Based on Value of Non-Originating Materials (Build-down Method)

RVC = AV - VNM/AV x 100

(b) Method Based on Value of Originating Materials (Build-up Method)

RVC= VOM/AV x 100

where,

RVC is the regional value content, expressed as a percentage;

AV is the adjusted value of the good;

VNM is the value of non-originating materials, other than indirect materials, acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced; and

VOM is the value of originating materials, other than indirect materials, acquired or self-produced and used by the producer in the production of the good.

2. Each Party shall provide that all costs considered for the calculation of regional value content shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

3. Where Annex 6-A specifies a regional value content test to determine if an automotive good (2) is originating, each Party shall provide that the importer, exporter, or producer may calculate the regional value content of that good as provided in paragraph 1 or based on the following method:

Net Cost Method (for Automotive Goods)

RVC = NC - VNM/NC x 100

where,

RVC is the regional value content, expressed as a percentage;

NC is the net cost of the good; and

VNM is the value of non-originating materials, other than indirect materials, acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced.

(2) Paragraph 3 applies solely to goods classified under the following HS headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.01 through 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

4. Each Party shall provide that, for purposes of the regional value content method in paragraph 3, the importer, exporter, or producer may use a calculation averaged over the producer's fiscal year, using any one of the following categories, on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

(a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;

(b) the same class of motor vehicles produced in the same plant in the territory of a Party; or

(c) the same model line of motor vehicles produced in the territory of a Party.

5. Each Party shall provide that, for purposes of calculating regional value content under paragraph 3 for automotive materials (3) produced in the same plant, an importer, exporter, or producer may use a calculation:

(a) averaged,

(i) over the fiscal year of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month; or

(iii) over the fiscal year of the automotive materials producer,

provided that the good was produced during the fiscal year, quarter, or month forming the basis for the calculation;

(b) in which the average in subparagraph (a) is calculated separately for such goods sold to one or more motor vehicle producers; or

(c) in which the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of the other Party.

(3) Paragraph 5 applies solely to automotive materials classified in the following HS headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

Article 6.3. VALUE OF MATERIALS

Each Party shall provide that, for purposes of Articles 6.2 and 6.6, the value of a material shall be:

(a) for a material imported by the producer of the good, the adjusted value of the material;

(b) for a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, i.e., in the same manner as for imported goods, with such reasonable modifications as may be required due to the absence of an importation by the producer; or

(c) for a material that is self-produced,

(i) all the costs incurred in the production of the material, including general expenses; and

(ii) an amount for profit equivalent to the profit added in the normal course of trade.

Article 6.4. FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS

1. Each Party shall provide that, for originating materials, the following expenses, where not included under Article 6.3, may be added to the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of the Parties to the location of the producer;

(b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

2. Each Party shall provide that, for non-originating materials, the following expenses, where included under Article 6.3, may be deducted from the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of the Parties to the location of the producer;

(b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(d) the cost of originating materials used in the production of the non-originating material in the territory of a Party. (4)

(4) For greater certainty and for purposes of paragraphs 1(a) and 2(a) of Article 6.4, "costs of freight" includes the costs of all types of freight, including in-land freight incurred within a Partyâs territory, regardless of the mode of transportation.

Article 6.5. ACCUMULATION

1. Each Party shall provide that originating goods or materials of one Party, incorporated into a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.

2. Each Party shall provide that a good is originating where the good is produced in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements in Article 6.1 and all other applicable requirements in this Chapter.

Article 6.6. DE MINIMIS

1. Except as provided in Annex 6-B, each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 6-A is nonetheless originating if the value of all non-originating materials that have been used in the production of the good and do not undergo the applicable change in tariff classification does not exceed ten percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other applicable requirements in this Chapter.

2. With respect to a textile or apparel good, Article 4.2.7 (Rules of Origin and Related Matters) applies in place of paragraph 1.

Article 6.7. FUNGIBLE GOODS AND MATERIALS (5)

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good may claim that a fungible good or material is originating where the importer, exporter, or producer has:

(a) physically segregated each fungible good or material; or

(b) used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that the inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

(5) Nothing in Article 6.7 shall be construed to prevent a Party from requiring an importer to identify by percentage the country or countries of origin of fungible goods.

Article 6.8. ACCESSORIES, SPARE PARTS, AND TOOLS

1. Each Party shall provide that a good's standard accessories, spare parts, or tools delivered with the good shall be considered originating goods if the good is an originating good and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts, or tools are customary for the good.

2. If a good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools described in paragraph 1 shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 6.9. SETS OF GOODS

1. Each Party shall provide that if goods are classified as a set as a result of the application of rule 3 of the General Rules of Interpretation of the Harmonized System, the set is originating only if each good in the set is originating.

2. Notwithstanding paragraph 1, a set of goods is originating if the value of all the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set.

3. With respect to a textile or apparel good, Article 4.2.8 (Rules of Origin and Related Matters) applies in place of paragraphs 1 and 2.

Article 6.10. PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4-A (Specific Rules of Origin for Textile or Apparel Goods) or Annex 6-A.

2. Ifa good is subject to a regional value content requirement, the value of packaging materials and containers described in paragraph 1 shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 6.11. PACKING MATERIALS AND CONTAINERS FOR SHIPMENT

Each Party shall provide that packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

Article 6.12. INDIRECT MATERIALS

Each Party shall provide that an indirect material shall be disregarded for the purpose of determining whether a good is originating pursuant to subparagraphs (a), (b)(i), and (c) of Article 6.1.

Article 6.13. TRANSIT AND TRANSSHIPMENT

Each Party shall provide that a good shall not be considered to be an originating good if the good:

(a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(b) does not remain under the control of customs authorities in the territory of a non-Party.

Article 6.14. CONSULTATION AND MODIFICATION

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

2. The Parties shall consult regularly pursuant to Article 22.2.3(c) (Joint Committee) to discuss possible amendments or modifications to this Chapter and its Annex, taking into account developments in technology, production processes, or other related matters.

3. With respect to a textile or apparel good, paragraphs 3 through 5 of Article 4.2 (Rules of Origin and Related Matters) apply in place of paragraph 2.

Section B. Origin Procedures

Article 6.15. CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on either:

(a) a written or electronic certification by the importer, exporter, or producer; or

(b) the importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

2. Each Party shall provide that a certification need not be made in a prescribed format, provided that the certification is in written or electronic form, including but not limited to the following elements:

(a) the name of the certifying person, including as necessary contact or other identifying information;

(b) the importer of the good (if known);

(c) the exporter of the good (if different from the producer);

(d) the producer of the good (if known);

(e) tariff classification under the Harmonized System and a description of the good;

(f) information demonstrating that the good is originating;

(g) date of the certification; and

(h) in the case of a blanket certification issued as set out in paragraph 4(b), the period that the certification covers.

3. Each Party shall provide that a certification by the producer or exporter of the good may be completed on the basis of:

(a) the producerâs or exporterâs knowledge that the good is originating; or

(b) in the case of an exporter, reasonable reliance on the producerâs written or electronic certification that the good is originating.

Neither Party may require an exporter or producer to provide a written or electronic certification to another person.

4. Each Party shall provide that a certification may apply to:

(a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of the certification.

5. Each Party shall provide that a certification shall be valid for four years after the date it was issued.

6. Each Party shall allow an importer to submit a certification in the language of the importing Party or the exporting Party. In the latter case, the customs authority of the importing Party may require the importer to submit a translation of the certification in the language of the importing Party.

Article 6.16. WAIVER OF CERTIFICATION OR OTHER INFORMATION

Each Party shall provide that a certification or information demonstrating that a good is originating shall not be required where:

(a) the customs value of the importation does not exceed 1,000 U.S. dollars or the equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purpose of evading compliance with the Party's laws governing claims for preferential tariff treatment under this Agreement; or

(b) itis a good for which the importing Party does not require the importer to present a certification or information demonstrating origin.

Article 6.17. RECORD KEEPING REQUIREMENTS

1. Each Party shall provide that an exporter or a producer in its territory that provides a certification in accordance with Article 6.15 shall maintain, for a minimum of five years from the date the certification was issued, all records necessary to demonstrate that a good for which the producer or exporter provided a certification was an originating good, including records concerning:

(a) the purchase of, cost of, value of, and payment for, the exported good;

(b) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the exported good;

(c) the production of the good in the form in which it was exported; and

(d) such other documentation as the Parties may agree to require.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party based on the importer's certification or its knowledge that the good is an originating good shall maintain, for a minimum of five years from the date of importation of the good, all records necessary to demonstrate the good qualified for

the preferential tariff treatment.

3. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party based on a certification issued by the exporter or producer shall maintain, for a minimum of five years from the date of importation of the good, a copy of the certification that served as the basis for the claim. If the importer possesses records demonstrating that the good satisfies the requirements to remain originating under Article 6.13, the importer shall maintain such records for a minimum of five years from the date of importation of the good.

4. Each Party shall provide that an importer, exporter, or producer may choose to maintain the records specified in paragraph 1, 2, or 3 in any medium that allows for prompt retrieval, including, but not limited to, digital, electronic, optical, magnetic, or written form.

Article 6.18. VERIFICATION

1. For purposes of determining whether a good imported into its territory from the territory of the other Party is an originating good, the importing Party may conduct a verification by means of:

(a) written requests for information from the importer, exporter, or producer;

(b) written questionnaires to the importer, exporter, or producer;

(c) visits to the premises of an exporter or producer in the territory of the other Party, to review the records referred to in Article 6.17.1 or observe the facilities used in the production of the good;

(d) for a textile or apparel good, the procedures set out in Article 4.3 (Customs Cooperation for Textile or Apparel Goods); or

(e) such other procedures to which the importing and exporting Parties may agree. Where an importing Party conducts verification by the means referred to in subparagraph (a) or (b), the importing Party may request that the importer arrange for the exporter or producer to provide information directly to the importing Party.

2. The Parties shall agree on procedures for conducting visits provided for in paragraph 1(c).

3. A Party may deny preferential tariff treatment to a good where:

(a) the importer, exporter, or producer fails to provide information that the Party requested under paragraph 1(a) or 1(b) demonstrating that the good is an originating good;

(b) after receiving a written notification for a visit pursuant to paragraph 1(c), the exporter or producer declines to provide access to the records referred to in Article 6.17 or to its facilities; or

(c) the Party finds a pattern of conduct indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications that a good imported into its territory is an originating good.

4. If, as a result of a verification, a Party finds that a good is not originating, the Party shall provide the importer with a proposed determination to that effect and an opportunity to submit additional information demonstrating that the good is originating. Each Party shall provide that the importer may arrange for the exporter or producer to provide pertinent information directly to the Party.

5. After providing the importer with an opportunity to submit additional information pursuant to paragraph 4, the Party that conducted the verification shall provide the importer a final determination, in writing, of whether the good is originating. The Party's determination shall include factual findings and the legal basis for the determination. Where the exporter or producer has provided information pursuant to paragraph 1 or 4 directly to the Party conducting the verification, that Party shall endeavor to provide a copy of the determination to the exporter or producer that provided the information.

6. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good imported into its territory is originating, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the Party determines that the importer, exporter, or producer is in compliance with the requirements of this Chapter.

Article 6.19. OBLIGATIONS RELATING TO IMPORTATIONS

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party issues a written determination that the claim is invalid as a matter of law or fact.

2. A Party may deny preferential tariff treatment to a good if the importer fails to comply with any requirement in this Chapter.

3. Neither Party may subject an importer to any penalty for making an invalid claim for preferential tariff treatment, if the importer:

(a) did not engage in negligence, gross negligence, or fraud in making the claim and pays any customs duty owing; or

(b) on becoming aware that such a claim is not valid, promptly and voluntarily corrects the claim and pays any customs duty owing.

4. Each Party may require that an importer who claims preferential tariff treatment for a good imported into its territory:

(a) declare in the importation document that the good is an originating good;

(b) identify the applicable tariff rate;

(c) have in its possession at the time the declaration referred to in subparagraph (a) is made, a written or electronic certification as described in Article 6.15, if the certification forms the basis for the claim;

(d) provide a copy of the certification, on request, to the importing Party, if the certification forms the basis for the claim;

(e) when the importer has reason to believe that the declaration in subparagraph (a) is based on inaccurate information, correct the importation document and pay any customs duty owing;

(f) when a certification by the exporter forms the basis for the claim, have in place an arrangement to have the exporter provide, on request of the importing Party, all information relied on by such exporter in making such certification;

(g) when a certification by the producer forms the basis for the claim, have in place, at the importer's option:

(i) an arrangement with the producer to provide; or

(ii) an arrangement with the exporter to have the producer provide,

all information relied on by the producer in making its certification; and

(h) when the importer's certification or knowledge forms the basis for the claim, demonstrate, on request of the importing Party, that the good is originating under Article 6.1, including that the good satisfies the requirements to remain originating under Article 6.13.

5. Each Party shall provide that, where a good was originating when it was imported into its territory, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the Party of:

(a) a written or electronic declaration or statement that the good was originating at the time of importation;

(b) a copy of a written or electronic certification if the certification forms the basis for the claim, or other information demonstrating that the good was originating; and

(c) such other documentation relating to the importation of the good as the importing Party may require.

6. Nothing in this Article shall prevent a Party from taking action under Article 4.3 (Customs Cooperation for Textile or Apparel Goods).

Article 6.20. OBLIGATIONS RELATING TO EXPORTATIONS

1. Each Party shall provide that:

(a) an exporter or a producer in its territory that has provided a written or electronic certification in accordance with Article 6.15 shall, on request, provide a copy to the exporting Party;

(b) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party is originating shall be subject to penalties equivalent to those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation, with appropriate modifications; and

(c) when an exporter or a producer in its territory has provided a certification and has reason to believe that the certification contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom the exporter or producer provided the certification of any change that could affect the accuracy or validity of the certification.

2. Neither Party may impose penalties on an exporter or a producer for providing an incorrect certification if the exporter or producer voluntarily notifies in writing all persons to whom it has provided the certification that it was incorrect.

Article 6.21. COMMON GUIDELINES

Within six months of the date this Agreement enters into force, the Parties shall meet to discuss whether to develop common guidelines for the interpretation, application, and administration of this Chapter and Chapter Seven (Customs Administration and Trade Facilitation).

Article 6.22. DEFINITIONS

(a) an exporter or a producer in its territory that has provided a written or electronic certification in accordance with Article 6.15 shall, on request, provide a copy to the exporting Party;

(b) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party is originating shall be subject to penalties equivalent to those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation, with appropriate modifications; and

(c) when an exporter or a producer in its territory has provided a certification and has reason to believe that the certification contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom the exporter or producer provided the certification of any change that could affect the accuracy or validity of the certification.

2. Neither Party may impose penalties on an exporter or a producer for providing an incorrect certification if the exporter or producer voluntarily notifies in writing all persons to whom it has provided the certification that it was incorrect.

Article 6.21. COMMON GUIDELINES

Within six months of the date this Agreement enters into force, the Parties shall meet to discuss whether to develop common guidelines for the interpretation, application, and administration of this Chapter and Chapter Seven (Customs Administration and Trade Facilitation).

Article 6.22. DEFINITIONS

For purposes of this Chapter:

adjusted value means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

class of motor vehicles means any one of the following categories of motor vehicles:

(a) motor vehicles classified under HS subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 87.05 or 87.06;

(b) motor vehicles classified under subheading 8701.10 or subheading 8701.30 through 8701.90;

(c) motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.21 or 8704.31; or

(d) motor vehicles classified under subheading 8703.21 through 8703.90;

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

Generally Accepted Accounting Principles means recognized consensus or substantial authoritative support given in the territory of a Party with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

good means any merchandise, product, article, or material;

goods wholly obtained or produced entirely in the territory of one or both of the Parties means:

(a) plants and plant products grown, and harvested or gathered, in the territory of one or both of the Parties;

(b) live animals born and raised in the territory of one or both of the Parties;

(c) goods obtained in the territory of one or both of the Parties from live animals;

(d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(e) minerals and other natural resources not included in subparagraphs (a) through (d) extracted or taken from the territory of one or both of the Parties;

(f) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or both of the Parties by vessels registered or recorded with a Party and flying its flag;

(g) goods produced on board factory ships from the goods referred to in subparagraph (f), provided such factory ships are registered or recorded with that Party and fly its flag;

(h) goods taken by a Party or a person of a Party from the seabed or subsoil outside the territory of one or both of the Parties, provided that Party has rights to exploit such seabed or subsoil;

(i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(j) waste and scrap derived from:

(i) manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(k) recovered goods derived in the territory of one or both of the Parties from used goods and utilized in the territory of one or both of the Parties in the production of remanufactured goods; and

(l) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

identical goods means goods that are the same in all respects relevant to the particular tule of origin that qualifies the goods as originating;

indirect material means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(a) fuel and energy;

(b) tools, dies, and molds;

(c) spare parts and materials used in the maintenance of equipment and buildings;

(d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(e) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(f) equipment, devices, and supplies used for testing or inspecting the good;

(g) catalysts and solvents; and

(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

material means a good that is used in the production of another good, including a part or an ingredient;

material that is self-produced means an originating material that is produced by a producer of a good and used in the production of that good;

model line means a group of motor vehicles having the same platform or model name;

net cost means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

net cost of the good means the net cost that can be reasonably allocated to the good under one of the following methods:

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or

(c) reasonably allocating each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs,

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles;

non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the yield on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

non-originating good or non-originating material means a good or material that does not qualify as originating under this Chapter;

packing materials and containers for shipment means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale;

producer means a person who engages in the production of a good in the territory of a Party;

production means growing, mining, harvesting, fishing, breeding, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

reasonably allocate means to apportion in a manner appropriate under Generally Accepted Accounting Principles;

recovered goods means materials in the form of individual parts that are the result of:

(a) the disassembly of used goods into individual parts; and

(b) cleaning, inspecting, testing, or other processes as necessary for improvement to sound working condition;

total cost means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

used means utilized or consumed in the production of goods; and

value means the value of a good or material for purposes of calculating customs duties or for purposes of applying this Chapter.

Chapter Seven. CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Article 7.1. PUBLICATION

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.

2. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.

3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before adopting them.

Article 7.2. RELEASE OF GOODS

1. In order to facilitate bilateral trade, each Party shall adopt or maintain simplified customs procedures for the efficient release of goods.

2. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authority adopts or maintains procedures that:

(a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the goodsâ arrival;

(b) provide for customs information to be submitted and processed electronically before goods arrive in order for them to be released on their arrival;

(c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and

(d) allow importers to withdraw goods from customs before, and without prejudice to, its customs authority's final determination of the applicable customs duties, taxes, and fees. (1)

(1) A Party may require importers to provide guarantees in the form of sureties, deposits, or other appropriate instruments sufficient to cover payment of the customs duties, taxes, and fees its customs authority ultimately applies in connection with the importation of the good.

Article 7.3. AUTOMATION

Each Party shall use information technology that expedites procedures for the release of goods and shall:

(a) make electronic systems accessible to customs users;

(b) endeavor to use international standards;

(c) endeavor to develop electronic systems that are compatible with the other Party's systems, in order to facilitate bilateral exchange of international trade data; and

(d) endeavor to develop a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO recommendations and guidelines.

Article 7.4. RISK MANAGEMENT

Each Party shall adopt or maintain electronic or automated risk management systems for assessment and targeting that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods.

Article 7.5. COOPERATION

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.

2. The Parties shall cooperate in achieving compliance with their respective laws and regulations pertaining to:

(a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment, and verification procedures;

(b) the implementation and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports or exports; and (d) other customs matters as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request the other Party to provide specific confidential information normally collected in connection with the importation of goods.

4. A Party's request under paragraph 3 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from which the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party, provide a written response containing the information.

6. For purposes of paragraph 3, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

(a) historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;

(b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of the other Party;

(c) historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or

(d) other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request.

7. Each Party shall endeavor to provide the other Party with any other information that would assist the other Party in determining whether imports from or exports to the other Party's territory are in compliance with the other Party's laws or regulations governing importations, in particular those related to unlawful activities, including smuggling and similar infractions.

8. In order to facilitate bilateral trade, each Party shall endeavor to provide the other Party with technical advice and assistance for the purpose of improving risk management techniques, facilitating the implementation of international supply chain standards, simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner, advancing the technical skill of personnel, and enhancing use of technologies that can lead to improved compliance with the Party's laws or regulations governing importations.

9. The Parties shall endeavor to conduct joint training programs and to exchange information on customs laboratory techniques.

10. The Parties shall endeavor to enhance each Party's ability to enforce its regulations governing importations. The Parties shall further endeavor to establish and maintain channels of communication, including by establishing contact points, that will assist them in exchanging information rapidly and securely and to improve bilateral coordination on importation issues.

Article 7.6. CONFIDENTIALITY

1. Where a Party that provides information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall keep the information confidential. The Party providing the information may require the other Party to furnish written assurance that the information will be held in confidence, will be used only for the purposes the other Party specified in its request for information, and will not be disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

2. If a Party receives information designated as confidential in accordance with paragraph 1, the Party receiving the information may nevertheless use or disclose the information for law enforcement purposes or in the course of judicial proceedings.

3. A Party may decline to provide information that the other Party has requested where that Party has failed to act in conformity with paragraph 1.

4. Each Party shall adopt or maintain procedures for protecting from unauthorized disclosure confidential information submitted in accordance with the administration of the Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.

Article 7.7. EXPRESS SHIPMENTS

Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

(a) provide a separate and expedited customs procedure for express shipments;

(b) provide for information necessary to release an express shipment to be submitted and processed electronically before the shipment arrives;

(c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;

(d) to the extent possible, provide for certain goods to be cleared with a minimum of documentation;

(e) under normal circumstances, provide for express shipments to be cleared within four hours after the necessary customs documents have been submitted, provided the shipment has arrived;

(f) apply without regard to an express shipment's weight or customs value;

(g) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at 200 U.S. dollars or less. (2)

(2) Notwithstanding subparagraph (g), a Party may require express shipments to be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes, and may require formal entry documents, for restricted goods.

Article 7.8. REVIEW AND APPEAL

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

(a) a level of administrative review independent of the employee or office that issued the determinations; (3) and

(b) judicial review of the determinations. For greater certainty, each Party shall allow an exporter or producer to provide information directly to the Party conducting the review and to request that Party to treat that information as confidential in accordance with Article 7.6.4.

(3) For Korea, administrative review under subparagraph (a) may include review by Korea's tax tribunal.

Article 7.9. PENALTIES

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential treatment under this Agreement.

Article 7.10. ADVANCE RULINGS

1. Each Party shall issue, through its customs authority, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party (4) with regard to:

(a) tariff classification;

(b) the application of customs valuation criteria for a particular case, in accordance with the Customs Valuation Agreement;

(c) the application of duty drawback, deferral, or other relief from customs duties;

(d) whether a good is originating;

(e) whether a good re-entered into the territory of a Party after being exported to the territory of the other Party for repair or alteration is eligible for duty free treatment in accordance with Article 2.6 (Goods Re-entered after Repair or Alteration);

(f) country of origin marking;

(g) whether a good is subject to a quota or tariff-rate quota; and

(h) such other matters as the Parties may agree.

2. Each Party shall issue an advance ruling within 90 days after its customs authority receives a request, provided that the requester has submitted all information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account facts and circumstances the requester has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that, pursuant to this paragraph, declines to issue an advance ruling shall promptly notify the requester in writing, setting forth the relevant facts and the basis for its decision to decline to issue the advance ruling.

3. Each Party shall provide that advance rulings shall take effect on the date they are issued, or on another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.

5. Each Party shall ensure that requesters have access to administrative review of advance rulings.

6. Subject to any confidentiality requirements in its laws, each Party shall publish its advance rulings, including on the Internet.

7. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the rulingâs terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

(4) For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorized representative.

Chapter Eight. SANITARY AND PHYTOSANITARY MEASURES

OBJECTIVES

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, and provide a Committee for helping to address bilateral sanitary and phytosanitary matters.

Article 8.1. SCOPE

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 8.2. RIGHTS AND OBLIGATIONS OF THE PARTIES

Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

Article 8.3. COMMITTEE ON SANITARY AND PHYTOSANITARY MATTERS

1. The Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Matters comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The objectives of the Committee shall be to enhance each Party's implementation of the SPS Agreement, protect human, animal, or plant life or health, enhance cooperation and consultation on sanitary and phytosanitary matters, and facilitate trade between the Parties.

3. Recognizing that the resolution of sanitary and phytosanitary matters must rely on science and risk-based assessment and is best achieved through bilateral technical cooperation and consultation, the Committee shall seek to enhance any present or future relationships between the Parties' agencies with responsibility for sanitary and phytosanitary matters. For these purposes, the Committee shall:

(a) recognize that scientific risk analysis shall be conducted and evaluated by the relevant regulatory agencies of each Party;

(b) enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(c) consult on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(d) consult on issues, positions, and agendas for meetings of the WTO Committee on Sanitary and Phytosanitary Measures established under the SPS Agreement, the Codex Alimentarius Commission, the World Organization for Animal Health (OIE), the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, and other international and regional fora on food safety and on human, animal, or plant life or health;

(e) promote coordination of technical cooperation activities in relation to development, implementation, and application of sanitary and phytosanitary measures;

(f) improve bilateral understanding related to specific implementation issues concerning the SPS Agreement, including clarification of each Party's regulatory frameworks and rulemaking procedures; and

(g) review progress on addressing sanitary and phytosanitary matters that may arise between the Parties' agencies with responsibility for such matters, including progress on annual animal health, plant health, and meat, poultry, and processed egg products technical meetings.

4. The Parties shall establish the Committee not later than 45 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

5. The Committee shall meet at least once a year unless the Parties otherwise agree.

6. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in the Committee meetings. The agencies and ministries of each Party responsible for such measures shall be set out in the Committee's terms of reference.

Article 8.4. DISPUTE SETTLEMENT

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Chapter Nine. TECHNICAL BARRIERS TO TRADE

Article 9.1. AFFIRMATION OF TBT AGREEMENT

Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 9.2. SCOPE AND COVERAGE

1. This Chapter applies to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of central government bodies, unless otherwise specified, that may, directly or indirectly, affect trade in goods between the Parties, (1) including any amendment (2) thereto and any addition to their rules or the product coverage thereof, except amendments and additions of an insignificant nature.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) technical specifications prepared by a governmental body for its production or consumption requirements; or

(b) sanitary or phytosanitary measures.

(1) For greater certainty, the Parties understand that any reference in this Chapter to a standard, technical regulation, or conformity assessment procedure includes those related to metrology.

(2) "Any amendment" includes the elimination of a technical regulation.

Article 9.3. INTERNATIONAL STANDARDS

In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its determination on the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement), issued by the WTO Committee on Technical Barriers to Trade.

Article 9.4. JOINT COOPERATION

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. In particular, the Parties shall seek to identify, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors. These initiatives may include cooperation on regulatory issues, such as transparency, the promotion of good regulatory practices, alignment with international standards, and use of accreditation to qualify conformity assessment bodies.

2. On request, a Party shall give favorable consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Chapter.

Article 9.5. CONFORMITY ASSESSMENT PROCEDURES

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party's territory. For example:

(a) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;

(b) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the other Party's territory;

(c) a Party may designate conformity assessment bodies located in the other Party's territory;

(d) a Party may recognize the results of conformity assessment procedures conducted in the other Party's territory;

(e) conformity assessment bodies located in each of the Parties' territories may enter into voluntary arrangements to accept the results of each other's assessment procedures; and

(f) the importing Party may rely on a supplier's declaration of conformity.

The Parties shall intensify their exchange of information on these and similar mechanisms with a view to facilitating the acceptance of conformity assessment results.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with

that technical regulation or standard in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

4. A Party that accredits, approves, licenses, or otherwise recognizes conformity assessment bodies shall do so on the basis of criteria published by the Party for determining whether a conformity assessment body is competent to receive accreditation, approval, licensing or other recognition.

5. Each Party shall take steps to implement Phase II of the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (1998) with respect to the other Party as soon as possible. No later than one year after the date this Agreement enters into force, Korea will publish notice of the changes in its legislation that it proposes to make to implement Phase II.

Article 9.6. TRANSPARENCY

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures. (3) Each Party shall permit persons of the other Party to participate in the development of these measures on terms no less favorable than those it accords to its own persons.

2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in developing standards and voluntary conformity assessment procedures.

3. In order to enhance the opportunity for persons and the other Party to be aware of, and to understand, proposed technical regulations and conformity assessment procedures, and to be able to provide meaningful comments on these regulations and procedures, a Party publishing a notice and filing a notification in accordance with Article 2.9, 3.2, 5.6, or 7.2 of the TBT Agreement shall:

(a) include an explanation of the objectives the proposed technical regulation or conformity assessment procedure is meant to serve and how it addresses those objectives;

(b) transmit the proposal electronically to the other Party through, in the case of a Korean proposal, the U.S. inquiry point established in accordance with Article 10 of the TBT Agreement or, in the case of a U.S. proposal, the Korean coordinator established in accordance with Annex 9-A, at the same time as it notifies WTO Members of the proposal in accordance with the TBT Agreement; and

(c) make available to the public, preferably by electronic means, comments it receives from persons or the other Party on the proposed technical regulation or conformity assessment procedure.

Each Party shall also publish and notify new technical regulations and amendments to existing technical regulations that are in accordance with the technical content of any relevant international standards. Each Party shall also take such reasonable measures as may be available to it to ensure that new technical regulations and amendments to existing technical regulations of local governments on the level directly below that of the central government that are in accordance with the technical content of any relevant international standards are published and notified through the inquiry point referenced in subparagraph (b).

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and the other Party to provide comments in writing on the proposal. A Party shall give favorable consideration to reasonable requests from persons or the other Party for extending the comment period.

4. Where a Party makes a notification under Article 2.10, 3.2, 5.7, or 7.2 of the TBT Agreement, it shall at the same time transmit the notification and text of the proposal electronically to the other Party through the inquiry point referenced in paragraph 3(b). Each Party shall also notify new technical regulations and amendments to existing technical regulations that are in accordance with the technical content of any relevant international standards. Each Party shall also take such reasonable measures as may be available to it to ensure that new technical regulations and amendments to existing technical regulations of local governments on the level directly below that of the central government that are in accordance with the technical content of any relevant international standards are published and notified through the inquiry point referenced in paragraph 3(b).

5. Each Party shall publish, preferably by electronic means, notices of proposed and final technical regulations and conformity assessment procedures required under Articles 2.9, 2.11, 5.6, and 5.8 of the TBT Agreement in a single official journal and shall encourage the government bodies that issue them to disseminate them through additional channels. With respect to notices of proposed and final technical regulations and conformity assessment procedures notified under Articles 3.2 and 7.2 of the TBT Agreement, each Party shall ensure to the extent practicable, that all such notices are accessible through a single Internet site or other information source.

6. Each Party shall include in the notice of a final technical regulation or conformity assessment procedure that it publishes in its official journal:

(a) an explanation of the objectives of the technical regulation or conformity assessment procedure and how it addresses those objectives; and

(b) responses to significant comments that it received during the comment period and an explanation of substantive revisions that it made to the proposed technical regulation or conformity assessment procedure.

7. On request, each Party shall provide the other Party with additional available information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt. Such requests may include requests for information regarding the matter the technical regulation or conformity assessment procedure is designed to address, alternative approaches the Party considered, and the merits of the particular approach the Party chose.

(3) For purposes of the first sentence of paragraph 1 and for greater certainty, a Party allows persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures if it maintains a process for participation that is open to the public, including persons of the other Party.

Article 9.7. AUTOMOTIVE STANDARDS AND TECHNICAL REGULATIONS

1. The Parties shall cooperate bilaterally, including in the World Forum for Harmonization of Vehicle Regulations of the United Nations Economic Commission for Europe (WP.29), to harmonize standards for motor vehicle environmental performance and safety.

2. Each Party shall ensure that technical regulations related to motor vehicles are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade, to the extent provided in Article 2.2 of the TBT Agreement. For this purpose, technical regulations related to motor vehicles shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; and protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, televant elements of consideration are, inter alia: available scientific and technical information, related processing technology, or intended end-uses of products.

Article 9.8. COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish a Committee on Technical Barriers to Trade, comprising representatives of each Party, as set out in Annex 9-A.

2. The Committee's functions shall include:

(a) monitoring the implementation and administration of this Chapter;

(b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;

(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;

(d) facilitating the consideration of any sector-specific proposal a Party makes for further cooperation between conformity assessment bodies, including, where appropriate, between governmental and non-governmental conformity assessment bodies in the Parties' territories;

(e) facilitating the consideration of a request that a Party recognize the results of conformity assessment procedures conducted by bodies in the other Party's territory, including a request for the negotiation of an agreement, in a sector nominated by that other Party;

(f) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;

(g) at a Party's request, consulting on any matter arising under this Chapter;

(h) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments;

(i) taking any other steps that the Parties consider will assist them in implementing this Chapter;

(j) exchanging information, at a Party's request, on the Parties' respective views regarding third party issues concerning standards, technical regulations, and conformity assessment procedures so as to foster a common approach to their resolution; and

(k) as it considers appropriate, reporting to the Joint Committee on the implementation of this Chapter.

3. Where the Parties have had recourse to consultations under paragraph 2(g), the consultations shall, if the Parties agree, constitute consultations under Article 22.7 (Consultations).

4. The Committee shall meet at least once a year unless the Parties otherwise agree.

5. The Committee may, as it considers appropriate, establish and determine the scope and mandate of working groups, including ad hoc working groups, comprising representatives of each Party. Subject to decisions of the Committee and as the Parties may agree, each working group, including an ad hoc working group, may:

(a) as it considers necessary and appropriate, include or consult with non-governmental experts and stakeholders; and

(b) determine its work program, taking into account relevant international activities.

6. Within 30 days after the date this Agreement enters into force, each Party shall notify the Committee of the criteria it uses to accredit, approve, license, or otherwise recognize conformity assessment bodies with respect to cosmetics, household electrical appliances, motor vehicles, and noise and emissions, and with respect to any other areas identified by a Party. Thereafter, each Party shall notify the Committee of the criteria it uses for this purpose with respect to other areas that the other Party requests. The Committee shall review this information in order to improve mutual understanding of each Party's conformity assessment system and to discuss possible reforms to facilitate trade between the Parties.

Article 9.9. INFORMATION EXCHANGE

Any information or explanation that a Party provides on request of the other Party pursuant to this Chapter shall be provided in print or electronically within a reasonable period. A Party shall endeavor to respond to each such request within 60 days.

Article 9.10. DEFINITIONS

For purposes of this Chapter:

central government body, (4) local government body, conformity assessment procedures, standard, and technical regulation have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and

good regulatory practice means a practice that: (i) serves clearly identified policy goals, and is effective in achieving those goals; (ii) has a sound legal and empirical basis; (iii) takes into consideration the distribution of a regulation's effects across society, taking economic, environmental, and social effects into account; (iv) minimizes costs and market distortions; (v) promotes innovation through market incentives and goal-based approaches; (vi) is clear, simple, and practical for users; (vii) is consistent with the Partyâs other regulations and policies; and (viii) is compatible as far as possible with domestic and international competition, trade, and investment principles.

(4) For greater certainty, a non-governmental entity that a Party's central government has authorized to prepare, adopt, or apply standards, technical regulations, or conformity assessment procedures on its behalf shall be considered a central government body for purposes of this Chapter in respect of such activity.

Chapter Ten. TRADE REMEDIES

Section A. Safeguard Measures

Article 10.1. APPLICATION OF a SAFEGUARD MEASURE

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

(a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement;

(b) increase the rate of customs duty on the good to a level not to exceed the lesser of:

(i) the most-favored-nation (MFN) applied rate of duty on the good in effect at the time the action is taken; and

(ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date this Agreement enters into force; or

(c) in the case of a customs duty applied to a good on a seasonal basis, increase the rate of duty to a level that, for each season, does not exceed the lesser of:

(i) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date of application of the safeguard measure; and

(ii) the MFN applied rate of duty on the good in effect for the corresponding season immediately preceding the date this Agreement enters into force.

Article 10.2. CONDITIONS AND LIMITATIONS

1. A Party shall notify the other Party in writing on initiation of an investigation described in paragraph 2 and shall consult with the other Party as far in advance of applying a safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.

2. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, mutatis mutandis.

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made a part of this Agreement, mutatis mutandis.

4. Each Party shall ensure that its competent authorities complete any such investigation within one year of its date of initiation.

5. Neither Party may apply a safeguard measure:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

(b) fora period exceeding two years, except that the period may be extended by up to one year if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Article, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed three years; or

(c) beyond the expiration of the transition period, except with the consent of the other Party.

6. Neither Party may apply a safeguard measure more than once against the same good.

7. Where the expected duration of the safeguard measure is over one year, the importing Party shall progressively liberalize it at regular intervals.

8. When a Party terminates a safeguard measure, the rate of customs duty shall be the rate that, according to the Party's Schedule to Annex 2-B (Tariff Elimination), would have been in effect but for the measure.

Article 10.3. PROVISIONAL MEASURES

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a safeguard measure on a provisional basis pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

2. Before a Partyâs competent authorities may make a preliminary determination, the Party shall publish a public notice in its official journal setting forth how interested parties, including importers and exporters, may obtain a non-confidential copy of the application requesting a provisional safeguard measure, and shall provide interested parties at least 20 days after the date it publishes the notice to submit evidence and views regarding the application of a provisional measure. A Party may not apply a provisional measure until at least 45 days after the date its competent authorities initiate an investigation.

3. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 10.2.2 and 10.2.3.

4. The Party shall promptly refund any tariff increases if the investigation described in Article 10.2.2 does not result in a finding that the requirements of Article 10.1 are met. The duration of any provisional measure shall be counted as part of the period described in Article 10.2.5(b).

Article 10.4. COMPENSATION

1. No later than 30 days after it applies a safeguard measure, a Party shall afford an opportunity for the other Party to consult with it regarding appropriate trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. The applying Party shall provide such compensation as the Parties mutually agree.

2. If the Parties are unable to agree on compensation within 30 days after consultations begin, the Party against whose originating good the measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure.

3. The applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions under paragraph 2 shall terminate on the date the safeguard measure terminates.

Article 10.5. GLOBAL SAFEGUARD ACTIONS

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards Agreement, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party if such imports are not a substantial cause of serious injury or threat thereof.

2. Neither Party may apply, with respect to the same good, at the same time:

(a) a safeguard measure; and

(b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Article 10.6. DEFINITIONS

For purposes of Section A:

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party, or those whose collective output of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;

safeguard measure means a measure described in Article 10.1;

serious injury means a significant overall impairment in the position of a domestic industry;

substantial cause means a cause that is important and not less than any other cause;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and

transition period means the ten-year period following the date this Agreement enters into force, except that for any good for which the Schedule to Annex 2-B (Tariff Elimination) of the Party applying the safeguard measure provides for the Party to eliminate its tariffs on the good over a period of more than ten years, transition period means the tariff elimination period for the good set out in that Schedule.

Section B. Antidumping and Countervailing Duties

Article 10.7. ANTIDUMPING AND COUNTERVAILING DUTIES

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties.

2. Except for paragraphs 3 and 4, no provision of this Agreement shall be construed to impose any rights or obligations on a Party with respect to antidumping or countervailing duty measures. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article. (1)

Notification and Consultations

3. (a) Upon receipt by a Party's competent authorities of a properly documented antidumping application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other Party a meeting or other similar opportunities regarding the application, consistent with the Party's law.

(b) Upon receipt by a Party's competent authorities of a properly documented countervailing duty application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other Party a meeting to consult with its competent authorities regarding the application.

Undertakings

(a) After a Party's competent authorities initiate an antidumping or countervailing duty investigation, the Party shall transmit to the other Party's embassy or competent authorities written information regarding the Party's procedures for requesting its authorities to consider an undertaking on price or, as appropriate, on quantity, including the time frames for offering and concluding any such undertaking.

(b) In an antidumping investigation, where a Party's authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the Party shall afford due consideration, and adequate opportunity for consultations, to exporters of the other Party regarding proposed price undertakings which, if accepted, may result in suspension of the investigation without imposition of antidumping duties, through the means provided for in the Party's laws and procedures.

(c) In a countervailing duty investigation, where a Party's authorities have made a preliminary affirmative determination of subsidization and injury caused by such subsidization, the Party shall afford due consideration, and adequate opportunity for consultations, to the other Party and exporters of the other Party, regarding proposed undertakings on price or, as appropriate, on quantity, which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, through the means provided for in the Party's laws and procedures.

(1) Although recourse to dispute settlement is not available with respect to paragraphs 3 and 4, the Parties reaffirm that those paragraphs create binding rights and obligations.

Section C. Committee on Trade Remedies

Article 10.8. COMMITTEE ON TRADE REMEDIES

1. The Parties hereby establish a Committee on Trade Remedies, comprising representatives at an appropriate level from relevant agencies of each Party who have responsibility for trade remedies matters, including antidumping, subsidies and countervailing measures, and safeguards issues.

2. The functions of the Committee shall be to:

(b)

(a) enhance each Party's knowledge and understanding of the other Party's trade remedy laws, policies, and practices;

(b) oversee implementation of this Chapter, including compliance with paragraphs 3 and 4 of Article 10.7;

(c) improve cooperation between the Parties' agencies having responsibility for trade remedies matters;

(d) provide a forum for the Parties to exchange information on issues relating to antidumping, subsidies and countervailing measures, and safeguards;

(e) establish and oversee, for officials of both Parties, development of educational programs related to the administration of trade remedy laws; and

(f) provide a forum for the Parties to discuss other relevant topics of mutual interest including:

(i) international issues related to trade remedies, including issues relating to the WTO Doha Round Rules negotiations;

(ii) practices by the Parties' competent authorities in antidumping and countervailing duty investigations, such as application of "facts available" and verification procedures; and

(iii) practices of a Party that may constitute industrial subsidies.

The Committee shall meet at least once a year and may meet more frequently as the Parties may agree.

Chapter Eleven. INVESTMENT

Section A. Investment

Article 11.1. SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) Investors of the other Party;

(b) Covered Investments; and

(c) with respect to Articles 11.8 and 11.10, all investments in the territory of the Party.

2. For greater certainty, this Chapter does not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

3. For purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central, regional, or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

Article 11.2. RELATION TO OTHER CHAPTERS

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Thirteen (Financial Services).

Article 11.3. NATIONAL TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct,

operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 11.4. MOST-FAVORED-NATION TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 11.5. MINIMUM STANDARD OF TREATMENT! (1)

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. Notwithstanding Article 11.12.5(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to war or other armed conflict, or revolt, insurrection, riot, or other civil strife.

5. Notwithstanding paragraph 4, if an investor of a Party, in the situations referred to in paragraph 4, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with paragraphs 2 through 4 of Article 11.6, mutatis mutandis.

6. Paragraph 4 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 11.3 but for Article 11.12.5(b).

(1) Article 11.5 shall be interpreted in accordance with Annex 11-A.

Article 11.6. EXPROPRIATION AND COMPENSATION (2)

1. Neither Party may expropriate or nationalize a Covered Investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law and Article 11.5.1 through 11.5.3.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) - converted into the currency of payment at the market rate of exchange prevailing on the date of payment - shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Eighteen (Intellectual Property Rights).

(2) Article 11.6 shall be interpreted in accordance with Annexes 11-A and 11-B.

Article 11.7. TRANSFERS (3)

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital, including the initial contribution;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 11.5.4 and 11.5.5 and Article 11.6; and (payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made ina freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

(3) For greater certainty, Annex 11-G applies to this Article.

Article 11.8. PERFORMANCE REQUIREMENTS

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking: (4)

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or

(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory. (5)

(b) Paragraph 1(f) does not apply:

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39

of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws. (6)

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

(ii) necessary to protect human, animal, or plant life or health; or

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement. For purposes of this Article, private parties include designated monopolies or state enterprises, where such entities are not exercising delegated governmental authority.

(4) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for purposes of paragraph 1.

(5) For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided that such activity is consistent with paragraph 1(f).

(6) The Parties recognize that a patent does not necessarily confer market power.

Article 11.9. SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 11.10. INVESTMENT AND ENVIRONMENT

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 11.11. DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain normal economic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

Article 11.12. NON-CONFORMING MEASURES

1. Articles 11.3, 11.4, 11.8, and 11.9 do not apply to:

(a) Any existing non-conforming measure that is maintained by a Party at

(i) the central level of government, as set out by that Party in its Schedule to Annex I,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, (7) or

(iii) a local level of government; (8)

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 11.3, 11.4, 11.8, or 11.9.

2. Articles 11.3, 11.4, 11.8, and 11.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 11.3 and 11.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 18.1.6 (General Provisions) as specifically provided in that Article.

5. Articles 11.3, 11.4, and 11.9 do not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

(7) For greater certainty, Annex 12-C (Consultations Regarding Non-Con forming Measures Maintained by a Regional Level of Government) is incorporated into and made part of this Chapter.

(8) For Korea, local level of government means a local government as defined in the Local Autonomy Act.

Article 11.13. SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 11.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 11.3 and 11.4, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 11.14. SUBROGATION

1. If the Korea Export Insurance Corporation or the Overseas Private Investment Corporation makes a payment to an investor of the Party in which the respective Corporation is established under a guarantee or a contract of insurance it has entered into in respect of an investment, the Corporation shall be considered the subrogee of the investor and shall be entitled to the same rights that the investor would have possessed under this Chapter but for the subrogation, and the investor shall be precluded from pursuing such rights to the extent of the subrogation.

Section B. Investor-State Dispute Settlement

Article 11.15. CONSULTATION AND NEGOTIATION

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

Article 11.16. SUBMISSION OF a CLAIM TO ARBITRATION

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) aninvestment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (notice of intent). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to

in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimantâs notice of, or request for, arbitration (notice of arbitration):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

Article 11.17. CONSENT OF EACH PARTY TO ARBITRATION

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter I (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of of the New York Convention for an "agreement in writing."

Article 11.18. CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 11.16.1 and knowledge that the claimant (for claims brought under Article 11.16.1(a)) or the enterprise (for claims brought under Article 11.16.1(b)) has incurred loss or damage. 2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied,

(i) for claims submitted to arbitration under Article 11.16.1(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 11.16.1(b), by the claimant's and the enterprise's written waivers of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 11.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 11.16.1(a)) and the claimant or the enterprise (for claims brought under Article 11.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

Article 11.19. SELECTION OF ARBITRATORS

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 75 days of the date a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties otherwise agree.

4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 11.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 11.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 11.20. CONDUCT OF THE ARBITRATION

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 11.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. At the request ofa disputing party, and unless the disputing parties otherwise agree, the tribunal may determine the place of meetings, including consultations and hearings, taking into consideration appropriate factors, including the convenience of the parties and the arbitrators, the location of the subject matter, and the proximity of evidence. The preceding sentence is without prejudice to any appropriate factors a tribunal may consider under paragraph 1.

3. Unless the disputing parties otherwise agree, English and Korean shall be the official languages to be used in the entire arbitration proceedings, including all hearings, submissions, decisions, and awards.

4. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement. On the request of a disputing party, the non-disputing Party should resubmit its oral submission in writing.

5. After consulting the disputing parties, the tribunal may allow a party or entity that is not a disputing party to file a written amicus curiae submission with the tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

(a) the amicus curiae submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;

(b) the amicus curiae submission would address a matter within the scope of the dispute; and

(c) the amicus curiae has a significant interest in the proceeding.

The tribunal shall ensure that the amicus curiae submission does not disrupt the proceeding or unduly burden or unfairly

prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the amicus curiae submission.

6. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 11.26.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 7.

7. In the event that the respondent so requests within 45 days of the date the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 6 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

8. When it decides a respondent's objection under paragraph 6 or 7, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

9. A respondent may not assert as a defense, counterclaim, or right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract, except with respect to any subrogation as provided for in Article 11.14.

10. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 11.16. For purposes of this paragraph, an order includes a recommendation.

11. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Party. Within 60 days after the date the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the date the 60-day comment period expires.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 12 or Annex 11-D.

12. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 11.26 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

Article 11.21. TRANSPARENCY OF ARBITRAL PROCEEDINGS

1. Subject to paragraphs 2, 3, and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 11.20.4 and 11.20.5 and Article 11.25;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 23.2 (Essential Security) or Article 23.4 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) A disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1;

(d) The tribunal shall decide any objection by a disputing party regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information; and

(e) At the request of a disputing Party, the Joint Committee shall consider issuing a decision in writing regarding a determination by the tribunal that information claimed to be protected was not properly designated. If the Joint Committee issues a decision within 60 days of such a request, it shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee does not issue a decision within 60 days, the tribunalâs determination shall remain in effect only if the non-disputing Party submits a written statement to the Joint Committee within that period that it agrees with the tribunal's determination.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

Article 11.22. GOVERNING LAW

1. Subject to paragraph 3, when a claim is submitted under Article 11.16.1(a)(i)(A) or Article 11.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 11.16.1(a)(i)(B) or (C), or Article 11.16.1(b)(i)(B) or (C), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment authorization or investment agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed,

(i) the law of the respondent, including its rules on the conflict of laws (9); and

(ii) such rules of international law as may be applicable.

3. A decision of the Joint Committee declaring its interpretation of a provision of this Agreement under Article 22.2.3(d) (Joint Committee) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

(9) For purposes of clause (i), the law of the respondent means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

Article 11.23. INTERPRETATION OF ANNEXES

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue. The Joint Committee shall submit in writing any decision declaring its interpretation under Article 22.2.3(d) (Joint Committee) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Joint Committee under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 11.24. EXPERT REPORTS

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 11.25. CONSOLIDATION

1. Where two or more claims have been submitted separately to arbitration under Article 11.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 11.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 11.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 11.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant; (b) the nature of the order sought; and (c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 11.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 11.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 11.26. AWARDS

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. A tribunal may also award costs and attorneyâs fees in accordance with this Section and the applicable arbitration rules.

3. Subject to paragraph 1, where a claim is submitted to arbitration under Article 11.16.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law. 4. A tribunal may not award punitive damages.

5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A tribunal may not award punitive damages.

5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

6. Subject to paragraph 7 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

7. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention,

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 11.16.3(d),

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

8. Each Party shall provide for the enforcement of an award in its territory.

9. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 22.9 (Establishment of Panel). The requesting Party may seek in such proceedings:

(a)

(b)

a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

in accordance with Article 22.11 (Panel Report), a recommendation that the respondent abide by or comply with the final award.

10. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 9.

11-21

11. Acclaim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

Article 11.27. SERVICE OF DOCUMENTS

8. Each Party shall provide for the enforcement of an award in its territory.

9. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 22.9 (Establishment of Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 22.11 (Panel Report), a recommendation that the respondent abide by or comply with the final award.

10. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 9.

11. Acclaim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

Article 11.27. SERVICE OF DOCUMENTS

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 11-C.

Section C. Definitions

Article 11.28. DEFINITIONS

For purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with the other

Party; disputing parties means the claimant and the respondent; disputing party means cither the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.4 (Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans; (10)

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (11) (12) and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges. (13)

For purposes of this Agreement, a claim to payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment.

investment agreement means a written agreement (14) between a national authority (15) of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party; (16) (17)

investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

non-disputing Party means the Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

respondent means the Party that is a party to an investment dispute; Secretary-General means the Secretary-General of ICSID; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

(10) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

(11) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(12) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(13) For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

(14) "written agreement" refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 11.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

(15) For purposes of this definition, national authority means an authority at the central level of government.

(16) For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

(17) The Parties recognize that, as of the date of signature of this Agreement, neither Party has a foreign investment authority that grants investment authorizations.

Annex 11-A. CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 11.5 and Annex 11-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 11.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Annex 11-B. EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.

2. Article 11.6.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 11.6.1 is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or a series of actions by a Party, ina specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:

(i) the economic impact of the government action, although the fact that an action or a series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; (18) and

(iii) the character of the government action, including its objectives and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest.

(b) Except in rare circumstances, such as, for example, when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilization (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations. (19)

(18) For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investorâs expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

(19) For greater certainty, the list of "legitimate public welfare objectives" in subparagraph (b) is not exhaustive.

Annex 11-C. SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B

Korea

Notices and other documents in disputes under Section B shall be served on Korea by delivery to:

Office of International Legal Affairs Ministry of Justice of the Republic of Korea Government Complex, Gwacheon

Korea

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX) Office of the Legal Adviser Department of State Washington, D.C. 20520 United States of America

Annex 11-D. POSSIBILITY OF A BILATERAL APPELLATE MECHANISM

Within three years after the date this Agreement enters into force, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 11.26 in arbitrations commenced after they establish the appellate body or similar mechanism.

Annex 11-E. SUBMISSION OF A CLAIM TO ARBITRATION

Korea

1. Notwithstanding Article 11.18.2, an investor of the United States may not submit to arbitration under Section B a claim that Korea has breached an obligation under Section A either:

(a) on its own behalf under Article 11.16.1(a); or

(b) on behalf of an enterprise of Korea that is a juridical person that the investor owns or controls directly or indirectly under Article 11.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in any proceedings before a court or administrative tribunal of Korea.

2. For greater certainty, where an investor of the United States or an enterprise of Korea that is a juridical person that the investor owns or controls directly or indirectly makes an allegation that Korea has breached an obligation under Section A before a court or administrative tribunal of Korea, that election shall be final, and the investor may not thereafter allege that breach, on its own behalf or on behalf of the enterprise, in an arbitration under Section B.

Annex 11-F. TAXATION AND EXPROPRIATION

The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 11-B and the following considerations:

(a) The imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition ofa taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

(b) A taxation measure that is consistent with internationally recognized tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;

(c) A taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and

(d) A taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

Annex 11-G. TRANSFERS

1. Nothing in this Chapter, Chapter Twelve (Cross-Border Trade in Services), or Chapter Thirteen (Financial Services) shall be construed to prevent Korea from applying measures pursuant to Article 6 of the Foreign Exchange Transactions Act, provided that such measures: (20)

(a) are in effect for a period not to exceed one year; however, if extremely exceptional circumstances arise such that Korea seeks to extend such measures, Korea will coordinate in advance with the United States concerning the implementation of any proposed extension;

(b) are not confiscatory;

(c) do not constitute a dual or multiple exchange rate practice;

(d) do not otherwise interfere with investors' ability to earn a market rate of return in the territory of Korea on any restricted

assets; (21)

(e) avoid unnecessary damage to the commercial, economic, or financial interests of the United States;

(f) are temporary and phased out progressively as the situation calling for imposition of such measures improves;

(g) are applied in a manner consistent with Articles 11.3, 12.2, and 13.2 (National Treatment) and Articles 11.4, 12.3, and 13.3 (Most-Favored-Nation Treatment) subject to the Schedules of Korea to Annex I, Annex IJ, and Annex III; and

(h) are promptly published by the Ministry of Finance and Economy or the Bank of Korea.

2. Paragraph 1 does not apply to measures that restrict: (a) payments or transfers for current transactions, unless:

(i) the imposition of such measures complies with the procedures stipulated in the Articles of Agreement of the International Monetary Fund (22); and

(ii) Korea coordinates any such measures in advance with the United States; or

(b) payments or transfers associated with foreign direct investment.

(20) Korea shall endeavor to provide that such measures will be price-based.

(21) For greater certainty, the term "restricted assets" in subparagraph (d) refers only to assets invested in the territory of Korea by an investor of the United States that are restricted from being transferred out of the territory of Korea.

(22) Current transactions shall have the meaning set forth in Article 30(d) of the Articles of Agreement of the International Monetary Fund and, for greater certainty, shall include interest pursuant to a loan or bond on any restricted amortization payments coming due during the period that controls on capital transactions are applied.

Exchange of Letters

June 30, 2007

The Honorable Susan C. Schwab United States Trade Representative Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Annex 11-B (Expropriation) of Chapter Eleven (Investment) of the Free Trade Agreement between our two Governments signed this day:

For purposes of the Agreement, the term "tangible or intangible property right" in paragraph 1 of Annex 11-B (Expropriation) includes rights under contract and all other property rights in an investment, as that term is defined in Article 11.28 (Definitions).

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN]

Hyun Chong Kim

June 30, 2007

The Honorable Hyun Chong Kim Minister for Trade Seoul, Republic of Korea

Dear Minister Kim:

Ihave the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the

United States of America during the course of negotiations regarding Annex 11-B (Expropriation) of Chapter Eleven (Investment) of the Free Trade Agreement between our two Governments signed this day:

For purposes of the Agreement, the term "tangible or intangible property right" in paragraph 1 of Annex 11-B (Expropriation) includes rights under contract and all other property rights in an investment, as that term is defined in Article 11.28 (Definitions).

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Ihave the further honor to confirm that my Government shares this understanding and

that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

Chapter Twelve. CROSS-BORDER TRADE IN SERVICES

Article 12.1. SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale, and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. For purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central, regional, or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

3. Notwithstanding paragraph 1:

(a) Articles 12.4, 12.7, and 12.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment; (1) and

(b) Annex 12-B shall apply to measures adopted or maintained by a Party affecting the supply of express delivery services, including by a covered investment. (2)

4. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) financial services as defined in Article 13.20 (Definitions), except that paragraph 3 shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution (as defined in Article 13.20) in the Party's territory;

(b) government procurement;

(c) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service; and

(ii) specialty air services; or

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

5. This Chapter does not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

6. This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory. A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

7. Nothing in this Chapter or any other provision of this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, including admission or conditions of admission for temporary entry. (3)

(1) For greater certainty, the scope and coverage of application of Articles 12.4, 12.7, and 12.8 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope and coverage specified in Article 12.1 of this Chapter, subject to any applicable non- conforming measures and exceptions.

(2) For greater certainty, nothing in this Chapter, including paragraph 3 and Annex 12-B, is subject to investor-state dispute settlement under Section B (Investor-State Dispute Settlement) of Chapter Eleven (Investment).

(3) For greater certainty, paragraph 7 does not limit the application of this Agreement to measures other than immigration measures that affect the supply of a service by a national of a Party in the territory of the other Party. The Parties shall consult regarding paragraph 7 within two years of the date this Agreement enters into force, and at two-year intervals afterward, unless the Parties otherwise agree.

Article 12.2. NATIONAL TREATMENT

1. Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 12.3. MOST-FAVORED-NATION TREATMENT (4)

Each Party shall accord to service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to service suppliers of a non-Party.

(4) For greater certainty, nothing in Article 12.3 shall be interpreted as extending the scope and coverage of this Chapter.

Article 12.4. MARKET ACCESS

Neither Party may adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (5) or

(iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(5) Clause (iii) does not cover measures of a Party that limit inputs for the supply of services.

Article 12.5. LOCAL PRESENCE

Neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 12.6. NON-CONFORMING MEASURES

1. Articles 12.2 through 12.5 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government; (6)

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 12.2, 12.3, 12.4, or 12.5.

2. Articles 12.2 through 12.5 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

(6) For Korea, local level of government means a local government as defined in the Local Autonomy Act.

Article 12.7. DOMESTIC REGULATION

1. Where a Party requires authorization for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorization requirements that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, while recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service; and

(b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. (7)

(7) For greater certainty, nothing in Article 12.7 prejudices either Party's position in any other forum with regard to matters covered by Article 12.7.

Article 12.8. TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS (8)

Further to Chapter Twenty-One (Transparency):

(a) Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Chapter.

(b) If, consistent with paragraphs 2 and 3 of Article 21.1 (Publication), a Party does not provide advance notice of and opportunity for comment on regulations it proposes to adopt relating to the subject matter of this Chapter, it shall, to the extent possible, address in writing the reasons for not doing so.

(c) To the extent possible, each Party shall allow reasonable time between publication of final regulations relating to the subject matter of this Chapter and their effective date.

(8) For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria at the central, regional, and local levels of government.

Article 12.9. RECOGNITION

1. For purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing, or certification of services suppliers, and subject to the requirements of paragraph 5, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 12.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. On request of the other Party, a Party shall promptly provide information, including appropriate descriptions, concerning any recognition agreement or arrangement that the Party or relevant bodies in its territory has concluded.

4. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in the other Party's territory should be recognized.

5. Neither Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

6. Annex 12-A applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

Article 12.10. PAYMENTS AND TRANSFERS (9)

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

(9) For greater certainty, Annex 11-G (Transfers) applies to Article 12.10.

Article 12.11. DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party:

(a) does not maintain normal economic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities in the territory of the other Party. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

Article 12.12. SPECIFIC COMMITMENTS

1. Annex 12-B sets out specific commitments with regard to the supply of express delivery services.

2. Annex 12-C sets out specific commitments with regard to consultations regarding non-conforming measures adopted or maintained by a regional level of government.

Article 12.13. DEFINITIONS

For purposes of this Chapter:

cross-border trade in services or cross-border supply of services means the supply of a service:

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of one Party by a person of that Party to a person of the other Party; or

(c) by a national of Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an "enterprise" as defined in Article 1.4 (Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise organized or constituted under the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;

professional services means services, the supply of which requires specialized post-secondary education, or equivalent training or experience or examination, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by trades-persons or vessel and aircraft crew members;

service supplier of a Party means a person of that Party that seeks to supply or supplies a service; (10) and

specialty air services means any non-transportation air services, such as aerial fire- fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial, and inspection services.

(10) For purposes of Articles 12.2 and 12.3, "service suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of GATS.

Exchange of Letters

June 30, 2007

The Honorable Susan C. Schwab United States Trade Representative Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understandings reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services) of the Free Trade Agreement between our two Governments signed this day:

(1) During the negotiations, the Parties discussed certain measures related to resource recycling and to policies to encourage low-emission motor vehicle distribution. The Parties shared the understanding that these measures relating to: (i) the obligation to recycle products and packaging materials; (ii) the submission of recycling performance plans and results; (iii) payment of applicable recycling levies; (iv) the obligation to distribute a certain percentage of low-emission motor vehicles; and (v) the submission and approval of plans to distribute low-emission motor vehicles are not inconsistent with Article 11.8 (Performance Requirements).

(2) During the negotiations, the Parties discussed regulations that prohibit an enterprise from concurrently holding two or more business licenses to supply different services. The Parties shared the understanding that, for the purpose of the Agreement, such restrictions are not inconsistent with Article 12.4 (Market Access).

(3) During the negotiations, the Parties discussed existing regulations applicable to the establishment, extension, or transfer of educational institutions within certain geographical areas under the Seoul Metropolitan Area Readjustment Planning Act (Law No. 7308, December 31, 2004). The Parties shared the understanding that such restrictions are not inconsistent with Article 12.4 (Market Access).

(4) During the negotiations, the Parties discussed a measure that allows local higher education institutions to jointly operate curricula only with higher education institutions organized under Korean law, or with foreign higher education institutions that have obtained accreditation from a foreign government or authorized foreign accreditation bodies. The Parties shared the understanding that such a measure is not inconsistent with Article 11.3 (National Treatment) and Article 12.2 (National Treatment).

(5) During the negotiations, the Parties discussed a measure that may establish requirements regarding the types and quantities of raw materials for producing liquor under the Liquors Act (Law No. 7841, Dec. 31, 2005) and its subordinate regulations. The Parties shared the understanding that such measure is not inconsistent with Article 11.8 (Performance Requirement), provided that it is applied in a manner consistent with the WTO Agreement on Trade-Related Investment Measures.

(6) During the negotiations, the Parties discussed regulations that control a rail transportation company's ability to stop supplying its service, including closure or liquidation of the company. The Parties shared the understanding that such restrictions are not inconsistent with Article 12.4 (Market Access).

(7) During the negotiations, the Parties discussed regulations on zoning and land use. The Parties shared the understanding that measures concerning zoning and land use are not inconsistent with Article 12.4 (Market Access).

I have the honor to propose that this letter and your letter in reply confirming that your Government shares these understandings shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]

Hyun Chong Kim

June 30, 2007

The Honorable Hyun Chong Kim Minister for Trade Seoul, Republic of Korea

Dear Minister Kim:

Ihave the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understandings reached between the delegations of the Republic of Korea and the

United States of America during the course of negotiations regarding Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services) of the Free Trade Agreement between our two Governments signed this day:

(1) During the negotiations, the Parties discussed certain measures related to resource recycling and to policies to encourage low-emission motor vehicle distribution. The Parties shared the understanding that these measures relating to: (i) the obligation to recycle products and packaging materials; (ii) the submission of recycling performance plans and results; (iii) payment of applicable recycling levies; (iv) the obligation to distribute a certain percentage of low-emission motor vehicles; and (v) the submission and approval of plans to distribute low-emission motor vehicles are not inconsistent with Article 11.8 (Performance Requirements).

(2) During the negotiations, the Parties discussed regulations that prohibit an enterprise from concurrently holding two or more business licenses to supply different services. The Parties shared the understanding that, for the purpose of the Agreement, such restrictions are not inconsistent with Article 12.4 (Market Access).

(3) During the negotiations, the Parties discussed existing regulations applicable to the establishment, extension, or transfer of educational institutions within certain geographical areas under the Seoul Metropolitan Area Readjustment Planning Act (Law No. 7308, December 31, 2004). The Parties shared the understanding that such restrictions are not inconsistent with Article 12.4 (Market Access).

(4) During the negotiations, the Parties discussed a measure that allows local higher education institutions to jointly operate curricula only with higher education institutions organized under Korean law, or with foreign higher education institutions that have obtained accreditation from a foreign government or authorized foreign accreditation bodies. The Parties shared the understanding that such a measure is not inconsistent with Article 11.3 (National Treatment) and Article 12.2 (National Treatment).

(5) During the negotiations, the Parties discussed a measure that may establish requirements regarding the types and quantities of raw materials for producing liquor under the Liquors Act (Law No. 7841, Dec. 31, 2005) and its subordinate regulations. The Parties shared the understanding that such measure is not inconsistent with Article 11.8 (Performance Requirement), provided that it is applied in a manner consistent with the WTO Agreement on Trade-Related Investment Measures.

(6) During the negotiations, the Parties discussed regulations that control a rail transportation company's ability to stop supplying its service, including closure or liquidation of the company. The Parties shared the understanding that such restrictions are not inconsistent with Article 12.4 (Market Access).

(7) During the negotiations, the Parties discussed regulations on zoning and land use. The Parties shared the understanding that measures concerning zoning and land use are not inconsistent with Article 12.4 (Market Access).

I have the honor to propose that this letter and your letter in reply confirming that your Government shares these understandings shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares these understandings and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

June 30, 2007

The Honorable Susan C. Schwab United States Trade Representative Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services) of the Free Trade Agreement between our two Governments signed this day:

Notwithstanding Article 11.1 (Scope and Coverage) or Article 12.1 (Scope and Coverage), the cross-border trade in gambling and betting services (1) is not subject to Chapter Twelve (Cross-Border Trade in Services) and investment in gambling and betting services is not subject to Chapter Eleven (Investment).

For greater certainty, each Party retains the right to adopt or maintain any measure in relation to betting and gambling services, in accordance with its respective laws or regulations.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]

Hyun Chong Kim

(1) For greater certainty, "gambling and betting services" includes such services supplied through electronic transmission and services that use sa-haeng-seong-ge-im-mul. "Sa-haeng-seong-ge-im-mul," as defined in Article 2 of Korea's Game Industry Promotion Act, includes, inter alia, gaming instruments which result in financial loss or gain through betting or by chance.

June 30, 2007

The Honorable Hyun Chong Kim Minister for Trade Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services) of the Free Trade Agreement between our two Governments signed this day:

Notwithstanding Article 11.1 (Scope and Coverage) or Article 12.1 (Scope and Coverage), the cross-border trade in gambling and betting services (1) is not subject to Chapter Twelve (Cross-Border Trade in Services) and investment in gambling and betting services is not subject to Chapter Eleven (Investment).

For greater certainty, each Party retains the right to adopt or maintain any measure in relation to betting and gambling services, in accordance with its respective laws or regulations.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

(1) For greater certainty, "gambling and betting services" includes such services supplied through electronic transmission and services that use sa-haeng-seong-ge-im-mul. "Sa-haeng-seong-ge-im-mul," as defined in Article 2 of Korea's Game Industry Promotion Act, includes, inter alia, gaming instruments which result in financial loss or gain through betting or by chance.

Sincerely,

Chapter Thirteen. FINANCIAL SERVICES

Article 13.1. SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) Financial Institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that these Chapters or Articles of these Chapters are incorporated into this Chapter.

(a) Articles 11.6 (Expropriation and Compensation), 11.7 (Transfers), 11.10 (Investment and Environment), 11.11 (Denial of Benefits), 11.13 (Special Formalities and Information Requirements), and 12.11 (Denial of Benefits) are hereby incorporated into and made part of this Chapter.

(b) Section B (Investor-State Dispute Settlement) of Chapter Eleven (Investment) is hereby incorporated into and made part of this Chapter solely for claims that a Party has breached Article 11.6, 11.7, 11.11, or 11.13 as incorporated into this Chapter.

(c) Article 12.10 (Payments and Transfers) is incorporated into and made part of this Chapter to the extent that cross-border trade in financial services is subject to obligations under Article 13.5.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter does not apply to laws, regulations, or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

Article 13.2. NATIONAL TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article 13.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 13.3. MOST-FAVORED-NATION TREATMENT

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party, in like circumstances.

Article 13.4. MARKET ACCESS FOR FINANCIAL INSTITUTIONS

A Party shall not adopt or maintain, with respect to financial institutions of the other Party or investors of the other Party seeking to establish such institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (1) or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

(1) Clause (iii) does not cover measures of a Party which limit inputs for the supply of financial services.

Article 13.5. CROSS-BORDER TRADE

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 13-A.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define "doing business" and "solicitation" for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 13.6. NEW FINANCIAL SERVICES (2)

Each Party shall permit a financial institution of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 13.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires a financial institution to obtain authorization to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorization and the authorization may be refused only for prudential reasons.

(2) The Parties understand that nothing in Article 13.6 prevents a financial institution of a Party from applying to the other Party to request that it authorize the supply of a financial service that is supplied in neither Party's territory. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 13.6.

Article 13.7. TREATMENT OF CERTAIN INFORMATION

Nothing In this Chapter requires a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 13.8. SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. A Party may not require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 13.9. NON-CONFORMING MEASURES

1. Articles 13.2 through 13.5 and Article 13.8 do not apply to:

(a) Any existing non-conforming measure that is maintained by a Party at

(i) the central level of government, as set out by that Party in Section A ofits Schedule to Annex III,

(ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex II, or

(iii) a local level of government; (3)

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 13.2, 13.3, 13.4, or 13.8. (4)

2. Articles 13.2 through 13.5 and Article 13.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure set out in an entry in a Party's Schedule to Annex I or IL as not subject to Article 11.3 (National Treatment), 11.4 (Most-Favored-Nation Treatment), 12.2 (National Treatment), or 12.3 (Most-Favored-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 13.2 or 13.3, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the entry is covered by this Chapter.

(3) For Korea, local level of government means a local government as defined in the Local Autonomy Act.

(4) For greater certainty, Article 13.5 applies to an amendment to any non-conforming measure referred to in subparagraph (a) only to the extent that the amendment decreases the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 13.5.

Article 13.10. EXCEPTIONS

1. Notwithstanding any other provision of this Chapter or Chapter Eleven (Investment), Fourteen (Telecommunications), including specifically Article 14.23 (Relation to Other Chapters), or Fifteen (Electronic Commerce), and, in addition, Article 12.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (5) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapter Eleven (Investment), Fourteen (Telecommunications), including specifically Article 14.23 (Relation to Other Chapters), or Fifteen (Electronic Commerce), and, in addition, Article 12.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 11.8 (Performance Requirements) with respect to measures covered by Chapter Eleven or under Article 11.7 (Transfers) or 12.10 (Payments and Transfers).

3. Notwithstanding Articles 11.7 (Transfers) and 12.10 (Payments and Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

(5) It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

Article 13.11. TRANSPARENCY

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

3. In lieu of paragraphs 2 through 4 of Article 21.1 (Publication), each Party, to the extent practicable:

(a) shall publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulation;

(b) shall provide interested persons and the other Party a reasonable opportunity to comment (6) on such proposed regulations; (7) and

(c) should at the time it adopts final regulations, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent practicable, each Party should allow reasonable time between publication of final regulations of general application and their effective date.

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.

8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

10. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

(6) For greater certainty, when a Party publishes regulations in advance as described in subparagraph (a), the Party shall provide an address, whether electronic or otherwise, to which interested persons and the other Party may send their comments.

(7) Further to subparagraph (b), the FSS shall continue its current practice of providing a period for interested persons and the other Party to comment on its proposed measures of general application, including the Detailed Enforcement Rules, that is at least as long as the period for commenting on proposed regulations under Korea's Administrative Procedures Act and related regulations.

Article 13.12. SELF-REGULATORY ORGANIZATIONS (8)

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure that the self-regulatory organization observes the obligations of Articles 13.2 and 13.3.

(8) For greater certainty, an organization is subject to Article 13.12 to the extent that membership or participation in or access to the organization is required to supply a financial service.

Article 13.13. PAYMENT AND CLEARING SYSTEMS

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Partyâs lender of last resort facilities.

Article 13.14. RECOGNITION

1. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded autonomously;

(b) achieved through harmonization or other means; or

(c) based on an agreement or arrangement with the non-Party. 2. A Party according recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties. 3. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances described in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 13.15. SPECIFIC COMMITMENTS

Annex 13-B sets out certain specific commitments by each Party.

Article 13.16. FINANCIAL SERVICES COMMITTEE

1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 13-C.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 13.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Joint Committee of the results of each of its meetings.

Article 13.17. CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 13-C.

Article 13.18. DISPUTE SETTLEMENT

1. Section B (Dispute Settlement Proceedings) of Chapter Twenty-Two (Institutional Provisions and Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. When a Party claims that a dispute arises under this Chapter, Article 22.9 (Establishment of Panel) shall apply, except that:

(a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 22.9.4, and

(ii) if the Party complained against invokes Article 13.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties otherwise agree.

3. Financial services panelists shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, a disputing Party; and

(d) comply with the code of conduct to be established by the Joint Committee.

4. Notwithstanding Article 22.13 (Non-Implementation), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 13.19. INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter Eleven (Investment), and the respondent invokes Article 13.10 as a defense, the following provisions shall apply:

(a) The respondent shall, within 120 days of the date the claim is submitted to arbitration under Section B of Chapter Eleven, submit in writing to the Financial Services Committee a request for a joint determination on the issue of whether and to what extent Article 13.10 is a valid defense to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d).

(b) The Committee shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties and, if constituted, to the tribunal. The determination shall be binding on the tribunal.

(c) If the Committee, within 60 days of the date by which it has received the respondentâs written request for a determination under subparagraph (a), has not made a determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the Committee. The provisions of Section B of Chapter Eleven shall apply, except as modified by this subparagraph.

(i) In the appointment of all arbitrators not yet appointed to the tribunal, each disputing party shall take appropriate steps to ensure that the tribunal has expertise or experience as described in Article 13.18.3(a). The expertise or experience of particular candidates with respect to financial services shall be taken into account to the greatest extent possible in the appointment of the presiding arbitrator.

(ii) If, prior to the submission of the request for a determination in conformance with subparagraph (a), the presiding arbitrator has been appointed pursuant to Article 11.19.3 (Selection of Arbitrators), such arbitrator shall be replaced upon the request of either disputing party and the tribunal shall be reconstituted consistent with clause (i). If, within 30 days of the date the arbitration proceedings are resumed under subparagraph (d), the disputing parties have not agreed on the

appointment of a new presiding arbitrator, the Secretary-General, on the request of a disputing party, shall appoint the presiding arbitrator consistent with clause (i).

(iii) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 13.10 is a valid defense to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 13.10 not inconsistent with that of the respondent.

(d) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:

(i) ten days after the date the determination of the Committee has been received by the disputing parties and, if constituted, the tribunal; or

(ii) ten days after the expiration of the 60-day period extended to the Committee in subparagraph (c).

2. The definitions of the following terms set out in Article 11.28 (Definitions) are incorporated into this Article, mutatis mutandis: claimant, disputing parties, disputing party, respondent, and Secretary-General.

Article 13.20. DEFINITIONS

For purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

(a) from the territory of one Party into the territory of the other Party;

(b) in the territory of one Party by a person of that Party to a person of the other Party; or

(c) by a national of one Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities: Insurance and insurance-related services (a) Direct insurance (including co-insurance):

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency; and

(d) assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public;

(f) Lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;

(i) Guarantees and commitments;

(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(i) money market instruments (including checks, bills, certificates of deposits);

(ii) foreign exchange;

(iii) derivative products including, but not limited to, futures and options;

(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(v) transferable securities;

(vi) other negotiable instruments and financial assets, including bullion;

(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l) Money broking;

(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

FSS means the Financial Supervisory Service (9) established under Korea's Act on the Establishment, etc. of Financial Supervisory Organizations;

investment means "investment" as defined in Article 11.28 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for purposes of Chapter Eleven (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 11.28 (Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.4 (Definitions) and, for greater certainty, does not include

a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; for purposes of Chapter Sixteen (Competition- Related Matters), a central bank or monetary authority ofa Party, or any financial institution that performs a financial regulatory function and is owned or controlled by a Party, (10) shall not be considered a designated monopoly or a state enterprise; and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, by statute or delegation from central, regional, or local governments or authorities; for purposes of Chapter Sixteen (Competition-Related Matters), a self-regulatory organization shall not be considered a designated monopoly.

(9) For greater certainty, Korea shall ensure that the FSS complies with Korea's obligations under this Agreement.

(10) The Korea Deposit Insurance Corporation of Korea and the Federal Deposit Insurance Corporation of the United States shall be deemed to be within the definition of public entity for purposes of Chapter Sixteen (Competition-Related Matters).

Annex 13-A. CROSS-BORDER TRADE

UNITED STATES

Insurance and insurance-related services

1. Article 13.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.20 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit; and

(b) reinsurance and retrocession, services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service in Article 13.20, and insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 13.20.

2. Article 13.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 13.20 with respect to insurance services.

Banking and other financial services (excluding insurance)

3. Article 13.5.1 applies only with respect to:

(a) the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (0) of the definition of financial service in Article 13.20; and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 13.20.

KOREA

Insurance and insurance-related services

4. Article 13.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.20 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising

therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance, such as consultancy, (11) risk assessment, (12) actuarial and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 13.20, of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

5. Article 13.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 13.20 with respect to services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

6. Article 13.5.1 applies only with respect to:

(a) the provision and transfer of financial information; (13)

(b) the provision and transfer of financial data processing and related software relating to banking and other financial services as referred to in subparagraph (0) of the definition of financial service in Article 13.20, by no later than two years from the date this Agreement enters into force; and

(c) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 13.20. This commitment applies to the supply of credit rating, credit reference and investigation, general fund administration, indirect investment vehicle appraisal, and bond appraisal with regard to securities issued in Korea (14) only to the extent that Korea allows the supply of these services with respect to such assets. This commitment does not apply to (i) credit rating of enterprises in Korea; or (ii) credit reference and investigation undertaken for purposes of lending and other financial transactions in Korea with respect to individuals or companies in Korea. Once Korea allows the supply of certain of these services, it may not subsequently prohibit or limit the supply of such services.

(11) Consultancy means activities such as providing advice on corporate strategy formulation, marketing strategy, or product development strategy.

(12) Risk assessment means activities such as risk analysis, risk prevention, or expert advice related to difficult or unusual risks.

(13) For greater certainty, "financial information" referred to in paragraph 6(a) does not include general financial or business information that is included within a general circulation publication or provided for a general audience.

(14) As of March 2007, securities issued in the territory of Korea are denominated solely in Korean won, except in extraordinary circumstances. Where bonds issued outside the territory of Korea are held by a Korean collective investment scheme registered with the Financial Supervisory Commission, appraisal of the bond must be undertaken by a bond appraisal company in the territory of Korea.

Annex 13-B. SPECIFIC COMMITMENTS

Section A. PORTFOLIO MANAGEMENT

United States

1. The United States shall allow a financial institution organized outside its territory to provide the following services to a collective investment scheme located in its territory:

(a) investment advice; and

(b) portfolio management services, excluding

(i) trustee services; and

(ii) custodial services (15) and execution services, that are not related to managing a collective investment scheme.

2. For greater certainty, paragraph 1 is subject to Articles 13.1 and 13.5.3.

3. For purposes of paragraph 1, collective investment scheme means an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

Korea

4. Korea shall allow a financial institution organized outside its territory to provide investment advice and portfolio management services to the manager of a collective investment scheme located in its territory, provided that the scope of the services does not include:

(a) trustee services;

(b) custodial services; and

(c) execution services that are not related to managing a collective investment scheme.

This paragraph applies to the supply of investment advice or portfolio management services with regard to won-denominated assets only to the extent that Korea allows the supply of these services with respect to such assets. Once Korea allows the supply of certain of these services with regard to Korean won-denominated assets, it may not subsequently prohibit or limit the supply of such services. Korea will consult with the United States with respect to the liberalization of these services no later than two years after the date this Agreement enters into force.

5. For greater certainty, paragraph 4 is subject to Articles 13.1 and 13.5.3. 6. For purposes of paragraph 4, collective investment scheme means: (a) an investment trust reported to the Financial Supervisory Commission (FSC) pursuant to the Indirect Investment Asset Management Business Act (LAMB Act); and

(b) an investment company registered with the FSC pursuant to the TAMB Act.

(15) Custodial services are included in paragraph 1 only with respect to investments for which the primary market is outside the territory of the United States.

Section B. TRANSFER OF INFORMATION

Each Party shall allow a financial institution of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the institutionâs ordinary course of business. Korea shall give effect to this commitment no later than two years after the date this Agreement enters into force.

Section C. PERFORMANCE OF FUNCTIONS

1. The Parties recognize the benefits of allowing a financial institution in a Party's territory to perform certain functions at its head office or affiliates located inside or outside the Party's territory. To the extent practicable, each Party should allow such an office or affiliate to perform these functions.

These functions generally include, but are not limited to:

(a) trade and transaction processing functions, including confirmation and statement production;

(b) technology-related functions, such as data processing, (16) programming, and system development;

(c) administrative services, including procurement, travel arrangements, mailing services, physical security, office space management, and secretarial services;

(d) human resource activities, including training and education;

(e) accounting functions, including bank reconciliation, budgeting, payroll, tax, account reconciliation, and customer and proprietary accounting; and

(f) legal functions, including the provision of advice and litigation strategy.

2. Nothing in paragraph 1 prevents a Party from requiring a financial institution located in its territory to retain certain functions.

3. For greater certainty, a financial institution located in the territory of a Party retains ultimate responsibility for compliance with requirements applicable to those functions performed by its head office or affiliate.

(16) To the extent that a Party is obligated under Section B of Annex 13-B to allow the transfer of information outside its territory, that Party shall also allow data processing of that information after the transfer.

Section D. TRANSPARENCY

The United States welcomes Korea's ongoing initiative to expand and enhance transparency, noting in particular the adoption by the FSS of the Operational Rule on Administrative Guidance and the introduction of the no-action letter mechanism. Korea shall, to the extent practicable, continue its existing practice of issuing in writing any administrative guidance to a financial institution or cross-border financial services supplier. At the request of an affected party, Korea shall put any oral administrative guidance provided into writing and post it on a public Internet site. During any review of previously issued administrative guidance, Korea shall provide interested parties an opportunity to comment on that guidance.

Section E. INSURANCE COMPLAINT METHODS AND PROCEDURES

Each Party should ensure that its system for public disclosure of data on complaints filed with regard to insurance suppliers fairly takes into account the relative size of such suppliers. Each Party shall ensure that aggregate complaint information is provided in a transparent manner, such as in a complaint index ratio format, grade format, or other reasonable format and include well documented definitions and explanations of calculation methodology. Any public disclosure of the number of complaints filed with respect to an insurance supplier should also disclose the number of such complaints that the authorities found to be valid.

Section F. SECTORAL COOPERATIVES SELLING INSURANCE

1. The regulation of insurance services supplied by a sectoral cooperative should not provide the cooperative a competitive advantage over private suppliers of like insurance services. To the extent practicable, a Party should apply the same rules to services supplied by such cooperatives that it applies to like services supplied by private insurers.

2. To this end, the FSC should exercise regulatory oversight over services supplied by sectoral cooperatives. At a minimum, Korea shall provide that no later than three years after the date this Agreement enters into force, solvency matters related to the sale of insurance by the National Agricultural Cooperative Federation, the National Federation of Fisheries Cooperatives, the Korea Federation of Community Credit Cooperatives, and the National Credit Union Federation of Korea shall be subject to regulation by the FSC.

3. The Insurance Working Group established in Annex 13-C shall address the need for additional steps to achieve the objectives set out in paragraphs 1 and 2.

Section G. SUPERVISORY COOPERATION

The Parties support the efforts of their respective financial regulators to provide assistance to the regulators of the other Party to enhance consumer protection and those regulators' ability to prevent, detect, and prosecute unfair and deceptive practices. Each Party confirms that its financial regulators have the legal authority to exchange information in support of those efforts. The Parties encourage financial regulators to continue their ongoing efforts to strengthen this cooperation through bilateral consultations or bilateral or multilateral international cooperative mechanisms, such as memoranda of understanding or ad hoc undertakings.

Section H. GOVERNMENT PROCUREMENT

1. Notwithstanding Article 13.1.4, each Party shall apply Articles 13.2. and 13.3 with respect to the acquisition or procurement of the following services to the extent this Chapter applies to measures adopted or maintained by the Party relating to activities or services set out in subparagraphs (a) and (b) of Article 13.1.3:

(a) services relating to the sale, redemption, and distribution of central government debt;

(b) services relating to the holding of central government fiscal and depository accounts; and

(c) services relating to the management of the following assets:

(i) in the case of the United States, assets of federal government employees held by the Federal Retirement Thrift Investment Board as a fiduciary; and

(ii) in the case of Korea, assets of the Korea Investment Corporation.

2. Korea shall apply Article 13.5.1 with respect to the services described in subparagraph 1(c) (ii) to the extent that the Korea Investment Corporation chooses to acquire or procure those services on a cross-border basis.

Section I. EXPEDITED AVAILABILITY OF INSURANCE

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

Korea

1. The United States welcomes Korea's plan to adopt policies and procedures based on a negative list approach (17) to the product filing process no later than one year after the date this Agreement enters into force. Korea requires prior product filing before the introduction of a new insurance product except in cases where the product satisfies criteria (18) set forth by the FSC in the Regulation on Supervision of Insurance Business.

Section 8 of this regulation establishes the review period for products filed with the FSS. Korea requires product filing for all Bancassurance products.

United States

2. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the McCarran-Ferguson Act, the United States welcomes the efforts of the National Association of Insurance Commissioners (NAIC) relating to the availability of insurance services as expressed in the NAIC's "Statement of Intent: The Future of Insurance Regulation," including the initiatives on speed-to-market intentions and regulatory re-engineering provided under Part II of the Statement of Intent.

(17) For purposes of paragraph 1, adoption of a negative list approach in this context means developing a list of specific procedures or products that are subject to product filing. For greater certainty, procedures or products not on the list would not require prior product filing.

(18) The criteria referred to in paragraph 1 include, among others: whether risk rates already reported are used or only minimal adjustments are made from assumed interest rate or cost; whether the premium rate has changed; whether reinsurers' premium rates are used due to a shortage in domestic statistics; whether insurance employs assumed interest rates and its reported risk rates are used without change or with only minimal change; and whether policy certificates or the policy application form is being amended with minimal change.

Annex 13-C. FINANCIAL SERVICES COMMITTEE

Authorities Responsible for Financial Services

1. The authorities responsible for financial services are:

(a) for Korea, the Ministry of Finance and Economy; and

(b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance.

Elaboration of the Agenda of the Financial Services Committee

2. The Parties anticipate discussing a range of issues in the Financial Services Committee, including measures adopted or maintained by central and regional levels of government that affect the supply of financial services by financial institutions or financial service suppliers of either Party. Before any meeting of the Committee, the authorities specified in paragraph 1

will provide their counterparts with a list of financial services issues for the Committee's consideration, including any concerns of financial institutions or financial service suppliers that a Party chooses to raise.

Insurance Working Group

3. The Parties recognize the importance of discussions between their respective insurance regulatory authorities to further cooperation, coordination, and mutual understanding of issues relating to the supply of insurance in their territories. To this end, the Parties hereby establish an Insurance Working Group comprising relevant officials of each Party's financial services regulatory structure. The Working Group shall address transparency; actions necessary to ensure competitive equality between Korea Post, sectoral cooperatives selling insurance, and private insurers; financial supervision, including regulations at the central and regional levels of government, the development, adoption, and review of changes in policy; the different regulatory structures of the Parties; and other issues of mutual interest. Unless the Parties otherwise agree, the Working Group shall meet once each year after the date this Agreement enters into force, and each Party shall select, the meeting location every other year. The Working Group shall inform the Joint Committee of the results of each meeting in accordance with Article 13.16, unless the Parties otherwise agree.

Chapter Fourteen. TELECOMMUNICATIONS

Article 14.1. SCOPE AND COVERAGE

1. This Chapter applies to measures affecting trade in telecommunications services, including:

(a) measures relating to access to and use of public telecommunications services;

(b) measures relating to obligations of suppliers of public telecommunications services;

(c) other measures relating to public telecommunications networks or services; and

(d) measures relating to the supply of value-added services.

2. Except to ensure that an enterprise operating a broadcast station or cable system has continued access to and use of public telecommunications services, this Chapter (except for Article 14.20) does not apply to any measure relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

Section A. Access to and Use of Public Telecommunications Networks and Services

Article 14.2. ACCESS AND USE

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased circuits; (1)

(c) connect owned or leased circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;

(d) perform switching, signaling, processing, and conversion functions; and

(e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that conditions for access to and use of public telecommunications networks and services satisfy the criteria set out in paragraph 5, such conditions may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(b) requirements, where necessary, for the inter-operability of such networks and services; and

(c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to such networks.

(1) For greater certainty, subparagraph (b) shall not be construed to prohibit a Party from requiring a service supplier to obtain a license to supply specific services.

Section B. Suppliers of Public Telecommunications Services

Article 14.3. OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES (2)

Interconnection

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

Article 14.5. COMPETITIVE SAFEGUARDS

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 include in particular:

(a) engaging in anticompetitive cross-subsidization;

(b) using information obtained from competitors with anticompetitive results; and

(c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

Article 14.6. RESALE

Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications services.

Article 14.7. UNBUNDLING OF NETWORK ELEMENTS

Each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, nondiscriminatory, and transparent for the supply of public telecommunications services.

Article 14.8. INTERCONNECTION

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(c) of a quality no less favorable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(d) in a timely fashion, and on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

Options for Interconnecting with Major Suppliers

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through:

(a) negotiation of a new intercomnection agreement; and

(b) one of the following options:

(i) a reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(ii) the terms and conditions of an interconnection agreement in effect.

Public Availability of Interconnection Offers and Agreements

3. If a major supplier in the territory of a Party has a reference interconnection offer, the Party shall require the offer to be made publicly available.

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

5. Each Party shall require a major supplier in its territory to file all interconnection agreements to which it is party with its telecommunications regulatory body. (5)

6. Each Party shall make publicly available interconnection agreements in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory.

(5) The United States may comply with paragraph 5 by requiring filing with a state regulatory authority.

Article 14.9. PROVISIONING AND PRICING OF LEASED CIRCUITS SERVICES (6)

1. Each Party shall ensure that a major supplier in its territory provides service suppliers of the other Party leased circuits services that are public telecommunications services on terms and conditions, and at rates, that are reasonable and non-discriminatory.

2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based, cost-oriented prices.

(6) Article 14.9 shall not be construed to require a Party to ensure that the major supplier provides leased circuits as an unbundled network element.

Article 14.10. CO-LOCATION

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution (7) on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

3. Each Party may limit which premises are subject to paragraphs 1 and 2, provided the Party specifies any such limitation in its law or regulations.

(7) The United States may comply with the obligation in Article 14.10.2 to ensure that a major supplier in its territory provides an alternative solution by ensuring that the supplier provides virtual co-location.

Article 14.11. ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

Each Party shall ensure that a major supplier in its territory affords access to poles, ducts, conduits, and rights-of-way owned or controlled by the major supplier to suppliers of public telecommunications services of the other Party in the Party's territory on terms and conditions, and at rates, that are reasonable, non-discriminatory, and transparent.

Section D. Other Measures

Article 14.12. SUBMARINE CABLE SYSTEMS

1. Where a supplier of telecommunications services in the territory of a Party operates a submarine cable system to provide public telecommunications services, that Party shall ensure that the supplier accords suppliers of public telecommunications services of the other Party reasonable and non-discriminatory treatment with respect to access (8) to that submarine cable system, including landing facilities.

2. Where a major supplier of international public telecommunications services in the territory of a Party controls cable landing facilities and services for which there are no economically or technically feasible alternatives, the Party shall ensure that the major supplier: (9)

(a) permits suppliers of public telecommunications services of the other Party to:

(i) use the major supplier's cross-connect links in the submarine cable landing station to connect their equipment to backhaul links and submarine cable capacity of any supplier of telecommunications; and

(ii) co-locate their transmission and routing equipment used for accessing submarine cable capacity and backhaul links of any supplier of telecommunications in the submarine cable landing station on terms and conditions, and at cost-oriented rates, that are reasonable, transparent, and non-discriminatory; and

(b) provides suppliers of telecommunications of the other Party international leased circuits, backhaul links, and cross-connect links in the submarine cable landing station on terms and conditions, and at rates, that are reasonable, transparent, and non-discriminatory. (10)

(8) With respect to a supplier of the other Party that does not own facilities in the territory of the Party in which the cable landing system is located, that Party may comply with paragraph 1 by ensuring access to the submarine cable system through facilities that the supplier of the other Party leases from a licensed supplier of public telecommunications services in the territory of the Party.

(9) Paragraph 2 is subject to Annex 14-B.

(10) Notwithstanding paragraph 2, a Party may permit a major supplier in its territory to limit access to or use of its submarine cable landing station if capacity at the station is unavailable.

Article 14.13. CONDITIONS FOR THE SUPPLY OF VALUE-ADDED SERVICES

1. Neither Party may require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services over facilities that the enterprise does not own to:

(a) supply those services to the public generally;

(b) cost-justify its rates for those services;

(c) file a tariff for those services;

(d) connect its networks with any particular customer for the supply of those services; or

(e) conform with any particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anticompetitive under its law or regulations, or to otherwise promote competition or safeguard the interests of consumers.

Article 14.14. INDEPENDENT REGULATORY BODIES

Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not own equity (11) or maintain an operating or management role in any such supplier. Each Party shall ensure that its regulatory decisions and procedures, including decisions and procedures relating to licensing, interconnection with public telecommunications networks and services, tariffs, and assignment or allocation of spectrum for non-government public telecommunications services, are impartial with respect to all market participants.

(11) For greater certainty, Article 14.14 shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

Article 14.15. UNIVERSAL SERVICE

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 14.16. LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications services to have a license, the Party shall make publicly available:

(a) all the licensing criteria and procedures it applies;

(b) the period it normally requires to reach a decision concerning an application for a license; and

(c) the terms and conditions of all licenses in effect.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of a license.

Article 14.17. ALLOCATION AND USE OF SCARCE RESOURCES

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including

frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands, but retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article 12.4 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 12.1.3 (Scope and Coverage) to an investor or covered investment of the other Party. Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of public telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. Each Party shall endeavor to allocate and assign spectrum for non-government telecommunications services in a manner that encourages economically efficient use of the spectrum and competition among suppliers of telecommunications services, recognizing that a Party may encourage this behavior through a variety of means, including through administrative incentive pricing, auctions, or unlicensed use.

Article 14.18. ENFORCEMENT

Each Party shall provide its competent authority the authority to enforce the Party's measures relating to the obligations set out in Articles 14.2 through 14.12. That authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension, or revocation of licenses.

Article 14.19. RESOLUTION OF TELECOMMUNICATIONS DISPUTES (12)

Further to Articles 21.3 (Administrative Proceedings) and 21.4 (Review and Appeal), each Party shall ensure that:

Recourse

(a) (i) enterprises may have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Articles 14.2 through 14.12; and

(ii) suppliers of public telecommunications services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier requests interconnection, by its telecommunications regulatory body (13) to resolve disputes regarding the terms, conditions, and rates for interconnection with that major supplier;

Reconsideration

(b) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays the determination or decision; (14) and

Judicial Review

(c) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless the relevant judicial body stays the determination or decision.

(12) For Korea, for purposes of Article 14.19, enterprise means a natural person or a juridical person organized under the laws of Korea.

(13 The United States may comply with subparagraph (a)(ii) by providing for review by a state regulatory authority.

(14) For Korea, subparagraph (b) does not apply to a determination or decision of the telecommunications regulatory body with respect to disputes between service suppliers or between service suppliers and users.

Article 14.20. TRANSPARENCY

Further to Article 21.1 (Publication), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided with adequate advance public notice of, and reasonable opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes;

(c) to the extent practicable, all comments filed with the telecommunications regulatory body in the rulemaking are made publicly available;

(d) its telecommunications regulatory body responds in its rulemaking to all significant and relevant issues raised in comments filed with the telecommunications regulatory body; and

(e) its measures relating to public telecommunications services are made publicly available, including:

(i) measures relating to

(A) tariffs and other terms and conditions of service;

(B) specifications of technical interfaces;

(C) conditions for attaching terminal or other equipment to the public telecommunications network; and

(D) notification, permit, registration, or licensing requirements, if any; and

(ii) procedures relating to judicial and other adjudicatory proceedings.

Article 14.21. MEASURES CONCERNING TECHNOLOGIES AND STANDARDS (15)

1. The Parties recognize that measures concerning technologies and standards may contribute to legitimate public policy objectives, and that a regulatory approach that affords suppliers of public telecommunications and value-added services the flexibility to choose the technologies that they use to supply their services may contribute to innovation in and development of information and communications technologies.

2. A Party may apply a measure that limits the technologies or standards that a supplier of public telecommunications or value-added services may use to supply its services, provided that the measure is designed to achieve a legitimate public policy objective and is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade. Except with respect to technical requirements referred to in paragraph 3, each Party retains the right to define its own legitimate public policy objectives, recognizing that affording protection to domestic suppliers of telecommunications or value-added services or equipment is not a legitimate public policy objective.

3. A Party may apply a technical requirement (16) that limits the technologies or standards that a supplier of public telecommunications or value-added services may use to supply its services in a particular spectrum frequency band, provided that the requirement is designed to ensure effective or efficient use of the spectrum (including with respect to preventing harmful interference), safeguard consumers' continued access to domestic or international networks or services, (17) facilitate law enforcement, or protect human health or safety.

4. To the extent possible, each Party shall endeavor to base its technical requirements relating to the supply of telecommunications or value-added services on performance rather than design or descriptive characteristics.

5. If a Party adopts a measure that mandates the use of a specific technology or standard, or otherwise limits a supplierâs ability to choose the technology it uses, to supply a telecommunications or value-added service, it shall:

(a) do so on the basis of a rulemaking

(i) in which the Party determines that market forces have not achieved, or could not reasonably be expected to achieve, its legitimate public policy objective; and

(ii) that affords suppliers of telecommunications or value-added services or equipment the opportunity to demonstrate that an alternative technology or standard could achieve the Party's legitimate public policy objective; and

(b) after adopting the measure, provide suppliers of telecommunications or value-added services or equipment opportunities to request the Party to initiate a rulemaking to permit, in addition, the use of an alternative technology or standard that could effectively and reasonably achieve the Party's legitimate public policy objective. The Party shall respond to any such request in writing, stating the reasons for accepting or rejecting the request, including how amending or not applying the measure may affect consumers, and make the response and, to the extent practicable, the request publicly available.

(15) Except for paragraphs 1 and 5(b), Article 14.21 does not apply to measures adopted before the date this Agreement enters into force.

(16) The Parties recognize that it may be appropriate to base technical requirements regarding the supply of public telecommunications or value-added services on international standards.

(17) For greater certainty, "safeguard consumers' continued access to domestic or international networks or services" includes facilitating consumers' ability to access mobile networks globally.

Article 14.22. FORBEARANCE

1. The Parties recognize the importance of relying on competitive market forces to provide wide choice in the supply of telecommunications services. To this end, each Party may forbear, to the extent provided for in its law, from applying a regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body determines that:

(a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of the regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

2. For greater certainty, each Party shall subject its regulatory body's decision to forbear to judicial review in accordance with Article 14.19(c).

Article 14.23. RELATION TO OTHER CHAPTERS

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article 14.24. DEFINITIONS

For purposes of this Chapter:

backhaul links means end-to-end transmission links from a submarine cable landing station to another primary point of access to any public telecommunications network;

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

cross-connect links means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching, or routing equipment of any supplier of public telecommunications services co-located in that submarine cable landing station;

dialing parity means the ability of an end-user to use an equal number of digits to access a particular public telecommunications service, regardless of which public telecommunications services supplier the end-user chooses;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

enterprise means an enterprise as defined in Article 1.4 (Definitions) and includes a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to supply a service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

non-discriminatory means treatment no less favorable than that accorded to any other user of like public telecommunications networks or services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between the same category of suppliers of public telecommunications services;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customerâs information, and excludes value-added services;

physical co-location means physical access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to provide public telecommunications services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory bodyâ that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers without impairment of quality, reliability, or convenience when switching between the same category of suppliers of public telecommunications services;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

physical co-location means physical access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a supplier to provide public telecommunications services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body (18) that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

service supplier of the other Party means, with respect to a Party, a person that is either a covered investment in the territory of the Party or a person of the other Party and that seeks to supply or supplies services in or into the territory of the Party, and includes a supplier of public telecommunications services;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications regulatory body means a body at the central level of government responsible for the regulation of telecommunications;

user means a service consumer or a service supplier; and

value-added services means services that add value to telecommunications services through enhanced functionality, and specifically:

(a) for the United States, means those services as defined in 47 U.S.C. § 153(20); and

(b) for Korea, means those services as defined in Article 4.4 of the Telecommunications Business Act.

(18) For the United States, this body may be a state regulatory authority.

Chapter Fifteen. ELECTRONIC COMMERCE

Article 15.1. GENERAL

The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

Article 15.2. ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters Eleven through Thirteen (Investment, Cross-Border Trade in Services, and Financial Services), which are subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

Article 15.3. DIGITAL PRODUCTS

1. Neither Party may impose customs duties, fees, or other charges (1) on or in connection with the importation or exportation of:

(a) if it is an originating good, a digital product fixed on a carrier medium; or

(b) adigital product transmitted electronically. (2)

2. Neither Party may accord less favorable treatment to some digital products (3) than it accords to other like digital products

(a) on the basis that:

(i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party, or

(ii) the author, performer, producer, developer, distributor, or owner of such digital products is a person of the other Party; or

(b) so as otherwise to afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

3. Neither Party may accord less favorable treatment to digital products:

(a) created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products created, produced, published, contracted for, commissioned, or first

made available on commercial terms in the territory of a non-Party; or

(b) whose author, performer, producer, developer, distributor, or owner is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, distributor, or owner is a person of a non-Party.

4. Paragraphs 2 and 3 do not apply to measures adopted or maintained in accordance with Article 11.12 (Non-Conforming Measures), 12.6 (Non-Conforming Measures), or 13.9 (Non-Conforming Measures).

5. Paragraph 2 does not apply to:

(a) subsidies or grants that a Party provides to a service or service supplier, including government-supported loans, guarantees, and insurance; or

(b) services supplied in the exercise of governmental authority, as defined in Article 12.1.6 (Scope and Coverage).

6. This Article does not apply to measures affecting the electronic transmission of a series of text, video, images, sound recordings, and other products scheduled by a content provider for aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

(1) For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes or other internal charges on digital products, provided that the taxes or charges are imposed in a manner consistent with this Agreement.

(2) Consistent with Article 2.14.4 (Committee on Trade in Goods), the Committee on Trade in Goods shall consult on and endeavor to resolve any difference that may arise between the Parties on classification matters related to the application of paragraph 1.

(3) Recognizing the Parties' objective of promoting bilateral trade, "some digital products" in paragraph 2 refers solely to those digital products created, produced, published, contracted for, or commissioned in the territory of the other Party, or digital products of which the author, performer, producer, developer, or owner is a person of the other Party.

Article 15.4. ELECTRONIC AUTHENTICATION AND ELECTRONIC SIGNATURES

1. Neither Party may adopt or maintain legislation for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction;

(b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication; or

(c) deny a signature legal validity solely on the basis that the signature is in electronic form.

2. Notwithstanding paragraph 1, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Partyâs law, provided the tequirement:

(a) serves a legitimate governmental objective; and

(b) is substantially related to achieving that objective.

Article 15.5. ONLINE CONSUMER PROTECTION

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

2. The Parties recognize the importance of cooperation between their respective national consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

3. Each Party's national consumer protection enforcement agencies shall endeavor to cooperate with those of the other Party, in appropriate cases of mutual concern, in the enforcement of laws against fraudulent and deceptive commercial practices in electronic commerce.

Article 15.6. PAPERLESS TRADING

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 15.7. PRINCIPLES ON ACCESS TO AND USE OF THE INTERNET FOR ELECTRONIC COMMERCE

To support the development and growth of electronic commerce, each Party recognizes that consumers in its territory should be able to:

(a) access and use services and digital products of their choice, unless prohibited by the Party's law;

(b) run applications and services of their choice, subject to the needs of law enforcement;

(c) connect their choice of devices to the Internet, provided that such devices do not harm the network and are not prohibited by the Party's law; and

(d) have the benefit of competition among network providers, application and service providers, and content providers.

Article 15.8. CROSS-BORDER INFORMATION FLOWS

Recognizing the importance of the free flow of information in facilitating trade, and acknowledging the importance of protecting personal information, the Parties shall endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders.

Article 15.9. DEFINITIONS

For Purposes of this Chapter:

carrier medium means any physical object designed principally for use in storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes, but is not limited to, an optical medium, a floppy disk, or a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically; (4)

electronic authentication means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

electronic signature means data in electronic form that is in, affixed to, or logically associated with, an electronic document, and that may be used to identify the signatory in relation to the electronic document and indicate the signatory's approval of the information contained in the electronic document;

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means; and

trade administration documents means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

(4) The definition of digital products should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorized as trade in services or trade in goods.

Chapter Sixteen. COMPETITION-RELATED MATTERS

Article 16.1. COMPETITION LAW AND ANTICOMPETITIVE BUSINESS CONDUCT

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing anticompetitive business conduct. Each Party shall take appropriate action with respect to anticompetitive business conduct with the objective of promoting economic efficiency and consumer welfare.

2. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws. The enforcement policy of each Party's authorities responsible for the enforcement of such laws is to treat persons who are not persons of the Party no less favorably than persons of the Party in like circumstances, and each Party's authorities intend to maintain this policy.

3. Each Party shall ensure that a respondent in an administrative hearing convened to determine whether conduct violates its competition laws or what administrative sanctions or remedies should be ordered for violation of such laws is afforded the opportunity to present evidence in its defense and to be heard in the hearing. In particular, each Party shall ensure that the respondent has a reasonable opportunity to cross-examine any witnesses or other persons who testify in the hearing and to review and rebut the evidence and any other collected information on which the determination may be based.

4. Each Party shall provide persons subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to seek review of the sanction or remedy in a court of that Party.

5. Each Party shall provide its authorities responsible for the enforcement of its national competition laws with the authority to resolve their administrative or civil enforcement actions by mutual agreement with the subject of the enforcement action. A Party may provide for such agreements to be subject to judicial approval.

6. Each Party shall publish rules of procedure for administrative hearings convened to determine whether conduct violates its competition laws or what administrative sanctions or remedies should be ordered for violation of such laws. These rules shall include procedures for introducing evidence in such proceedings, which shall apply equally to all parties to the proceeding.

7. The Parties recognize the importance of cooperation and coordination between their respective authorities to promote effective competition law enforcement. Accordingly, the Parties shall cooperate in relation to their enforcement policies and in the enforcement of their respective competition laws, including through mutual assistance, notification, consultation, and exchange of information.

Article 16.2. DESIGNATED MONOPOLIES

1. Each Party shall ensure that any privately-owned monopoly that it designates after the date this Agreement enters into force and any government monopoly that it designates or has designated:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;

(b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, (1) including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation (2) that are not inconsistent with subparagraph (c) or (d); (3)

(c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and

(d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non- monopolized market in its territory that adversely affect covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly or maintaining a designated monopoly.

3. This Article does not apply to government procurement.

(1) For greater certainty, "purchase or sale of the monopoly good or service in the relevant market" in Article 16.2 refers to the sale of the designated monopoly good or service in the case of a designated monopoly supplier and to the purchase of the designated monopoly good or service in the case of a designated monopoly buyer.

(2) For greater certainty, nothing in this Chapter shall be construed to prevent a Party from amending the terms of a monopoly's designation.

(3) Subparagraph (b) shall not be construed to prevent a designated monopoly from supplying the monopoly good or service in accordance with specific rates approved, or other terms or conditions established, by a regulatory authority of a Party, provided that those rates or other terms or conditions are not inconsistent with subparagraph (c) or (d).

Article 16.3. STATE ENTERPRISES

1. Each Party shall ensure that any state enterprise that it establishes or maintains:

(a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges; and

(b) accords non-discriminatory treatment in the sale of its goods or services to covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise.

Article 16.4. DIFFERENCES IN PRICING

Articles 16.2 and 16.3 shall not be construed to prevent a monopoly or state enterprise from charging different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions.

Article 16.5. TRANSPARENCY

1. The Parties recognize the value of transparency in their competition enforcement policies.

2. On request of a Party, each Party shall make available to the other Party public information concerning its:

(a) competition law enforcement activities;

(b) state enterprises and designated monopolies, public or private, at any level of government, provided that the request indicates the entities involved, specifies the particular goods or services and markets concerned, and includes some indicia that these entities may be engaging in practices that may hinder trade or investment between the Parties; and

(c) exemptions and immunities to its competition laws, provided that the request specifies the particular goods or services and markets of concern, and includes indicia that the exemption or immunity may hinder trade or investment between the Parties.

3. Each Party shall ensure that all final administrative decisions finding a violation of its competition laws are in writing and set out any relevant findings of fact and the reasoning and legal analysis on which the decision is based. Each Party shall further ensure that the decisions and any orders implementing them are published or, where publication is not practicable, otherwise made available to the public in such a manner as to enable interested persons and the other Party to become acquainted with them. The version of the decisions or orders that the Party makes available to the public may omit business confidential information or other information that is protected by its law from public disclosure.

Article 16.6. CROSS-BORDER CONSUMER PROTECTION

1. The Parties recognize the importance of cooperation on matters related to their consumer protection laws in order to enhance the welfare of their consumers. Accordingly, the Parties shall cooperate, in appropriate cases of mutual concern, in the enforcement of their consumer protection laws.

2. The Parties shall endeavor to strengthen cooperation between the United States Federal Trade Commission, on the one hand, and the Ministry of Finance and Economy of Korea and the Korea Fair Trade Commission, on the other, in areas of mutual concern relating to their respective consumer protection laws, including by:

(a) consulting on consumer protection policies and exchanging information related to the enactment and administration of their consumer protection laws;

(b) strengthening cooperation in detecting and preventing fraudulent and deceptive commercial practices against consumers;

(c) consulting on ways to reduce consumer protection law violations that have significant cross-border dimensions; and

(d) supporting implementation of the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders (2003).

3. Nothing in this Article shall limit the discretion of an agency referred to in paragraph 2 to decide whether to take action in response to a request by a counterpart agency of the other Party, nor shall it preclude any of those agencies from taking action with respect to any particular matter.

4. Each Party shall endeavor to identify, in areas of mutual concern and consistent with its own important interests, obstacles to effective cooperation with the other Party in the enforcement of its consumer protection laws, and shall consider modifying its domestic legal framework to reduce such obstacles.

Article 16.7. CONSULTATIONS

1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations regarding representations made by the other Party. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Party to which a request for consultations has been addressed shall accord full and sympathetic consideration to the concerns raised by the other Party.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavor to provide relevant non-confidential information to the other Party.

Article 16.8. DISPUTE SETTLEMENT

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 16.1, 16.6, or 16.7.

Article 16.9. DEFINITIONS

For purposes of this Chapter:

Consumer Protection Laws Means:

(a) in the case of Korea, Chapters II, IV.3, [X, and X of the Framework Act on Consumer, and the Fair Labeling and Advertising Act and its implementing regulations; and

(b) in the case of the United States, laws and regulations prohibiting "unfair or deceptive acts or practices" within the meaning of Section 5 of the Federal Trade Commission Act;

a delegation includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

designate means, whether formally or in effect, to establish, designate, or authorize a monopoly or to expand the scope of a monopoly to cover an additional good or service;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the central government of a Party; (4)

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

market means the geographical and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser ofa good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means national treatment and most-favored-nation

treatment, as set out in the relevant provisions of this Agreement, including the terms and conditions set out in the relevant Annexes thereto.

(4) For greater certainty, ownership, or control through ownership interests, may be direct or indirect.

Chapter Seventeen. GOVERNMENT PROCUREMENT

Article 17.1. GENERAL PROVISIONS

1. The Parties reaffirm their rights and obligations under the GPA and their interest in further expanding bilateral trading opportunities in each Party's government procurement market.

2. The Parties recognize their shared interest in promoting international liberalization of government procurement markets in the context of the rules-based international trading system. The Parties shall continue to cooperate in the review under Article XXIV:7 of the GPA and on procurement matters in APEC and other appropriate international fora.

3. Nothing in this Chapter shall be construed to derogate from either Party's rights or obligations with respect to the other Party under the GPA.

4. The Parties confirm their desire and determination to apply the APEC Non-Binding Principles on Government Procurement, as appropriate, to all their government procurement that is outside the scope of the GPA and this Chapter.

Article 17.2. SCOPE AND COVERAGE

1. This Chapter applies to any measure regarding covered procurement.

2. For purposes of this Chapter, covered procurement means procurement for governmental purposes:

(a) of goods, services, or any combination thereof:

(i) as specified in a Party's Schedule to Annex 17-A; and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) by any contractual means, including purchase; lease; rental or hire purchase, with or without an option to buy; build-operate-transfer contracts; and public works concession contracts;

(c) for which the value equals or exceeds the relevant threshold provided for in Annex 17-A;

(d) by a procuring entity; and

(c) procurement conducted for the specific purpose of providing international assistance, including development aid.

4. For greater certainty relating to the procurement of digital products as defined in Article 15.9 (Definitions):

(a) covered procurement includes the procurement of digital products; and

(b) no provision of Chapter Fifteen (Electronic Commerce) shall be construed as imposing obligations on a Party with respect to the procurement of digital products.

5. The provisions of this Chapter do not affect the rights and obligations provided for in Chapters Two (National Treatment and Market Access for Goods), Eleven (Investment), Twelve (Cross-Border Trade in Services), and Thirteen (Financial Services).

Article 17.3. INCORPORATION OF GPA PROVISIONS

1. For all covered procurement, the Parties shall apply Appendices I through IV of the GPA, and the following articles of the GPA, mutatis mutandis:

Article I:3 Application to Non-listed Entities

Article II Valuation of Contracts

Article III National Treatment and Non-discrimination

Article IV:1 Rules of Origin

Article VI Technical Specifications

Article VII Tendering Procedures

Article VIII Qualification of Suppliers

Article IX Invitation to Participate Regarding Intended Procurement

Article X Selection Procedures

Article XI:4 Time-Limits for Delivery

Article XII Tender Documentation

Article XIII Submission, Receipt and Opening of Tenders and Awarding of Contracts

Article XIV Negotiation

Article XV Limited Tendering

Article XVI:1 Offsets

Article XVIII Information and Review as Regards Obligations of Entities

Article XIX:1 through 4 Information and Review as Regards Obligations of Parties

Article XX Challenge Procedures

Article XXIII Exceptions to the Agreement

To that end, these GPA articles and appendices are incorporated into and made a part of this Chapter, mutatis mutandis.

2. For purposes of the incorporation of the GPA under paragraph 1, the term:

(a) “Agreement” in the GPA means “Chapter,” except that “countries not Parties to this Agreement” means “non-Parties” and “Party to the Agreement” in GPA Article III:2(b) means “Party;”

(b) “Appendix I” in the GPA means “Annex 17-A;”

(c) “Annex 1” in the GPA means “Section A of Annex 17-A;”

(d) “Annex 4” in the GPA means “Section C of Annex 17-A;”

(e) “Annex 5” in the GPA means “Section D of Annex 17-A;”

(f) “any other Party” in GPA Article III:1(b) means “a non-Party;”

(g) “other Parties” in the GPA means “the other Party;”

(h) “products” in the GPA means “goods;” and

(i) “among suppliers of other Parties or” in GPA Article VIII shall not be incorporated.

3. The Parties recognize that on December 8, 2006, the WTO Committee on Government Procurement provisionally approved the text of the revised GPA. Further to Article 24.3 (Amendment of the WTO Agreement), at such time as the revised GPA enters into force for both Parties, the Parties shall promptly incorporate by reference the appropriate provisions of the revised GPA in place of the provisions in paragraph 1.

4. If the GPA is further amended or is superseded by another agreement, the Parties shall, consistent with Article 24.2 (Amendments), amend this Chapter, as appropriate, after consultations.

Article 17.4. GENERAL PRINCIPLES

Use of Electronic Means

1. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Valuation

2. For greater certainty with regard to Article II of the GPA, in estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including premiums, fees, commissions, interest, and other revenue streams that may be provided for in the procurement.

Article 17.5. CONDITIONS FOR PARTICIPATION

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the supplier's financial capacity and commercial and technical abilities on the basis of that supplier's business activities outside the territory of the Party of the procuring entity, as well as its business activities, if any, inside the territory of the Party of the procuring entity;

(b) shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party; and

(c) shall base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.

3. A procuring entity may exclude a supplier on grounds such as: (a) bankruptcy; (b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offenses; and

(e) failure to pay taxes.

Article 17.6. PUBLICATION OF NOTICES

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in accordance with Article IX of the GPA, in the appropriate electronic medium, except in the circumstances described in Article XV of the GPA.
Notice of Planned Procurement

2. Each Party shall encourage its procuring entities to publish, as early as possible in each fiscal year, a notice regarding their future procurement plans. The notice should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement and, to the extent possible, be published in an electronic medium listed in each Party's Appendix II to the GPA.

Article 17.7. TECHNICAL SPECIFICATIONS

For greater certainty, a Party, including its procuring entities, may, in accordance with Article VI of the GPA, prepare, adopt, or apply technical specifications:

(a) to promote the conservation of natural resources or protect the environment; or

(b) to require a supplier to comply with generally applicable laws regarding

(i) fundamental principles and rights at work; and

(ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health,

in the territory in which the good is produced or the service is performed.

Article 17.8. TIME-PERIODS

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time for transmitting tenders from foreign as well as domestic points where electronic means are not used.

Such time-periods, including any extension of the time-periods, shall be common for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering set out in paragraph 3 to not less than 10 days where:

(a) the procuring entity published a notice of planned procurement under Article IX:7 of the GPA at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(vy) as much of the information that is required under Article IX:6 of the GPA for the notice of intended procurement, as is available;

(b) the procuring entity, for procurements of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders such time-period impracticable.

5. A procuring entity may reduce the time-period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of

intended procurement; and

(c) the tenders can be received by electronic means by the procuring entity.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering set out in paragraph 3 to less than ten days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other time-period in this Article, where a procuring entity purchases commercial goods or services, it may reduce the time-period for tendering set out in paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. Where the entity also accepts tenders for commercial goods and services by electronic means, it may reduce the time period set out in paragraph 3 to not less than ten days.

Article 17.9. MODIFICATIONS AND RECTIFICATIONS TO COVERAGE

1. A Party shall notify the other Party of any proposed rectification of Annex 17-A, withdrawal of an entity from Annex 17-A, or other modification of Annex 17-A (referred to generally in this Article as "modification"). The Party proposing the modification (modifying Party) shall include in the notification:

(a) for any proposed withdrawal of an entity from Annex 17-A in the exercise of its rights on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, evidence that such government control or influence has been effectively eliminated; or

(b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided under this Chapter.

2. Where the other Party objects to the proposed modification, it shall notify the modifying Party of its objection within 30 days of the notification of the proposed modification and include the reasons for its objection.

3. The Parties shall seek to resolve any objection through consultations. In such consultations, the Parties shall consider the proposed modification and, in the case ofa notification under paragraph 1(b), any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter prior to such notification.

4. Ifa Party proposes a modification pursuant to paragraph 1(b), the modifying Party shall offer to the other Party appropriate compensatory adjustments, where such adjustments are necessary to maintain a level of coverage comparable to that which was existing prior to the modification. Such modification shall become effective if the other Party does not notify the modifying Party of any objection to the proposed modification within 30 days of the notification. A Party need not provide compensatory adjustments where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence over the entity's covered procurement.

5. The Joint Committee shall adopt any proposed modification only where the other Party:

(a) does not object in writing to the proposed modification within 30 days of the notification provided under paragraph 1; or

(b) submits to the modifying Party a written notice withdrawing the objection.

Article 17.10. GOVERNMENT PROCUREMENT WORKING GROUP

1. The Parties shall establish a Working Group on Government Procurement comprising representatives of each Party.

2. The Working Group shall meet, as mutually agreed or upon request of a Party, to:

(a) consider issues regarding government procurement that a Party refers to it, including issues related to information technology; and

(b) exchange information relating to the government procurement opportunities in each Party.

Article 17.11. DEFINITIONS

For purposes of this Chapter:

APEC means Asia Pacific Economic Cooperation;

build-operate-transfer contract and public works concession contract mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

GPA means WTO Agreement on Government Procurement, done at Marrakesh, April 15, 1994; and procuring entity means an entity covered under Section A of Annex 17-A.

Chapter Eighteen. INTELLECTUAL PROPERTY RIGHTS

Article 18.1. GENERAL PROVISIONS

1. Each Party shall, at a minimum, give effect to this Chapter.

International Agreements

2. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement.

3. Each Party shall ratify or accede to the following agreements by the date this Agreement enters into force:

(a) the Patent Cooperation Treaty (1970), as amended in 1979;

(b) the Paris Convention for the Protection of Industrial Property (1967) (the Paris Convention);

(c) the Berne Convention for the Protection of Literary and Artistic Works (1971) (the Berne Convention);

(d) the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);

(e) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989);

(f) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended in 1980;

(g) the International Convention for the Protection of New Varieties of Plants (1991);

(h) the Trademark Law Treaty (1994); (1)

(i) the World Intellectual Property Organization (WIPO) Copyright Treaty (1996); and

(j) the WIPO Performances and Phonograms Treaty (1996).

4. Each Party shall make all reasonable efforts to ratify or accede to the following agreements:

(a) the Patent Law Treaty (2000);

(b) the Hague Agreement Concerning the International Registration of Industrial Designs (1999); and

(c) the Singapore Treaty on the Law of Trademarks (2006). More Extensive Protection and Enforcement

5. A Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

National Treatment

6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals (2) of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection (3) and enjoyment of such intellectual property rights and any benefits derived from such rights. With respect to secondary uses of phonograms by means of analog communications, analog free over-the-air radio broadcasting, and analog free over-the-air television broadcasting, however, a Party may limit the rights of performers and producers of phonograms of the other Party to the rights its persons are accorded in the territory of the other Party.

7. A Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

8. Paragraph 6 does not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

Application of Agreement to Existing Subject Matter and Prior Acts

9. Except as it provides otherwise, including in Article 18.4.5, this Chapter gives rise to obligations in respect of all subject matter existing at the date this Agreement enters into force that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

10. Except as otherwise provided in this Chapter, including in Article 18.4.5, a Party shall not be required to restore protection to subject matter that on the date this Agreement enters into force has fallen into the public domain in the territory of the Party where the protection is claimed.

11. This Chapter does not give rise to obligations in respect of acts that occurred before the date this Agreement enters into force.

Transparency

12. Further to Article 21.1 (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published, (4) or where publication is not practicable made publicly available, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

(1) A Party may satisfy the obligation in Article 18.1.3(h) by ratifying or acceding to the Singapore Treaty on the Law of Trademarks (2006), provided that treaty has entered into force.

(2) For purposes of paragraphs 6 and 7 and Articles 18.2.14(a), and 18.6.1, a "national" of a Party shall include, in respect of the relevant right, any person (as defined in Article 1.4 (Definitions)), of that Party that would meet the criteria for eligibility for protection of that right provided for in the agreements listed in paragraph 3 and the TRIPS Agreement.

(3) For purposes of paragraph 6, "protection" includes: (1) matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter; and (2) the prohibition on circumvention of effective technological measures set out in Article 18.4.7 and the rights and obligations concerning rights management information set out in Article 18.4.8.

(4) For greater certainty, a Party may satisfy the requirement in paragraph 12 to publish a law, regulation, or procedure by making it available to the public on the Intemet.

Article 18.2. TRADEMARKS INCLUDING GEOGRAPHICAL INDICATIONS

1. Neither Party may require, as a condition of registration, that signs be visually perceptible, nor may either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or scent.

2. Each Party shall provide that trademarks shall include certification marks. Each Party shall also provide that geographical indications are eligible for protection as trademarks. (5)

3. Each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good or service (common name), including, inter alia, requirements concerning the relative size, placement or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in

relation to such good or service.

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, at least for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

6. Neither Party may require, as a condition for determining that a mark is a well- known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Additionally, neither Party may deny remedies or relief with respect to well- known marks solely because of the lack of:

(a) a registration;

(b) inclusion on a list of well-known marks; or

(c) prior recognition of the mark as well-known.

7. Article 6 bis of the Paris Convention shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, (6) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

8. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark or geographical indication that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark or geographical indication is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark or geographical indication with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the well- known trademark.

9. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;

(b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;

(c) an opportunity for interested parties to oppose a trademark application and to seek cancellation of a trademark after it has been registered; and

(d) a requirement that decisions in opposition and cancellation proceedings be reasoned and in writing. Written decisions may be provided electronically.

10. Each Party shall provide a:

(a) system for the electronic application for, and electronic processing, registering, and maintenance of, trademarks; and

(b) publicly available electronic database, including an online database, of trademark applications and registrations.

11. Each Party shall provide that:

(a) each registration and publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their names, grouped according to the classes of the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1979), as revised and amended (Nice Classification); and

(b) goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

12. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no

less than ten years.

13. Neither Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.

14. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system of protection of trademarks or otherwise, it shall, with respect to such applications and petitions (as relevant to the means chosen by the Party):

(a) accept those applications and petitions without requiring intercession by a Party on behalf of its nationals;

(b) process those applications and petitions with a minimum of formalities;

ensure that its regulations governing filing of those applications and petitions are readily available to the public and set out clearly the procedures for these actions;

(c) make available contact information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications and petitions and the processing of those applications and petitions in general; and to allow applicants, petitioners, or their representatives to ascertain the status of, and to obtain procedural guidance concerning, specific applications and petitions; and

(d) ensure that applications and petitions for geographical indications are published for opposition, and provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel a registration resulting from an application or a petition.

15. (a) Each Party shall provide that each of the following shall be grounds for refusing protection or recognition of, and for opposition and cancellation of, a geographical indication:

(i) the geographical indication is likely to cause confusion with a trademark that is the subject of a good faith pending application or registration in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory;

(ii) âthe geographical indication is likely to cause confusion with a trademark, the rights to which have been acquired in the Party's territory through use in good faith, that has a priority date that predates the protection or recognition of the geographical indication in that territory; and

(iii) the geographical indication is likely to cause confusion with a trademark that has become well known in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory.

(b) For purposes of subparagraph (a), the date of protection of the geographical indication in a Party's territory shall be:

(i) in the case of protection or recognition provided as a result of an application or petition, the date of the application or petition; and

(ii) in the case of protection or recognition provided through other means, the date of protection or recognition under the Party's laws.

(5) For purposes of this Chapter, geographical indications means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign (such as words, including geographical and personal names, as well as letters, numerals, figurative elements, and colors, including single colors) or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication. "Originating" in this Chapter does not have the meaning ascribed to that term in Article 1.4 (Definitions).

(6) For purposes of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

Article 18.3. DOMAIN NAMES ON THE INTERNET

1. In order to address the problem of trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles

established in the Uniform Domain-Name Dispute-Resolution Policy.

2. Each Party shall require that the management of its ceTLD provide online public access to a reliable and accurate database of contact information concerning domain-name registrants.

Article 18.4. COPYRIGHT AND RELATED RIGHTS

1. Each Party shall provide (7) that authors, performers, and producers of phonograms (8) have the right to authorize or prohibit (9) all reproductions of their works, performances, (10) and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form). (11)

2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize or prohibit the making available to the public of the original and copies (12) of their works, performances, and phonograms through sale or other transfer of ownership.

3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram; or

(ii) failing such authorized publication within 25 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to the subject matter, rights, and obligations in this Article and Articles 18.5 and 18.6.

6. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.

7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:

(i) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or

(ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:

(A) are promoted, advertised, or marketed by that person, or by another person acting in concert with, and with the knowledge of, that person, for the purpose of circumvention of any effective technological measure;

(B) have only a limited commercially significant purpose or use other than to circumvent any effective technological

measure; or

(C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to the remedies set out in Article 18.10.13. (13) Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. Such criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 18.10.27 as applicable to infringements, mutatis mutandis.

(b) In implementing subparagraph (a), neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).

(c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate cause of action, independent of any infringement that might occur under the Party's law on copyright and related rights.

(d) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to the following activities, which shall be applied to relevant measures in accordance with subparagraph (c): (14)

(i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content ina technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii);

(iv) noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;

(v) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;

(vi) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;

(vii) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and

(viii) noninfringing uses of a work, performance, or phonogram in a particular class of works, performances, or phonograms when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence, provided that any limitation or exception adopted in reliance on this clause shall have effect for a renewable period of not more than three years from the date the proceeding concludes.

(e) The exceptions and limitations to measures implementing subparagraph (a) for the activities set forth in subparagraph (d) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) Measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraph (d).

(ii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a

work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i), (ii), (iii), (iv), and (vi).

(iii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i) and (vi).

(f) Effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.

8. In order to provide adequate and effective legal remedies to protect rights management information:

(a) Each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies set out in Article 18.10.13.

Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. These criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 18.10.27 as applicable to infringements, mutatis mutandis.

(b) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes.

Rights management information means:

(i) information that identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;

(ii) information about the terms and conditions of the use of the work, performance, or phonogram; or

(iii) any numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public.

(d) For greater certainty, nothing in this paragraph shall be construed to obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. Each Party shall provide appropriate laws, orders, regulations, government-issued guidelines, or administrative or executive decrees providing that its central government agencies not use infringing computer software and other materials protected by copyright or related rights and only use computer software and other materials protected by copyright or related rights as authorized by the relevant license. These measures shall provide for the regulation of the acquisition and management of software and other materials for government use that are protected by copyright or related rights.

10. (a) With respect to this Article and Articles 18.5 and 18.6, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

(b) Notwithstanding subparagraph (a) and Article 18.6.3(b), neither Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal. (15)

(7) The Parties reaffirm that it is a matter for each Party's law to prescribe that works and phonograms shall not be protected by copyright unless they have been fixed in some material form.

(8) "Authors," "performers," and "producers of phonograms" in this Chapter refer also to any successors in title.

(9) With respect to copyrights and related rights, the "right to authorize or prohibit" for purposes of this Chapter refers to exclusive rights.

(10) With respect to copyright and related rights, a performance for purposes of this Chapter means a performance fixed in a phonogram unless otherwise specified.

(11) Each Party shall confine limitations or exceptions to the rights described in paragraph 1 to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.

(12) As used in paragraph 2, "copies" and "original and copies", being subject to the right of distribution in this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects.

(13) In addition, each Party shall provide that any person who, unknowingly and without reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter shall be liable and subject at least to the remedies set out in subparagraphs (a), (c), and (d) of Article 18.10.13.

(14) Either Party may request consultations with the other Party to consider how to address, under subparagraph (d), activities of a similar nature that a Party identifies after the date this Agreement enters into force.

(15) For purposes of subparagraph (b) and for greater certainty, retransmission within a Party's territory over a closed, defined, subscriber network that is not accessible from outside the Party's territory does not constitute retransmission on the Internet.

Article 18.5. COPYRIGHT

Without prejudice to Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)Gi), 14(1) (ii), and 14bis of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

Article 18.6. RELATED RIGHTS

1. With respect to the rights accorded under this Chapter to performers and producers of phonograms, each Party shall:

(a) accord those rights to the performers and producers of phonograms who are nationals of the other Party; and

(b) accord those rights with respect to performances and phonograms that are first published or first fixed (16) in the territory of the other Party. (17)

2. Each Party shall provide to performers the right to authorize or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, except where the performance is

already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting and any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 18.4.10, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, shall be a matter of each Party's law.

(c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 18.4.10, provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.

4. Neither Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality.

5. For purposes of this Article and Article 18.4, the following definitions apply with respect to performers and producers of phonograms:

(a) broadcasting means the transmission to the public by wireless means or satellite of sounds or sounds and images, or representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; "broadcasting" does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

(b) communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

(c) fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(e) phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form ofa fixation incorporated in a cinematographic or other audiovisual work;

(f) producer of a phonogram means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

(g) publication of a performance or a phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

(16) For purposes of Article 18.6, "fixation" includes the finalization of the master tape or its equivalent.

(17) With respect to the protection of phonograms, a Party may apply the criterion of fixation instead of the criterion of publication.

Article 18.7. PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE AND CABLE SIGNALS

1. Each Party shall make it a criminal offense:

(a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite or cable signal without the authorization of the lawful distributor of such signal; and

(b) willfully to receive and make use of, (18) or further distribute, a program-carrying signal that originated as an encrypted satellite or cable signal knowing that it has been decoded without the authorization of the lawful distributor of the signal, or

if the signal has been decoded with the authorization of the lawful distributor of the signal, willfully to further distribute the signal for purposes of commercial advantage knowing that the signal originated as an encrypted program-carrying signal and that such further distribution is without the authorization of the lawful signal distributor.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

(18) For greater certainty, "make use of" includes viewing of the signal, whether private or commercial.

Article 18.8. PATENTS

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. In addition, each Party confirms that patents shall be available for any new uses or methods of using a known product. (19)

2. Each Party may only exclude from patentability:

(a) inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law; and

(b) diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals.

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Each Party shall provide that a patent may be revoked only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking a patent or holding a patent unenforceable. Where a Party provides proceedings that permit a third party to oppose the grant of a patent, the Party shall not make such proceedings available before the grant of the patent.

5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in its territory other than for purposes related to generating such information to support an application for meeting marketing approval requirements of that Party, and if the Party permits exportation of such product, the Party shall provide that the product shall only be exported outside its territory for purposes of generating information to support an application for meeting marketing approval requirements of that Party.

6. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application, whichever is later. Periods attributable to actions of the patent applicant need not be included in the determination of such delays. (20)

(b) With respect to patents covering a new pharmaceutical product (21) that is approved for marketing in the territory of the Party and methods of making or using a new pharmaceutical product that is approved for marketing in the territory of the Party, each Party, at the request of the patent owner, shall make available an adjustment of the patent term or the term of the patent rights of a patent covering a new pharmaceutical product, its approved method of use, or a method of making the product to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process related to the first commercial use of that pharmaceutical product in the territory of that Party. Any adjustment under this subparagraph shall confer all of the exclusive rights, subject to the same limitations and exceptions, of the patent claims of the product, its method of use, or its method of manufacture in the originally issued patent as applicable to the product and the approved method of use of the product. (22)

7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure:

(a) was made or authorized by, or derived from, the patent applicant, and

(b) occurred within 12 months prior to the date of filing of the application in the territory of the Party. (23)

8. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications.

9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

10. Each Party shall provide that a claimed invention:

Article 18.9. MEASURES RELATED TO CERTAIN REGULATED PRODUCTS

1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the origination of which involves a considerable effort, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the territory of the Party, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval,

for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval in the territory of the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or

(ii) evidence of prior marketing approval in the other territory,

for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval of the new product in the territory of the Party. (24)

(c) For purposes of this Article, a new pharmaceutical product is one that does not contain a chemical entity that has been previously approved in the territory of the Party for use in a pharmaceutical product, and a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

2. (a) If a Party requires or permits, as a condition of granting marketing approval for a pharmaceutical product that includes a chemical entity that has been previously approved for marketing in another pharmaceutical product, the submission of new clinical information that is essential to the approval of the pharmaceutical product containing the previously approved chemical entity, other than information related to bioequivalency, the Party shall not, without the consent of a person that previously submitted such new clinical information to obtain marketing approval in the territory of the Party, authorize another to market a same or a similar product based on:

(i) the new clinical information submitted in support of the marketing approval; or

(ii) evidence of the marketing approval based on the new clinical information,

for at least three years from the date of marketing approval in the territory of the Party.

(b) If a Party requires or permits, in connection with granting marketing approval for a pharmaceutical product of the type specified in subparagraph (a), the submission of evidence concerning new clinical information for a product that was previously approved based on that new clinical information in another territory, other than evidence of information related to bioequivalency, such as evidence of prior marketing approval based on the new clinical information, the Party shall not, without the consent of the person that previously submitted such new clinical information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the new clinical information submitted in support of the prior marketing approval in the other territory; or

(ii) evidence of prior marketing approval based on the new clinical information in the other territory,

for at least three years from the date of marketing approval based on the new clinical information in the territory of the Party.

(c) If a Party requires or permits, as a condition of granting marketing approval for a new use, for an agricultural chemical product that has been previously approved in the territory of the Party, the submission of safety or efficacy information, the origination of which involves a considerable effort, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the territory of the Party, authorize another to market a same or similar product for that use based on:

(i) the submitted safety or efficacy information; or

(ii) evidence of the marketing approval for that use,

for at least ten years from the date of the original marketing approval of the agricultural chemical product in the territory of the Party.

(d) If a Party requires or permits, in connection with granting marketing approval for a new use, for an agricultural chemical product that has been previously approved in the territory of the Party, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory for that new use, such as evidence of prior marketing approval for that new use, the Party shall not, without the consent of the person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on:

(i) the safety or efficacy information submitted in support of the prior marketing approval for that use in the other territory; or

(ii) evidence of prior marketing approval in another territory for that new use,

for at least ten years from the date of the original marketing approval granted in the territory of the Party.

3. With respect to pharmaceutical products, notwithstanding paragraphs 1 and 2, a Party may take measures to protect public health in accordance with:

(a) the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the Declaration);

(b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration and in force between the Parties; and

(c) any amendment of the TRIPS Agreement to implement the Declaration that enters into force with respect to the Parties.

4. Subject to paragraph 3, when a product is subject to a system of marketing approval in the territory of a Party in accordance with paragraph 1 or 2 and is also covered by a patent in that territory, the Party may not alter the term of protection that it provides in accordance with those paragraphs in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in those paragraphs.

5. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on that information or on evidence of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the territory of the Party or in another territory, that Party shall:

(a) provide that the patent owner shall be notified of the identity of any such other person that requests marketing approval to enter the market during the term of a patent notified to the approving authority as covering that product or its approved method of use; and

(b) implement measures in its marketing approval process to prevent such other persons from marketing a product without the consent or acquiescence of the patent owner during the term of a patent notified to the approving authority as covering that product or its approved method of use.

(24) The Parties acknowledge that, as of the date of signature of this Agreement, neither Party permits a person, not having the consent of the person that previously submitted safety or efficacy information to obtain marketing approval in another territory, to market a same or similar product in the territory of the Party on the basis of such information or evidence of prior marketing approval in such other territory.

Article 18.10. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

General Obligations

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights be in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall also provide that those decisions and rulings be published (25) or, where publication is not practicable, otherwise made available to the public, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

2. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, including any statistical information that the Party may collect for such purposes. (26)

3. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner is the designated right holder in such work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter. In civil, administrative, and criminal proceedings involving trademarks, each Party shall provide for a rebuttable presumption that a registered trademark is valid. In civil and administrative proceedings involving patents, each Party shall provide for a rebuttable presumption that a patent is valid, and shall provide that each claim of a patent is presumed valid independently of the validity of the other claims.

Civil and Administrative Procedures and Remedies

4. Each Party shall make available to right holders (27) civil judicial procedures concerning the enforcement of any intellectual property right.

5. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; (28) or

(ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in clause (i); and

(b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, inter alia, the value of the infringed good or service, measured by the market price, the suggested retail price, or other legitimate measure of value submitted by the right holder.

6. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain pre-established damages, which shall be available on the election of the right holder. Pre-established damages shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement. (29)

7. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement, patent infringement, or trademark infringement, that the prevailing party shall be awarded payment by the losing party of court costs or fees and, at least in proceedings concerning copyright or related rights infringement or willful trademark counterfeiting, reasonable attorney's fees.

Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party shall be awarded payment by the losing party of reasonable attorneys' fees.

8. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of allegedly infringing goods, materials, and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

9. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be

destroyed, except in exceptional circumstances;

(b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

10. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide, for the purpose of collecting evidence, any information that the infringer possesses or controls regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder or the judicial authorities.

11. Each Party shall provide that its judicial authorities have the authority to:

(a) fine, detain, or imprison, in appropriate cases, a party to a civil judicial proceeding who fails to abide by valid orders issued by such authorities; and

(b) impose sanctions on parties to a civil judicial proceeding, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding.

12. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those set out in this Chapter.

13. Incivil judicial proceedings concerning the acts described in paragraphs 7 and 8 of Article 18.4, each Party shall provide that its judicial authorities shall, at the least, have the authority to:

(a) impose provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;

(b) provide an opportunity for the right holder to elect award of either actual damages it suffered or pre-established damages;

(c) order payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney's fees, by the party engaged in the prohibited conduct; and

(d) order the destruction of devices and products found to be involved in the prohibited activity.

Neither Party may make damages available under this paragraph against a nonprofit library, archives, educational institution, or public noncommercial broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited activity.

14. Incivil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, in order, inter alia, to prevent infringing imports from entering the channels of commerce and to prevent their exportation.

15. In the event that a Party's judicial or other competent authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, the Party should seek to ensure that such costs are closely related, inter alia, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

Alternative Dispute Resolution

16. Each Party may permit use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.

Provisional Measures

17. Each Party shall act on requests for provisional measures inaudita altera parte expeditiously.

18. Each Party shall provide that its judicial authorities have the authority to require the plaintiff, with respect to provisional

measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff s right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

Special Requirements Related to Border Measures

19. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods (30) into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall apply to all points of entry to its territory and remain applicable for a period of not less than one year from the date of application, or the period that the good is protected by copyright or that the relevant trademark registration is valid, whichever is shorter.

20. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that the security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good. In no case shall an importer be permitted to post a bond or other security to obtain possession of suspected counterfeit or confusingly similar trademark goods, or of pirated copyright goods.

21. Where its competent authorities have seized goods that are counterfeit or pirated, a Party shall inform the right holder within 30 days of the seizure of the names and addresses of the consignor, importer, exporter, or consignee, and provide to the right holder a description of the merchandise, the quantity of the merchandise, and, if known, the country of origin of the merchandise.

22. Each Party shall provide that its competent authorities may initiate border measures ex officio (31) with respect to imported, exported, or in-transit merchandise, (32) or merchandise in free trade zones, that is suspected of being counterfeit or confusingly similar trademark goods, or pirated copyright goods.

23. Each Party shall provide that goods that have been suspended from release by its customs authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional circumstances. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized, except in exceptional circumstances, to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures.

24. Where an application fee or merchandise storage fee is assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse to these measures.

25. Each Party shall provide the other Party, on mutually agreed terms, with technical advice on the enforcement of border measures concerning intellectual property rights, and the Parties shall promote bilateral and regional cooperation on these matters.

Criminal Procedures and Remedies

26. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes:

(a) significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain; and

(b) willful infringements for purposes of commercial advantage or private financial gain.â

Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to

criminal penalties. (34)

27. Further to paragraph 26, each Party shall provide:

(a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer's monetary incentive. Each Party shall further encourage judicial authorities to impose those penalties at levels sufficient to provide a deterrent to future infringements, including the imposition of actual terms of imprisonment when criminal infringement occurs for purposes of commercial advantage or private financial gain;

(b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements used in the commission of the offense, any documentary evidence relevant to the offense, and any assets traceable to the infringing activity. Each Party shall provide that such orders need not individually identify the items that are subject to seizure, so long as they fall within general categories specified in the order;

(c) that its judicial authorities shall have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity;

(d) that its judicial authorities shall, except in exceptional cases, order

(i) the forfeiture and destruction of all counterfeit or pirated goods, and any articles consisting of a counterfeit mark; and

(ii) the forfeiture and/or destruction of materials and implements that have been used in the creation of pirated or counterfeit goods.

Each Party shall further provide that forfeiture and destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant;

(e) that, in criminal cases, its judicial or other competent authorities shall keep an inventory of goods and other material proposed to be destroyed, and shall have the authority temporarily to exempt these materials from the destruction order to facilitate the preservation of evidence on notice by the right holder that it wishes to bring a civil or administrative case for damages; and

(f) that its authorities may initiate legal action ex officio with respect to the offenses described in this Chapter, without the need for a formal complaint by a private party or right holder.

28. Each Party shall also provide for criminal procedures and penalties to be applied, even absent willful trademark counterfeiting or copyright piracy, at least in cases of knowing trafficking in:

(a) counterfeit labels or illicit labels affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany: a phonogram, a copy of a computer program or other literary work, a copy of a motion picture or other audiovisual work, or documentation or packaging for such items; and

(b) counterfeit documentation or packaging for items of the type described in subparagraph (a).

29. Each Party shall also provide for criminal procedures to be applied against any person who, without authorization of the holder of copyright or related rights in a motion picture or other audiovisual work, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of the motion picture or other audiovisual work, or any part thereof, from a performance of the motion picture or other audiovisual work in a public motion picture exhibition facility.

Liability for Service Providers and Limitations

30. For the purpose of providing enforcement procedures that permit effective action against any act of copyright infringement covered by this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies that constitute a deterrent to further infringements, each Party shall provide, consistent with the framework set out in this Article:

(a) legal incentives for service providers to cooperate with copyright (35) owners in deterring the unauthorized storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this subparagraph (b). (36)

(i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or

restrain certain actions for the following functions, and shall be confined to those functions: (37)

(A) transmitting, routing, or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(B) caching carried out through an automatic process;

(C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(D) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

(ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection).

(iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).

(iv) With respect to functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider:

(A) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available;

(C) not interfering with technology consistent with industry standards accepted in the Party's territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

(v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider:

(A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and

(C) publicly designating a representative to receive such notifications.

(vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider:

(A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(B) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary, provided that such other remedies are the least burdensome to the service provider among comparably effective

forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority.

(ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures in its law or in regulations for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(xi) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(xii) For purposes of the function referred to in clause (i)(A), service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user’s choosing, and for purposes of the functions referred to in clauses (i)(B) through (D) service provider means a provider or operator of facilities for online services or network access.

(25) A Party may satisfy the publication requirement in paragraph 1 by making the decision or ruling available to the public on the Internet.

(26) For greater certainty, nothing in paragraph 2 is intended to prescribe the type, format, and method of publication of the information a Party must publicize.

(27)For purposes of Article 18.10, "right holder" includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.

(28) In the case of patent infringement, damages adequate to compensate for the infringement shall not be less than a reasonable royalty.

(29) Neither Party is required to apply paragraph 6 to actions for infringement against a Party or a third party acting with the authorization or consent of a Party.

(30) For purposes of paragraphs 19 through 25: (a) counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and (b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

(31) For greater certainty, the Parties understand that ex officio action does not require a formal complaint from a private party or right holder.

(32) For purposes of paragraph 22, in-transit merchandise means goods under "Customs transit" and goods "transshipped," as defined in the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention).

(33) For purposes of paragraph 26 and Articles 18.4.7(a), 18.4.8(a), and 18.10.27 and for greater certainty, "financial gain" includes the receipt or expectation of anything of value.

(34) A Party may comply with the obligation in paragraph 26 in relation to exportation of pirated goods through its measures concerning distribution.

(35) For purposes of paragraph 30, "copyright" includes related rights.

(36) Subparagraph (b) is without prejudice to the availability of defenses to copyright infringement that are of general applicability.

(37) Either Party may request consultations with the other Party to consider how to address under subparagraph (b) functions of a similar nature that a Party identifies after the date this Agreement enters into force.

provider information in its possession identifying the alleged infringer.

(xii) For purposes of the function referred to in clause (i)(A), service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the userâs choosing, and for purposes of the functions referred to in clauses (i)(B) through (D) service provider means a provider or operator of facilities for online services or network access.

Article 18.11. UNDERSTANDINGS REGARDING CERTAIN PUBLIC HEALTH MEASURES

1. The Parties affirm their commitment to the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2).

2. The Parties have reached the following understandings regarding this Chapter:

(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Partyâs right to protect public health and, in particular, to promote access to medicines for all.

(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/S40) and the WTO General Council Chairmanâs statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively, the âTRIPS/health solutionâ), this Chapter does not and should not prevent the effective utilization of the TRIPSshealth solution.

(c) With respect to the aforementioned matters, if an amendment of the TRIPS Agreement enters into force with respect to the Parties and a Partyâs application of a measure in conformity with that amendment violates this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the amendment.

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Article 18.12. TRANSITIONAL PROVISIONS

1. Each Party shall give effect to this Chapter on the date this Agreement enters into force.

2. Notwithstanding paragraph 1, Korea shall fully implement the obligations of Article 18.4.4 within two years after the date this Agreement enters into force.

Chapter Nineteen. LABOR

Article 19.1. STATEMENT OF SHARED COMMITMENT

The Parties reaffirm their obligations as members of the International Labor Organization (ILO).

Article 19.2. FUNDAMENTAL LABOR RIGHTS

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the LO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (ILO Declaration): (1) (2)

(a) freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of compulsory or forced labor;

(d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and

(e) the elimination of discrimination in respect of employment and occupation.

2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.

(1) The obligations set out in Article 19.2, as they relate to the ILO, refer only to the ILO Declaration.

(2) To establish a violation of an obligation under Article 19.2.1 a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the Parties.

Article 19.3. APPLICATION AND ENFORCEMENT OF LABOR LAWS

1. (a) Neither Party shall fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 19.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date this Agreement enters into force.

(b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to bona fide decisions with regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 19.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter.(3)

2. For greater certainty, nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of the other Party.

(3) For greater certainty, a Party retains the right to exercise reasonable enforcement discretion and to make bona fide decisions regarding the allocation of enforcement resources with respect to labor laws other than those relating to fundamental rights enumerated in Article 19.2.1.

Article 19.4. PROCEDURAL GUARANTEES AND PUBLIC AWARENESS

1. Each Party shall ensure that persons with a recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall ensure, in accordance with its law, that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions, including by presenting information or evidence;

(d) such proceedings do not entail unreasonable fees or time limits or unwarranted delays;

(e) final decisions on the merits of the case in such proceedings are: (i) in writing and state the reasons on which the decisions are based; (ii) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and (iii) based on information or evidence in respect of which the parties were offered the opportunity to be heard;

(f) as appropriate, parties to such proceedings have the right to seek review and, where warranted, correction of decisions issued in such proceedings; and

(g) tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

3. Each Party shall provide that parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws.

4. Each Party shall promote public awareness of its labor laws, including by:

(a) ensuring that information related to its labor laws and enforcement and compliance procedures is publicly available; and

(b) encouraging education of the public regarding its labor laws.

Article 19.5. INSTITUTIONAL ARRANGEMENTS

1. The Parties hereby establish a Labor Affairs Council. The Council shall comprise appropriate senior officials from the labor ministry and other appropriate agencies or ministries of each Party.

2. The Council shall meet within the first year after the date this Agreement enters into force, and thereafter as necessary, to oversee the implementation of this Chapter, including activities of the Labor Cooperation Mechanism established under Article 19.6. Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters related to the implementation of this Chapter.

3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Party and with the public for purposes of implementing this Chapter. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons ofa Party on matters related to this Chapter and shall make such communications available to the other Party and the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures.

4. Each Party may convene a national labor advisory committee comprising members of its public, including representatives of its labor and business organizations and other persons, to advise it on the implementation of this Chapter.

5. Formal decisions of the Council shall be made public, unless the Council decides otherwise.

6. The Council may prepare reports on matters related to the implementation of this Chapter and shall make such reports public.

Article 19.6. LABOR COOPERATION

Recognizing that cooperation provides enhanced opportunities to promote respect for core labor standards embodied in the ILO Declaration and compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) (ILO Convention 182), and to further advance other common commitments regarding labor matters, the Parties hereby establish a Labor Cooperation Mechanism, as set out in Annex 19-A.

Article 19.7. LABOR CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point the other Party has designated under Article 19.5.3. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond. Consultations shall commence promptly after a Party delivers a request for consultations to the other Party's contact point.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they consider appropriate.

3. If the consultations fail to resolve the matter, either Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of the other Party. The Council shall convene promptly and endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or other experts and having recourse to such procedures as good offices, conciliation, or mediation.

4. If the Parties have failed to resolve the matter within 60 days of the delivery of a request for consultations under paragraph 1, the complaining Party may request consultations under Article 22.7 (Consultations) or refer the matter to the Joint Committee pursuant to Article 22.8 (Referral to the Joint Committee) and, as provided in Chapter Twenty-Two (Institutional Provisions and Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

5. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

Article 19.8. DEFINITIONS

For purposes of this Chapter:

labor laws means a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

(a) freedom of association;

(b) the effective recognition of the right to collective bargaining;

(c) the elimination of all forms of forced or compulsory labor;

(d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;

(e) the elimination of discrimination in respect of employment and occupation; and

(f) acceptable conditions of work with respect to minimum wages, hours of work, (4) and occupational safety and health; and

statutes and regulations and statutes or regulations means:

(a) for Korea, acts of the National Assembly or regulations promulgated pursuant to acts of the National Assembly that are enforceable by action of the central level of government; and

(b) for the United States, acts of Congress or regulations promulgated pursuant to acts of Congress that are enforceable by action of the central level of government and, for purposes of this Chapter, includes the Constitution of the United States.

(4) For greater certainty, "hours of work" does not include paid annual leave or holidays.

Annex 19-A. LABOR COOPERATION MECHANISM

Establishment of a Labor Cooperation Mechanism

1. Recognizing that cooperation provides enhanced opportunities for the Parties to improve labor standards and to further advance common commitments with respect to labor matters, including the ILO Declaration and ILO Convention 182, the Parties have established a Labor Cooperation Mechanism under Article 19.6.

Principal Functions and Organization

2. The contact points established under Article 19.5.3 shall serve as the contact points for the Labor Cooperation Mechanism.

3. Officials of each Party's labor ministry and other appropriate agencies or ministries shall carry out the work of the Labor Cooperation Mechanism by cooperating to:

(a) establish priorities for cooperative activities on labor matters;

(b) develop specific cooperative activities in accord with such priorities;

(c) exchange information regarding labor law and practice in each Party;

(d) exchange information on ways to improve labor law and practice, including best labor practices;

(e) advance understanding of, respect for, and effective implementation of the principles reflected in the ILO Declaration and ILO Convention 182;

(f) review and compare which statutes or regulations, or provisions thereof, of each Party fall within the definition of "labor laws" in Article 19.8 to understand further the scope of each Party's laws falling within that definition; and

(g) develop recommendations, for consideration by the Council, of actions each Party may take.

Cooperative Activities

4. The Parties may undertake cooperative activities through the Labor Cooperation Mechanism on any labor matter they consider appropriate, including:

(a) fundamental rights and their effective application: legislation and practice related to the principles and rights contained in the ILO Declaration (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation);

(b) worst forms of child labor;

(c) social safety net programs: unemployment insurance and worker adjustment programs;

(d) working conditions: hours of work, minimum wages, and overtime; occupational safety and health; and prevention of and compensation for work-related injuries and illnesses;

(e) labor-management relations: forms of cooperation among workers, management, and government to ensure productive labor relations and contribute to efficiency and productivity in the workplace;

(f) labor statistics; and

(g) human resources development and life-long learning.

Implementation of Cooperative Activities

5. The Parties may carry out cooperative activities undertaken by the Labor Cooperation Mechanism through any form they consider appropriate, including, but not limited to:

(a) arranging study visits and other exchanges between government delegations, professionals, students, and specialists;

(b) exchanging information on standards, regulations, procedures, and best practices, including through the exchange of

pertinent publications and monographs;

(c) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

(d) developing collaborative projects or demonstrations; and

(e) engaging in joint research projects, studies, and reports, including through engagement of independent experts with recognized expertise.

6. In identifying areas for labor cooperation, and in conducting cooperative activities, each Party shall seek the views and participation of its worker and employer representatives, as well as other members of the public.

Exchange of Letters

June 30, 2007

The Honorable Hyun Chong Kim Minister for Trade Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Article 19.5.3 (Institutional Arrangements) of Chapter Nineteen (Labor) of the Free Trade Agreement between our two Governments signed this day:

For greater certainty:

Each Party may establish appropriate procedures, consistent with Article 19.5.3, for reviewing communications from persons of a Party on matters related to Chapter Nineteen. Article 19.5.3 does not require a Party to establish new procedures that duplicate existing channels for reviewing such communications. A Party may limit the scope of any new procedures it establishes to comply with Article 19.5.3 to communications on labor matters in the other Party's territory, provided that the Party has other procedures in place for reviewing communications on other matters related to Chapter Nineteen.

The Parties recognize that it is in their mutual interest not to pursue frivolous or meritless communications and for each Party to take into account when reviewing any communication whether: (1) the person submitting the communication or any other person has sought relief regarding the matter under pertinent domestic laws of the other Party; (2) the matter is pending before an international body; and (3) the communication is substantially similar to another recent communication regarding the matter.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

June 30, 2007

The Honorable Susan C. Schwab United States Trade Representative Washington, D.C.

Dear Ambassador Schwab:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Article 19.5.3 of Chapter Nineteen (Labor) of the Free Trade Agreement between our two Governments signed this day:

For greater certainty:

Each Party may establish appropriate procedures, consistent with Article 19.5.3, for reviewing communications from persons of a Party on matters related to Chapter Nineteen. Article 19.5.3 does not require a Party to establish new procedures that duplicate existing channels for reviewing such communications. A Party may limit the scope of any new procedures it establishes to comply with Article 19.5.3 to communications on labor matters in the other Party's territory, provided that the Party has other procedures in place for reviewing communications on other matters related to Chapter

Nineteen.

The Parties recognize that it is in their mutual interest not to pursue frivolous or meritless communications and for each Party to take into account when reviewing any communication whether: (1) the person submitting the communication or any other person has sought relief regarding the matter under pertinent domestic laws of the other Party; (2) the matter is pending before an international body; and (3) the communication is substantially similar to another recent communication regarding the matter.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

T have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]

Hyun Chong Kim

Chapter Twenty. ENVIRONMENT

Article 20.1. LEVELS OF PROTECTION

Recognizing the right of each Party to establish its own levels of environmental protection and its own environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection, including through such environmental laws and policies.

Article 20.2. ENVIRONMENTAL AGREEMENTS

A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements listed in Annex 20- A ("covered agreements"). (1)(2)

(1) To establish a violation of Article 20.2 a Party must demonstrate that the other Party has failed to adopt, maintain, or implement laws, regulations, or other measures to fulfill an obligation under a covered agreement in a manner affecting trade or investment between the Parties.

(2) For purposes of Article 20.2: (1) "covered agreements" shall encompass those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which both Parties are party; and (2) a Party's "obligations" shall be interpreted to reflect, inter alia, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

Article 20.3. APPLICATION AND ENFORCEMENT OF ENVIRONMENTAL LAWS

1. (a) Neither Party shall fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date this Agreement enters into force.

(b) (i) The Parties recognize that each Party retains the right to exercise prosecutorial discretion and to make decisions regarding the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws and all laws, regulations, and other measures to fulfill a Party's obligations under the covered agreements, a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable, articulable, bona fide exercise of such discretion, or results from a reasonable, articulable, bona fide decision regarding the allocation of such resources.

(ii) The Parties recognize the importance of the covered agreements. Accordingly, where a course of action or inaction relates to laws, regulations, and other measures to fulfill its obligations under covered agreements, that shall be relevant to a determination under clause (i) regarding whether an allocation of resources is reasonable and bona fide.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in its environmental laws. Accordingly, neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties.

3. Paragraph 2 shall not apply where a Party waives or derogates from an environmental law pursuant to a provision in its environmental law providing for waivers or derogations, provided that the waiver or derogation is not inconsistent with the Party's obligations under a covered agreement.

4. For greater certainty, nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 20.4. PROCEDURAL MATTERS

1. Each Party shall ensure that interested persons may request the Party’s competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration, in accordance with its law.

2. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to provide sanctions or remedies for violations of its environmental laws and that persons with a recognized interest under its law in a particular matter have appropriate access to such proceedings.

(a) Each Party shall ensure in accordance with its law that such proceedings:

(i) are fair, equitable, and transparent and, to this end, comply with due process of law; and

(ii) are open to the public, except where the administration of justice otherwise requires.

(b) Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

3. Each Party shall provide persons with a recognized interest under its law in a particular matter effective access to sanctions or remedies for violations of its environmental laws, or for violations of a legal duty under its law relating to human health or the environment, which may include rights such as to:

(a) sue another person subject to its jurisdiction for damages;

(b) seek injunctive relief where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to its jurisdiction;

(c) seek sanctions or remedies such as monetary penalties, emergency closures, temporary suspension of activities, or orders to mitigate the consequences of such violations; or

(d) request, or where applicable request a tribunal to order, that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm.

4. Each Party shall provide appropriate and effective sanctions or remedies for violations of its environmental laws that:

(a) take into consideration, as appropriate, the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and

(b) may include administrative, civil, and criminal sanctions and remedies, such as compliance agreements, penalties, fines, imprisonment, injunctions, closure of facilities, and requirements to take remedial action or pay for damage to the environment including the cost of containing or cleaning up pollution.

Article 20.5. MECHANISMS TO ENHANCE ENVIRONMENTAL PERFORMANCE

1. The Parties recognize that flexible, voluntary, and incentive-based mechanisms can contribute to the achievement and maintenance of high levels of environmental protection, complementing the procedures set out in Article 20.4. As appropriate and in accordance with its law, each Party shall encourage the development and use of such mechanisms, which may include:

(a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:

(i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific

organizations;

(ii) voluntary guidelines for environmental performance; or

(iii) voluntary sharing of information and expertise among authorities, interested parties, and the public concerning methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or

(b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for trading permits or other instruments to help achieve environmental goals.

2. As appropriate and feasible and in accordance with its law, each Party shall encourage:

(a) the maintenance, development, or improvement of performance goals and standards used in measuring environmental performance; and

(b) flexible means to achieve those goals and meet those standards, including through mechanisms identified in paragraph 1.

Article 20.6. INSTITUTIONAL ARRANGEMENTS

1. The Parties hereby establish an Environmental Affairs Council. The Council shall comprise appropriate senior officials from each Party, including officials with environmental responsibilities.

2. The Council shall meet within one year after the date this Agreement enters into force, and thereafter as necessary, to oversee the implementation of this Chapter. Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters related to the implementation of this Chapter, including views received from the national advisory committees referred to in Article 20.7.3. The Council shall make public a written summary of discussions held during the public session.

3. The Council shall promote public participation in its work, including by seeking advice from the public in developing agendas for Council meetings and by engaging ina dialogue with the public on environmental issues of interest to the public.

4. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the environmental cooperation mechanism established by the Parties.

5. Formal decisions of the Council shall be made public, unless the Council decides otherwise.

Article 20.7. OPPORTUNITIES FOR PUBLIC PARTICIPATION

1. Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws and environmental law enforcement and compliance procedures, including procedures for its interested persons to request the Party's competent authorities to investigate alleged violations of its environmental laws.

2. Recognizing that opportunities for public participation can facilitate the sharing of best practices and the development of innovative approaches to issues of interest to the public, each Party shall:

(a) seek to accommodate requests from persons of either Party for information or to exchange views regarding either Party's implementation of this Chapter; and

(b) provide for the receipt of written submissions from persons of either Party that concern matters related to the implementation of specific provisions of this Chapter. Each Party shall respond to these submissions in accordance with domestic procedures and make the submissions and its responses easily accessible to the public in a timely manner.

3. Each Party shall convene a new, or consult an existing, national advisory committee, comprising persons of the Party with relevant experience, which may include experience in business or environmental matters, to solicit its views on matters related to the implementation of this Chapter. Each time it meets, the Council shall consider views that each Party has received from its national advisory committee on matters related to the implementation of this Chapter.

4. The Parties recognize the importance of public participation in the implementation of this Chapter and that effectively implementing this Article will assist the Parties in implementing the other provisions of this Chapter. Accordingly, the Council

shall review the implementation of this Article and prepare and submit to the Joint Committee a written report on the results of that review no later than 180 days after the first anniversary date of entry into force of this Agreement, and thereafter on the request of either Party. The Council shall make each such report public at the time the Council submits the report to the Joint Committee.

Article 20.8. ENVIRONMENTAL COOPERATION

1. The Parties recognize the importance of strengthening their capacity to protect the environment and of promoting sustainable development in concert with strengthening their trade and investment relations.

2. The Parties are committed to expanding their cooperative relationship in bilateral, regional, and multilateral fora on environmental matters, recognizing that such cooperation will help them achieve their shared environmental goals and objectives, including the development and improvement of environmental protection, practices, and technologies.

3. The Parties are committed to undertaking cooperative environmental activities pursuant to the Agreement between the Government of the United States of America and the Government of the Republic of Korea on Environmental Cooperation (ECA), including activities related to implementation of this Chapter. Activities that the Parties undertake pursuant to the ECA will be coordinated and reviewed by the implementation body established under the ECA. The Parties also acknowledge the importance of cooperative environmental activities in other fora.

4. Each Party shall consider public comments and recommendations it receives regarding cooperative environmental activities undertaken pursuant to this Chapter and the ECA.

5. Each Party shall, as appropriate, share information with the other Party and the public regarding its experiences in assessing and addressing the positive and negative environmental effects of trade agreements and policies.

Article 20.9. ENVIRONMENTAL CONSULTATIONS AND PANEL PROCEDURE

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated for purposes of this Article. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond. Unless the Parties otherwise agree, consultations shall commence promptly after a Party delivers a request for consultations to the other Party's contact point.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate. If the matter arises under Article 20.2 or under both that Article and another provision of this Chapter, and involves an issue related to a Party's obligations under a covered agreement, the Parties shall endeavor to address the matter through a mutually agreeable consultative or other procedure, if any, under the relevant agreement, unless the procedure could result in unreasonable delay (3).

3. If the consultations fail to resolve the matter, either Party may request that the Council be convened to consider the matter by delivering a written request to the other Party's contact point referred to in paragraph 1. The Council shall convene promptly and endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or other experts and having recourse to such procedures as good offices, conciliation, or mediation. When the matter arises under Article 20.2 or under both that Article and another provision of this Chapter and involves an issue relating to a Party's obligations under a covered agreement, the Council shall:

(a) through a mechanism that the Council establishes, consult fully with any entity authorized to address the issue under the relevant agreement; and

(b) defer to interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement.

4. If the Parties have failed to resolve the matter within 60 days of the delivery of a request for consultations under paragraph 1, the complaining Party may request consultations under Article 22.7 (Consultations) or refer the matter to the Joint Committee pursuant to Article 22.8 (Referral to the Joint Committee) and, as provided in Chapter Twenty-Two (Institutional Provisions and Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

5. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with paragraphs 1 through 3.

6. In a dispute arising under Article 20.2, or under both that Article and another provision of this Chapter, that involves an issue relating to a Party's obligations under a covered agreement, a panel convened under Chapter Twenty-Two (Institutional Provisions and Dispute Settlement) shall in making its findings and determination under Article 22.11 (Panel Report): (4)

(a) consult fully, through a mechanism that the Environmental Affairs Council establishes, concerning that issue with any entity authorized to address the issue under the relevant environmental agreement;

(b) defer to any interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement; and

(c) where the agreement admits of more than one permissible interpretation relevant to an issue in the dispute and the Party complained against relies on one such interpretation, accept that interpretation for purposes of its findings and determination under Article 22.11. (5)

(3) The Parties understand that for purposes of paragraph 2, where a covered agreement requires a decision to be taken by consensus, such a requirement could create an unreasonable delay.

(4) For greater certainty, the consultations and guidance in this paragraph are without prejudice to a panel's ability to seek information and technical guidance from any person or body consistent with Article 22.10.4 (Rules of Procedure).

(5) The guidance in subparagraph (c) shal! prevail over any other interpretative guidance.

Article 20.10. RELATION TO MULTILATERAL ENVIRONMENTAL AGREEMENTS

1. The Parties recognize that certain multilateral environmental agreements play an important role globally and domestically in protecting the environment. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of such agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are both party and trade agreements to which they are both party.

2. To this end, the Parties shall consult, as appropriate, with respect to negotiations on environmental issues of mutual interest.

3. In the event of any inconsistency between a Party's obligations under this Agreement and a covered agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade. (6)

(6) For greater certainty, paragraph 3 is without prejudice to multilateral environmental agreements other than covered agreements.

Article 20.11. DEFINITIONS

For purposes of this Chapter:

environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any

statute or regulation, or provision thereof, directly related to worker safety or health;

laws, regulations, and all other measures to fulfill its obligations under a covered agreement means a Partyâs laws, regulations, and other measures at the central level of government; and

statute or regulation means:

(a) for Korea, an act of the National Assembly or a regulation promulgated pursuant to an act of the National Assembly that is enforceable by action of the central level of government; and

(b) for the United States, an act of Congress or a regulation promulgated pursuant to an act of Congress that is enforceable by action of the central level of government.

Annex 20-A. COVERED AGREEMENTS

1. For purposes of this Chapter, covered agreement means a multilateral environmental agreement listed below to which both Parties are party:

(a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973, as amended;

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987, as adjusted and amended;

(c) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London, February 17, 1978, as amended;

(d) the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, done at Ramsar, February 2, 1971, as amended;

(e) the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, May 20, 1980;

(f) the International Convention for the Regulation of Whaling, done at Washington, December 2, 1946; and

(g) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, done at Washington, May 31, 1949.

2. The Parties may agree in writing to modify the list in paragraph 1 to include any other multilateral environmental agreement.

Exchange of Letters

June 30, 2007

The Honorable Hyun Chong Kim Minister for Trade Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Article 20.7.2(b) (Opportunities for Public Participation) of the Free Trade Agreement between

our two Governments signed this day:

For greater certainty:

With respect to providing for the receipt of submissions from persons of either Party, Article 20.7.2(b) shall not be construed to require a Party to establish procedures that duplicate existing channels for the receipt of submissions from persons of a Party.

With respect to providing for the receipt of submissions from persons of the other Party, a Party may establish appropriate criteria, consistent with Article 20.7.2(b), for accepting such submissions. These criteria may include that such a submission shall be transmitted to it by the other Party and that the other Party shall transmit such a submission only if it has reason to believe that the submission is submitted by a person of the other Party and the submission concerns matters related to the implementation of specific provisions of Chapter Twenty (Environment). Ifa Party receives a submission that has been

transmitted to it by the other Party, it shall provide its response directly to the person of the other Party.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

June 30, 2007

The Honorable Susan C. Schwab United States Trade Representative Washington, D.C.

Dear Ambassador Schwab:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Article 20.7.2(b) (Opportunities for Public Participation) of the Free Trade Agreement between our two Governments signed this day:

For greater certainty:

With respect to providing for the receipt of submissions from persons of either Party, Article 20.7.2(b) shall not be construed to require a Party to establish procedures that duplicate existing channels for the receipt of submissions from persons of a Party.

With respect to providing for the receipt of submissions from persons of the other Party, a Party may establish appropriate criteria, consistent with Article 20.7.2(b), for accepting such submissions. These criteria may include that such a submission shall be transmitted to it by the other Party and that the other Party shall transmit such a submission only if it has reason to believe that the submission is submitted by a person of the other Party and the submission concerns matters related to the implementation of specific provisions of Chapter Twenty (Environment). Ifa Party receives a submission that has been transmitted to it by the other Party, it shall provide its response directly to the person of the other Party.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

T have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]

Hyun Chong Kim

June 30, 2007

The Honorable Susan C. Schwab United States Trade Representative Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapter Twenty (Environment) of the Free Trade Agreement between our two Governments signed this day:

Before initiating dispute settlement under the Agreement for a matter arising under Article 20.3.1(a), a Party should consider whether it maintains environmental laws that are substantially equivalent in scope to those that would be the subject of the dispute.

I have the honor to propose that this letter and your letter in reply confirming that your

Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]

Hyun Chong Kim

June 30, 2007

The Honorable Hyun Chong Kim Minister for Trade Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapter Twenty (Environment) of the Free Trade Agreement between our two Governments signed this day:

Before initiating dispute settlement under the Agreement for a matter arising under Article 20.3.1(a), a Party should consider whether it maintains environmental laws that are substantially equivalent in scope to those that would be the subject of the dispute.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Ihave the further honor to confirm that my Government shares this understanding and

that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

Chapter Twenty-One. TRANSPARENCY

Article 21.1. PUBLICATION

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measures that it proposes to adopt; and

3. With respect to proposed regulations (1) of general application of its central level of government respecting any matter covered by this Agreement that are published in accordance with paragraph 2(a), each Party:

(a) shall publish the proposed regulations in a single official journal of national circulation and shall encourage their distribution through additional outlets;

(b) should in most cases publish the proposed regulations not less than 40 days before the date public comments are due; and

(c) shall include in the publication an explanation of the purpose of and rationale for the proposed regulations.

4. With respect to regulations of general application adopted by its central level of government respecting any matter covered by this Agreement, each Party:

(a) shall publish the regulations in a single official journal of national circulation and shall encourage their distribution through additional outlets;

(b) shall include in the publication an explanation of the purpose of and rationale for the regulations; and

(c) shall address significant, substantive comments received during the comment period and explain substantive revisions it made to the proposed regulations, in its official journal or in a prominent location on an official government Internet site.

(1) For purposes of paragraphs 3 and 4, regulation means, for Korea, Presidential Decrees, Ordinances of the Prime Minister, and Ministerial Ordinances.

Article 21.2. PROVISION OF INFORMATION

On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might affect the operation of this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

Article 21.3. ADMINISTRATIVE PROCEEDINGS

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application respecting any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 21.1 to particular persons, goods, or services of the other Party in specific cases, that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with the Party's procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its law.

Article 21.4. REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by the Party's law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 21.5. POLICY ON PRIVATE PURCHASES

Recognizing the benefits of liberalized and expanded bilateral trade and investment, each Party affirms that it is not its policy to discourage private persons in its territory from purchasing or using goods or services of the other Party through formal or informal means of influence or persuasion.

Article 21.5. POLICY ON PRIVATE PURCHASES

Recognizing the benefits of liberalized and expanded bilateral trade and investment, each Party affirms that it is not its policy to discourage private persons in its territory from purchasing or using goods or services of the other Party through formal or informal means of influence or persuasion.

Article 21.6. ANTI-CORRUPTION

1. The Parties reaffirm their resolve to eliminate bribery and corruption in international trade and investment.

2. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

(a) a public official of the Party or a person who performs public functions for the Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for

another person, in exchange for any act or omission in the performance of his public functions;

(b) any person subject to the jurisdiction of the Party intentionally to offer or grant, directly or indirectly, to a public official of the Party or a person who performs public functions for the Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;

(c) any person subject to the jurisdiction of the Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and

(d) any person subject to the jurisdiction of the Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c).

3. Each Party shall adopt or maintain appropriate penalties and procedures to enforce the criminal measures that it adopts or maintains in conformity with paragraph 2.

4. Each Party shall adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery described in paragraph 2.

5. The Parties recognize the importance of regional and multilateral initiatives to

eliminate bribery and corruption in international trade and investment. The Parties shall endeavor to work jointly to encourage and support appropriate initiatives in relevant international fora.

Article 21.7. DEFINITIONS

For purposes of this Chapter:

act or refrain from acting in relation to the performance of official duties includes any use of the official's position, whether or not within the official's authorized competence;

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) aruling that adjudicates with respect to a particular act or practice;

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and

public official means any official or employee of a Party at the central level of government, whether appointed or elected.

Chapter Twenty-Two. INSTITUTIONAL PROVISIONS AND DISPUTE SETTLEMENT

Section A. Institutional Provisions and Administration

Article 22.1. CONTACT POINTS

1. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Agreement.

2. On request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

Article 22.2. JOINT COMMITTEE

1. The Parties hereby establish a Joint Committee comprising officials of each Party, which shall be co-chaired by the United States Trade Representative and the Minister for Trade of Korea, or their respective designees.

2. The Joint Committee shall:

(a) supervise the implementation of this Agreement;

(b) supervise the work of all committees, working groups, and other bodies established under this Agreement;

(c) consider ways to further enhance trade relations between the Parties;

(d) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;

(e) establish the amount of remuneration and expenses that will be paid to panelists; and

(consider any other matter that may affect the operation of this Agreement.

3. The Joint Committee may:

(a) establish and delegate responsibilities to ad hoc and standing committees, working groups, or other bodies;

(b) seek the advice of non-governmental persons or groups;

(c) consider amendments to this Agreement or make modifications to the commitments therein;

(d) issue interpretations of the provisions of this Agreement, including as provided in Articles 11.22 (Governing Law) and 11.23 (Interpretation of Annexes);

(e) adopt its own rules of procedure; and

(f) take such other action in the exercise of its functions as the Parties may agree.

4. Unless the Parties otherwise agree, the Joint Committee shall convene:

(a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and

(b) in special session within 30 days of the request of a Party, with such sessions to be held in the territory of the other Party or at such location as the Parties may agree.

5. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Committee or any body created under paragraph 3(a) on the same basis as the Party providing the information.

6. Recognizing the importance of transparency and openness, the Parties affirm their respective practices of considering the views of members of the public in order to draw on a broad range of perspectives in the implementation of this Agreement.

7. All decisions of the Joint Committee and all committees, working groups, and other bodies established under this Agreement shall be taken by consensus of the Parties.

Section B. Dispute Settlement Proceedings

Article 22.3. COOPERATION

The Parties shall endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 22.4. SCOPE OF APPLICATION

Except as otherwise provided in this Agreement or as the Parties otherwise agree, this Section shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement;

(b) the other Party has otherwise failed to carry out its obligations under this Agreement; or

(c) a benefit the Party could reasonably have expected to accrue to it under Chapter Two (National Treatment and Market Access for Goods), Three(Agriculture), Four (Textiles and Apparel), Six (Rules of Origin and Origin Procedures), Twelve (Cross-Border Trade in Services), Seventeen (Government Procurement), or Eighteen (Intellectual Property Rights) (1) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, except that neither Party may invoke this subparagraph with respect to a benefit under Chapter Twelve (Cross- Border Trade in Services) or Eighteen (Intellectual Property Rights) if the measure is subject to an exception under Article 23.1 (General Exceptions).

(1) Neither Party will invoke subparagraph (c) with respect to a measure affecting benefits under Chapter Eighteen (Intellectual Property Rights) during any period for which WTO Members have agreed not to initiate complaints of the type provided for under subparagraph 1(b) of Article XXIII of GATT 1994 under the TRIPS Agreement.

Article 22.5. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS

Each Party shall designate an office that shall be responsible for providing administrative assistance to panels established under Article 22.9. Each Party shall be responsible for the operation and costs of its designated office and shall notify the other Party of its location.

Article 22.6. CHOICE OF FORUM

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested the establishment of, or referred a matter to, a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 22.7. CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter described in Article 22.4 by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint. The other Party shall reply promptly to the request and enter into consultations.

2. Promptly after requesting or receiving a request for consultations pursuant to this Article, each Party shall seek the views of interested parties and other members of the public on the matter in order to draw on a broad range of perspectives.

3. Each Party shall:

(a) provide sufficient information in the consultations to enable a full examination of how the matter subject to consultations might affect the operation of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

4. A Party may request the other Party to make available during consultations under this Article personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to consultations.

Article 22.8. REFERRAL TO THE JOINT COMMITTEE

1. If the Parties fail to resolve a matter within 60 days of the delivery of a request for consultations under Article 22.7, or 20 days where the matter concerns perishable goods, (2) either Party may refer the matter to the Joint Committee by delivering written notification to the other Party.

2. If the Parties fail to resolve a matter within 60 days of the delivery of a request for consultations under Article 19.7 (Labor Consultations) or 20.9 (Environmental Consultations and Panel Procedure), either Party may also refer the matter to the Joint Committee by delivering written notification to the other Party.

3. The Joint Committee shall promptly meet and endeavor to resolve the matter.

(2) For greater certainty, perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24.

Article 22.9. ESTABLISHMENT OF PANEL (3)

1. If the Joint Committee has not resolved a matter within 60 days after delivery ofa notification described in Article 22.8, within 30 days where the matter concerns perishable goods, or within such other period as the Parties may agree, the complaining Party may refer the matter to a dispute settlement panel by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure or other matter at issue and a brief summary of the legal basis for the complaint sufficient to present the problem clearly.

2. Unless the Parties otherwise agree, the Parties shall apply the following procedures in selecting a panel:

(a) The panel shall have three members.

(b) Each Party shall propose one panelist within 28 days after the matter has been referred to a panel. If a Party fails to propose a panelist within that period, the Parties shall meet within seven days and select a panelist by lot from among the members of the contingent list established under paragraph 3 who are nationals of that Party.

(c) A Party may exercise a peremptory challenge against any individual not on the contingent list within 14 days after the individual has been proposed as a panelist. Ifa Party has exercised three peremptory challenges, the other Party shall select a panelist from the contingent list.

(d) The Parties shall endeavor to agree on a third panelist who shall serve as chair.

(e) If the Parties are unable to agree on the chair within 28 days after the date on which the second panelist has been appointed, the Parties shall meet within seven days and select the chair by lot from among the members of the contingent list established under paragraph 3 who are not nationals of either Party. (4)

(f) A panelist shall be considered appointed to a panel when that person is proposed pursuant to subparagraph (b) and no peremptory challenge is exercised pursuant to subparagraph (c), or when that person is selected from the contingent list pursuant to this paragraph.

3. Within 180 days of the date this Agreement enters into force, the Parties shall establish a contingent list of individuals who are willing and able to serve as panelists. Unless the Parties otherwise agree, the contingent list shall include at least six nationals of each Party and at least eight individuals who are not nationals of either Party. An individual on the contingent list shall be appointed by agreement of the Parties for a minimum term of three years, and shall remain on the list until the individual is replaced or is unable to serve. The Parties shall review the contingent list every three years and may replace individuals on the list as appropriate. The Parties may also appoint a replacement where a member of the contingent list is no longer available to serve.

4. Individuals appointed to a panel pursuant to paragraph 2 or to the contingent list pursuant to paragraph 3 shall:

(a) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(b) have expertise or experience in law, international trade, or the resolution of disputes arising under international trade agreements;

(c) be independent of, and not be affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct to be established by the Joint Committee. In addition, in any dispute arising under Chapter Nineteen (Labor) or Twenty (Environment), panelists other than those chosen by lot from the contingent list shall have expertise or experience relevant to the subject matter under dispute. Paragraph 2(c) shall not apply to disputes arising under Chapter Nineteen or Twenty.

(3) Article 13.18 (Dispute Settlement) contains additional provisions relating to the establishment of a panel for matters arising under Chapter Thirteen (Financial Services).

(4) If a panelist selected by lot under subparagraph (b) or (e) is unable to serve on the panel, the Parties shall meet within seven days of learning that the panelist is unavailable to select another panelist by lot from among the remaining members of the contingent list who are nationals of the relevant Party (in the case of subparagraph (b)) or not nationals of either Party (in the case of subparagraph (e)). If a panelist becomes

unable to serve during the course of the proceeding or when the panel is reconvened pursuant to Article 22.13 or 22.14, then within seven days of learning that the panelist is unavailable, the relevant Party shall select a replacement panelist from the contingent list or, in the case of the chair, the Parties shall meet to select a replacement chair by lot from among the members of the contingent list who are not nationals of either Party.

Article 22.10. RULES OF PROCEDURE

1. By the date this Agreement enters into force, the Parties shall establish model tules of procedure, which shall ensure:

(a) aright to at least one hearing before the panel;

(b) that, subject to subparagraph (f), any hearing before the panel shall be open to the public;

(c) an opportunity for each Party to provide initial and rebuttal submissions;

(d) that each Party's written submissions, written versions of its oral statements, and written responses to a request or questions from the panel shall be made available to the public within seven days after they are submitted, subject to subparagraph (f);

(e) that the panel shall consider requests from non-governmental entities located in the Parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the Parties; and

(f) the protection of confidential information.

2. Unless the Parties otherwise agree, the panel shall follow the model rules of procedure and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules.

3. Unless the Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the panel's terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the request for the establishment of the panel, to make findings, determinations, and recommendations as provided in paragraphs 1 and 2 of Article 22.11, and to present the written reports referred to in paragraphs 1 and 4 of Article 22.11."

4. On request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Article 22.11. PANEL REPORT

1. Unless the Parties otherwise agree, the panel shall, within 180 days after the chair is appointed, present to the Parties an initial report containing findings of fact and its determination as to:

(a) (i) whether the measure at issue is inconsistent with the obligations of this Agreement;

(ii) whether a Party has otherwise failed to carry out its obligations under this Agreement; or

(iii) whether the measure at issue is causing nullification or impairment in the sense of Article 22.4(c); and

(b) any other matter that the Parties have jointly requested that the Panel address,

as well as the reasons for its findings and determinations.

2. The panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties. The panel shall consider this Agreement in accordance with customary rules of interpretation of public international law, which are reflected in Articles 31 through 33 of the Vienna Convention on the Law of Treaties (1969). The panel may, at the request of the Parties, make recommendations for the resolution of the dispute.

3. Each Party may submit written comments to the panel on its initial report within 14 days of the presentation of the report. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

4. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties otherwise agree. The Parties shall make the final report available to the public within 15 days thereafter, subject to the

protection of confidential information.

Article 22.12. IMPLEMENTATION OF THE FINAL REPORT

1. On receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Partyâs measure is causing nullification or impairment in the sense of Article 22.4(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

Article 22.13. NON-IMPLEMENTATION

1. If a panel has made a determination of the type described in Article 22.12.2, and the Parties are unable to reach agreement on a resolution pursuant to Article 22.12.1 within 45 days of receiving the final report, or such other period as the Parties agree, the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation.

2. If the Parties:

(a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

(b) have agreed on compensation or on a resolution pursuant to Article 22.12.1 and the complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. Subject to paragraph 5, the complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice to the other Party under this paragraph or the panel issues its determination under paragraph 3, as the case may be.

3. If the Party complained against considers that:

(a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days after it reconvenes to review a request under either subparagraph (a) or (b), or within 120 days for a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

4. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

5. The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 3, within 20 days after the panel provides its determination, the Party complained against provides written notice to the other Party that it will pay an annual monetary assessment. The Parties shall consult, beginning no later than ten days after the Party complained against provides notice, with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined under paragraph 3 to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend under paragraph 2.

6. Unless the Joint Committee decides otherwise, a monetary assessment shall be paid to the complaining Party in U.S. currency, or in an equivalent amount of Korean currency, in equal, quarterly installments beginning 60 days after the Party complained against gives notice that it intends to pay an assessment. Where the circumstances warrant, the Joint Committee may decide that an assessment shall be paid into a fund established by the Joint Committee and expended at the direction of the Joint Committee for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting a Party in carrying out its obligations under this Agreement.

7. If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits in accordance with paragraph 4.

Article 22.14. COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 22.13.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall issue its report on the matter within 90 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non- conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 22.13, and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 22.13.5.

Article 22.15. FIVE-YEAR REVIEW

The Joint Committee shall review the operation and effectiveness of Article 22.13 not later than five years after the date this Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been paid in five proceedings initiated under this Chapter, whichever occurs first.

Section C. Domestic Proceedings and Private Commercial Dispute Settlement

Article 22.16. PRIVATE RIGHTS

Neither Party may provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 22.17. ALTERNATIVE DISPUTE RESOLUTION

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area established under Article 1.1 (Establishment of a Free Trade Area).

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes. such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

Chapter Twenty-Three. EXCEPTIONS

Article 23.1. GENERAL EXCEPTIONS

1. For purposes of Chapters Two through Four (National Treatment and Market Access for Goods, Agriculture, and Textiles and Apparel) and Six through Nine (Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Twelve (Cross-Border Trade in Services), Fourteen (Telecommunications), and Fifteen (Electronic Commerce), (1) Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XTV(b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

(1) Article 23.1 is without prejudice to whether digital products should be classified as goods or services.

Article 23.2. ESSENTIAL SECURITY

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests. (2)

(2) For greater certainty, if a Party invokes Article 23.2 in an arbitral proceeding initiated under Chapter Eleven (Investment) or Chapter Twenty-Two (Institutional Provisions and Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.

Article 23.3. TAXATION

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. (a) Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

(b) In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

(a) Article 2.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and

(b) Articles 2.11 (Export Duties, Taxes, or Other Charges) and 2.12 (Engine Displacement Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Articles 12.2 (National Treatment), 13.2 (National Treatment), and 13.5.1 (Cross-Border Trade) shall apply to taxation measures on income, on capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 11.3 (National Treatment) and 11.4 (Most-Favored-Nation Treatment), Articles 12.2 (National Treatment) and 12.3 (Most-FavoredNation Treatment), and Articles 13.2 (National Treatment) and 13.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, or on the taxable capital of corporations, or taxes on estates, inheritances, gifts, and generation skipping transfers;

except that nothing in the Articles referred to in subparagraphs (a) and (b) shall apply:

(c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust or pension plan on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, paragraphs 2, 3, and 4 of Article 11.8 (Performance Requirements) shall apply to taxation measures.

6. (a) Article 11.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or an investment authorization.

(b) Article 11.6 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 11.6 as the basis for a claim where it has been determined pursuant to this subparagraph that the measure is not an expropriation. An investor that seeks to invoke Article 11.6 with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 11.16.2 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 11.16.3.

(c) For purposes of this paragraph, competent authorities means:

(i) in the case of Korea, the Deputy Minister for Tax and Customs, Ministry of Finance and Economy; and

(ii) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy).

7. For purposes of this Article, "taxes" and "taxation measures" do not include:

(a) a customs duty as defined in Article 1.4 (Definitions); or

(b) the measures listed in exceptions (b) and (c) of that definition.

Article 23.4. DISCLOSURE OF INFORMATION

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Chapter Twenty-Four. FINAL PROVISIONS

Article 24.1. ANNEXES, APPENDICES, AND FOOTNOTES

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 24.2. AMENDMENTS

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, on such date as the Parties may agree.

Article 24.3. AMENDMENT OF THE WTO AGREEMENT

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult to consider amending the relevant provision of this Agreement, as appropriate, in accordance with Article 24.2.

Article 24.4. ACCESSION

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between the country or group of countries and the Parties and following approval in accordance with the applicable legal requirements and procedures of each Party and acceding country.

2. This Agreement shall not apply as between any Party and any acceding country or group of countries if, at the time of the agreement described in paragraph 1, one of them does not consent to such application.

Article 24.5. ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force 60 days after the date the Parties exchange written notifications certifying that they

have completed their respective applicable legal requirements and procedures or on such other date as the Parties may agree.

2. This Agreement shall terminate 180 days after the date either Party notifies the other Party in writing that it wishes to terminate the Agreement.

3. Within 30 days after a Party provides notice under paragraph 2, either Party may request the other Party in writing to enter into consultations regarding whether any provision of this Agreement should terminate on a date later than that provided under paragraph 2. The consultations shall begin no later than 30 days after the Party delivers its request.

Article 24.6. AUTHENTIC TEXT

The English and Korean texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, D.C., this 30th day of June, 2007, in duplicate, in the Korean and English languages.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Annex I. EXPLANATORY NOTES

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 11.12 (Non- Conforming Measures) and 12.6 (Non-Conforming Measures), the Partyâs existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 11.3 (National Treatment) or 12.2 (National Treatment);

(b) Article 11.4 (Most-Favored-Nation Treatment) or 12.3 (Most-Favored- Nation Treatment);

(c) Article 12.5 (Local Presence);

(d) Article 11.8 (Performance Requirements);

(e) Article 11.9 (Senior Management and Boards of Directors); or

(f) Article 12.4 (Market Access).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the article(s) referred to in paragraph 1 that, pursuant to Articles 11.12.1(a) and 12.6.1(a), do not apply to the non- conforming aspects of the law, regulation, or other measure, as set out in paragraph 3;

(c) Level of Government (1) indicates the level of government maintaining the scheduled measure(s);

(d) Measures (2) identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the measure for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant articles of the Chapters against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Articles 11.12.1(a) and 12.6.1(a), and subject to Articles 11.12.1(c) and 12.6.1(c), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the Measures element of that entry.

5. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a Schedule entry for that measure taken with respect to Article 12.2 (National Treatment), 12.3 (Most-Favored-Nation Treatment), or 12.5 (Local Presence) shall operate as a Schedule entry with respect to Article 11.3 (National Treatment), 11.4 (Most-Favored-Nation Treatment), or 11.8 (Performance Requirements) to the extent of that measure.

6. For Korea, a foreign person means a foreign national or an enterprise organized under the laws of another country.

7. For greater certainty, Local Presence (Article 12.5) and National Treatment (Article 12.2) are separate disciplines and a measure that is only inconsistent with Local Presence (Article 12.5) need not be reserved against National Treatment (Article 12.2).

(1) If none is specified, the measure is maintained at the central level of government.

(2) For greater certainty, in the case of Korea, a change in the level of government at which a measure is administered or enforced does not, by itself, decrease the conformity of the measure with the obligations referred to in Article 11.12.1 and Article 12.6.1.

Annex I. SCHEDULE OF KOREA

Sector: Construction

Obligations Concerned: Services Local Presence (Article 12.5)

Measures: Framework Act on the Construction Industry (Law No. 7196, December 29, 2005), Articles 9 and 10

Enforcement Decree of the Framework Act on the Construction Industry (Presidential Decree No. 19513, June 12, 2006), Article 13

Enforcement Regulations of the Framework Act on the Construction Industry (Ordinance of the Ministry of Construction and Transportation No. 530, August 7, 2006), Articles 2 and 3

Information and Communication Construction Business Act (Law No. 7817, December 30, 2005), Article 14

Fire Fighting System Installation Business Act (Law No. 7982, September 22, 2006), Articles 4 and 5

Enforcement Decree of the Fire Fighting System Installation Business Act (Presidential Decree No. 19846, January 24, 2007), Article 2 (Table 1)

Enforcement Regulations of the Fire Fighting System Installation Business Act (Ordinance of Ministry of Government Administration and Home Affairs No. 368, January 9, 2007), Article 2

Description: Cross-Border Trade in Services

A person that supplies construction services in Korea must, prior to the signing of the first contract related to such services, establish an office in Korea.

A compulsory subcontract system is applied to contractors registered as general contractors. Such compulsory subcontract system will be abolished from January 1, 2008.

Sector: Leasing, Rental, Maintenance, Repair, Sales, and Disposal Services Related to Construction Machinery and Equipment

Obligations Concerned: Local Presence (Article 12.5)

Measures: Construction Machinery Management Act (Law No. 7545, May 31, 2005), Article 21

Enforcement Decree of the Construction Machinery Management Act (Presidential Decree No. 19507, June 12, 2006), Articles 13, 14, 15, and 15-2

Enforcement Regulations of the Construction Machinery Management Act (Ordinance of the Ministry of Construction and Transportation No. 530, August 7, 2006), Articles 57 through 63, 65-2, and 65-3

Description: Cross-Border Trade in Services

A person that supplies leasing, rental, maintenance, repair, sales, and disposal services related to construction machinery and equipment must establish an office in Korea.

Sector: Transportation Services - Automobile Maintenance, Repair, Sales, Disposal, and Inspection Services; Automobile License Plate Issuing Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Automobile Management Act (Law No. 8254, January 19, 2007), Articles 20, 44, 45, and 53

Enforcement Regulations of the Automobile Management Act (Ordinance of the Ministry of Construction and Transportation No. 551, March 19, 2007), Articles 7, 8, 83, 87, and 111

Description: Cross-Border Trade in Services

A person that supplies automobile management services (which includes used car sales, maintenance, repair, and disposal services) must establish an office in Korea and obtain authorization from the head of the si/gun/gu (municipal authorities), which is subject to an economic needs test, as appropriate.

A person that supplies automobile inspection services that is designated as a "designated repair facility" must establish an office in Korea.

A person that supplies license plate manufacturing, delivery, and seal services that is designated as a "license plate issuing agency" must establish an office in Korea.

Sector: Distribution Services - Wholesale and Retail Distribution of Tobacco and Liquor

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Tobacco Business Act (Law No. 8365, April 11, 2007), Articles 12, 13, and 16

Enforcement Decree of the Tobacco Business Act (Presidential Decree No. 18445, June 29, 2004), Articles 4 and 5

Enforcement Regulations of the Tobacco Business Act (Ordinance of the Ministry of Finance and Economy No. 512, July 5, 2006), Articles 5, 6-2, and 7

Liquors Act (Law No. 7841, December 31, 2005), Articles 8 through 10

Enforcement Decree of the Liquors Act (Presidential Decree No. 19336, February 9, 2006), Article 9

Notice of National Tax Service, 2005-5 and 2005-8 (January 21, 2005)

Description: Cross-Border Trade in Services

A person that supplies tobacco wholesale (including importation) or retail distribution services must establish an office in Korea.

Only designated tobacco retailers may sell tobacco to retail buyers. The sale of tobacco to retail buyers by mail or in electronic commerce is prohibited.

The distance between places of business of tobacco retailers must be at least 50 meters.

A person that supplies liquor wholesale distribution services must establish an office in Korea and obtain authorization from the head of the relevant tax office, which is subject to an economic needs test.

The sale of liquor by telephone or in electronic commerce is prohibited.

Sector: Agriculture and Livestock

Obligations Concerned: National Treatment (Article 11.3)

Measures: Foreign Investment Promotion Act (Law No. 8380, April 11, 2007), Article 4

Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 19826, January 5, 2007), Article 5

Consolidated Public Notice for Foreign Investment (No. 2007-69, February 28, 2007, Ministry of Commerce, Industry and Energy), Appendix 1

Description: Investment

Foreign persons may not: (i) invest in an enterprise engaged in rice or barley farming; or (ii) hold 50 percent or more of the equity interest of an enterprise engaged in beef cattle farming.

Sector: Business Services - An-gyung-sa (Optician and Optometry) Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Market Access (Article 12.4) Local Presence (Article 12.5)

Medical Technicians Act (Law No. 7148, January 29, 2004), Article 12

Enforcement Regulations of the Medical Technicians Act (Ordinance of the Ministry of Health and Welfare No. 333, October 17, 2005), Article 15

Description: Cross-Border Trade in Services

Only a natural person that is a licensed an-gyung-sa (optician or optometrist) that has established an office in Korea may engage in optician or optometry services.

An an-gyung-sa (optician or optometrist) may not establish more than one office.

Sector: Wholesale and Retail Distribution Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Pharmaceutical Affairs Act (Law No. 8035, October 4, 2006), Articles 34 and 37

Decree on the Facility Standards of Pharmacy, Manufacturer, Importer and Distributor of Pharmaceuticals (Presidential Decree No. 18401, May 25, 2004), Articles 7 and 9

Supply, Demand and Distribution of Oriental Medicinal Herbs Regulations (Notice of the Ministry of Health and Welfare No. 2006-69, September 5, 2006), Articles 4 and 13

Medical Devices Act (Law No. 8037, October 4, 2006), Article 14

Enforcement Regulations of the Medical Devices Act (Ordinance of the Ministry of Health and Welfare No. 366, July 27, 2006), Article 19

Functional Foods Act (Law No. 8033, October 4, 2006), Article 6

Enforcement Regulations of the Functional Foods Act (Ordinance of the Ministry of Health and Welfare No. 300, December 10, 2004), Articles 2 and 5

Food Sanitation Act (Law No. 8005, September 27, 2006), Articles 18, 21 and 22

To supply the following services a person must establish an office in Korea:

(a) transportation, sales, and preservation (cold storage) of food and food additives;

(b) food supply services;

(c) food inspection services; or

(d) narcotic drug wholesale and retail distribution services.

The Minister of Health and Welfare controls the supply and demand of the wholesale distribution of imported designated

han-yak-jae (Asian medicinal herbs).

Certain liquor-selling bars and the wholesale and retail distribution of narcotics require authorization by the relevant authority.

Sector: Retail Distribution of Pharmaceuticals

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Pharmaceutical Affairs Act (Law No. 8035, October 4, 2006), Articles 16 and 19

Description: Cross-Border Trade in Services

A person that supplies pharmaceutical product retail distribution services (including distribution of han-yak-jae (Asian medicinal herbs)) must establish a pharmacy in Korea.

That person may not establish more than one pharmacy nor establish in the form of a corporation.

Sector: Transportation Services - Rail Transportation and Incidental Services

Obligations Concerned: Market Access (Article 12.4)

Measures: Rail Transport Service Business Act (Law No. 7303, December 31, 2004), Articles 5, 6, and 12

Korea Railroad Corporation Act (Law No. 7052, December 31, 2003), Article 9

Rail Construction Act (Law No. 8251, January 19, 2007), Article 8

Framework Act on Rail Industry Development (Law No. 8135, December 30, 2006), Articles 3, 20, 26, and 38

Korea Rail Network Authority Act (Law No. 8257, January 19, 2007), Article 7

Description: Cross-Border Trade in Services

Only the Korea Railroad Corporation may supply railroad transportation services on railroad routes constructed on or before June 30, 2005.

Only juridical persons that have obtained authorization from the Minister of Construction and Transportation may supply railroad transportation services on railroad routes constructed on or after July 1, 2005. Such authorization is subject to an economic needs test.

Only the central or local level of government, or the Korea Rail Network Authority may supply rail construction services and maintain and repair government-owned rail facilities (including high-speed rail). However, juridical persons that meet the criteria in the Private Investment in Social Infrastructure Act may supply rail construction services.

Sector: Transportation Services - Passenger Road Transportation Services (not including Taxis and Scheduled Passenger Road Transportation Services)

Obligations Concerned: Local Presence (Article 12.5)

Measures: Passenger Transport Service Act (Law No. 8095, December 26, 2006), Article 5

Enforcement Decree of the Passenger Transport Service Act (Presidential Decree No. 19715, October 26, 2006), Article 3

Enforcement Regulations of the Passenger Transport Service Act (Ordinance of the Ministry of Construction and Transportation No. 530, August 7, 2006), Article 9

Cableway and Tramway Transport Service Act (Law No. 7714, December 7, 2005), Article 4

Enforcement Regulations of the Cableway and Tramway Transport Service Act (Ordinance of the Ministry of Construction and Transportation No. 520, June 14, 2006), Article 3

Description: Cross-Border Trade in Services

A person that supplies passenger road transportation services, not including taxis and scheduled passenger road transportation services, must establish an office in the dang- hae--ji-yeok (relevant geographic area) in Korea.

Sector: Transportation Services - International Maritime Cargo Transportation and Maritime Auxiliary Services

Obligations Concerned: National Treatment (Article 12.2) Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Maritime Transportation Act (Law No. 8381, April 11, 2007), Articles 24 and 33

Enforcement Regulations of the Maritime Transportation Act (Ordinance of the Ministry of Maritime Affairs and Fisheries No. 340, June 26, 2006), Articles 17, 19, 29, and 30

Pilotage Act (Law No. 8379, April 11, 2007), Article 6

Ship Investment Company Act (Law No. 8223, January 3, 2007), Articles 3 and 31

Description: Cross-Border Trade in Services

A person that supplies international maritime cargo transportation and shipping brokerage services must be organized as a Chusik Hoesa (stock company) in Korea. A ship investment company must also be organized as a Chusik Hoesa (stock company) in Korea.

Only a Korean national may supply maritime pilotage services.

Sector: Transportation Services - Air Transportation Services

Obligations Concerned: National Treatment (Article 11.3) Senior Management and Boards of Directors (Article 11.9)

Measures: Aviation Act (Law No. 8128, December 28, 2006), Articles 3, 6, 112, 113, 114 and 132

Enforcement Regulations of the Aviation Act (Ordinance of the Ministry of Construction and Transportation No. 532, August 18, 2006), Articles 278, 278-2, 298 and 299

Description: Investment

The following persons may not supply scheduled or non- scheduled domestic air transportation services or supply international air transportation services as Korean air carriers:

(a) a foreign national;

(b) a foreign government or a foreign gong- gong-dan-che (organization for public purposes);

(c) an enterprise organized under foreign law;

(d) an enterprise in which any of the persons referred to in subparagraphs (a) through (c) owns 50 percent or more of the equity interest, or has control; or

(e) an enterprise organized under Korean law whose dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) is a foreign national or half or more of whose senior management are foreign nationals.

A person that owns an aircraft or is authorized to operate a chartered aircraft must register the aircraft with the Minister of Construction and Transportation. The persons listed in subparagraphs (a) through (e) are not allowed to register an aircraft.

Sector: Transportation Services - Specialty Air Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Measures: Aviation Act (Law No. 8128, December 28, 2006), Articles 3, 6, and 134

Enforcement Regulations of the Aviation Act (Ordinance of the Ministry of Construction and Transportation No. 532, August 18, 2006), Articles 298 and 299-2

Description: Cross-Border Trade in Services and Investment

A person that supplies aircraft-sa-yong (use) services or such non-scheduled air transportation services as glider towing, parachute jumping, aerial construction, heli-logging, and aerial sightseeing must register its self-owned or chartered aircraft with the Minister of Construction and Transportation and establish an office in Korea.

The following persons may not register an aircraft:

(a) a foreign national;

(b) a foreign government or a foreign gong- gong-dan-che (organization for public purposes);

(c) an enterprise organized under foreign law;

(d) an enterprise in which any of those referred to in subparagraphs (a) through (c) owns 50 percent or more of the equity interest, or has control; or

(e) an enterprise organized under Korean law whose dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) is a foreign national or half or more of whose senior management are foreign nationals.

For purposes of this entry, aircraft-sa-yong (use) services are services using an aircraft, and supplied upon request, for hire, other than for passenger or freight transportation, including aerial fire-fighting, forestry fire management, aerial advertising, flight training, aerial mapping, aerial investigation, aerial spraying, aerial photographing and other aerial agricultural activities, and aerial inspections and observations.

Sector: Transportation Services - Road Transportation Support Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Passenger Transport Service Act (Law No. 8095, December 26, 2006), Articles 37 and 38

Enforcement Regulations of the Passenger Transport Service Act (Ordinance of the Ministry of Construction and Transportation No. 551, March 19, 2007), Article 66

Parking Lot Service Act (Law No. 7596, July 13, 2005), Article 12

Road Traffic Act (Law No. 7969, July 19, 2006), Article 36

Description: Cross-Border Trade in Services

A person that supplies parking lot services, bus terminal operation services, or car towing and storage services must establish a place of business in the relevant geographic area in Korea and obtain an authorization from the Minister of Construction and Transportation, head of local police, or head of shi/gun, as appropriate, which is subject to an economic needs test.

Sector: Courier Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Aviation Act (Law No. 8128, December 28, 2006), Article 139

Enforcement Regulations of the Aviation Act (Ordinance of the Ministry of Construction and Transportation No. 532, August 18, 2006), Article 306

Trucking Transport Business Act (Law No. 8138, December 30, 2006), Articles 3 and 21

Description: Cross-Border Trade in Services

To supply international courier services that include commercial document delivery services, as specified in Article 3 of the Enforcement Decree of the Postal Services Act, a person must establish an office in Korea.

In order to obtain a trucking business license from the Minister of Construction and Transportation, a domestic courier services supplier must establish an office in the relevant geographic area. Such a license is subject to an economic needs test.

For greater certainty, a person acquiring a domestic courier services supplier does not need to obtain a new trucking business license provided that the acquirer operates under the same terms and conditions as set out in the acquiree's license.

Sector: Telecommunications Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Telecommunications Business Act (Law No. 8324, March 29, 2007), Articles 5, 5-2, 6, 19, and 59-2

Telecommunications Business Act (Law No. 5385, August 28, 1997), Addenda Article 4

Radio Waves Act (Law No. 7815, December 30, 2005), Articles 13 and 20

Description: Cross-Border Trade in Services and Investment

A license for facilities-based public telecommunications services or a registration for non-facilities-based public telecommunications services shall be granted only to a juridical person organized under Korean law.

A license for facilities-based public telecommunications services shall not be granted to or held by a juridical person organized under Korean law in which a foreign government, foreign person, or deemed foreign person holds in the aggregate more than 49 percent of the juridical person's total voting shares.

A foreign government, foreign person, or deemed foreign person may not in the aggregate hold more than 49 percent of the total voting shares of a facilities-based supplier of public telecommunications services. In addition, with respect to KT Corporation (KT), a foreign government, foreign person, or deemed foreign person may not be the largest shareholder of KT, except if it holds less than five percent of the total voting shares of KT.

No later than two years after this Agreement enters into force, Korea shall permit:

(a) a deemed foreign person to hold up to 100 percent of the total voting shares of a facilities-based supplier of public telecommunications services organized under Korean law, other than KT and SK Telecom Co., LTD (SK Telecom); and

(b) a facilities-based supplier of public telecommunications services organized under Korean law in which a deemed foreign person holds up to 100 percent of its total voting shares to obtain or hold a license for facilities-based public telecommunications services.

A foreign government, or its representative, or a foreign person may not obtain or hold a radio station license.

A foreign person may not supply cross-border public telecommunications services into Korea, except through a commercial arrangement with a supplier of public telecommunications services that is licensed in Korea.

For purposes of this entry:

(a) deemed foreign person means a juridical person organized under Korean law in which a foreign government or a foreign person (including a "specially related person" under subparagraph 3 of Article 36 of the Securities Exchange Act) is the largest shareholder and holds 15 percent or more of that juridical person's total voting shares, but does not include a juridical person that holds less than 1 percent of the total voting shares of a facilities-based supplier of public telecommunications services;

(b) consistent with Article 4.2 of the Telecommunications Business Act (Law No. 8324, March 29, 2007), a facilities-based supplier is a supplier that owns transmission facilities;

(c) consistent with Article 4.3 of the Telecommunications Business Act (Law No. 8324, March 29, 2007), a non-facilities- based supplier is a supplier that does not own transmission facilities (but may own a switch, router or multiplexer) and supplies its public telecommunication services through transmission facilities of a licensed facilities-based supplier; and

(d) consistent with subparagraph 3 of Article 2 of the Telecommunications Basic Act (Law No. 7810, December 30, 2005), transmission facilities means wireline or wireless transmission facilities (including circuit facilities) that connect transmitting points with receiving points.

Sector: Real Estate Brokerage and Appraisal Services

Obligations Concerned: Local Presence (Article 12.5)

Measures: Act on Duties of a Licensed Real Estate Broker and Filing of Real Estate Transactions (Law No. 8120, December 28, 2006), Article 9

Enforcement Decree of the Act on Duties of a Licensed Real Estate Broker and Filing of Real Estate Transactions (Presidential Decree No. 19507, June 12, 2006), Article 13

Enforcement Regulations of the Act on Duties of a Licensed Real Estate Broker and Filing of Real Estate Transactions (Ordinance of the Ministry of Construction and Transportation No. 530, August 7, 2006), Article 4

Public Notice of Values and Appraisal of Real Estate Act (Law No. 7707, December 7, 2005), Article 27

Enforcement Decree of the Public Notice of Values and Appraisal of Real Estate Act (Presidential Decree No. 19463, April 28, 2006), Articles 65, 66, and 68

Enforcement Regulations of the Public Notice of Values and Appraisal of Real Estate Act (Ordinance of the Ministry of Construction and Transportation No. 425, February 12, 2005), Articles 25 and 26

Description: Cross-Border Trade in Services

A person that supplies real estate brokerage services or real estate appraisal services must establish an office in Korea.

Sector: Retail, Leasing, Rental and Repair Services Related to Medical Devices

Obligations Concerned: Local Presence (Article 12.5)

Measures: Medical Devices Act (Law No. 8037, October 4, 2006), Articles 15 and 16

Enforcement Regulations of the Medical Devices Act (Ordinance of the Ministry of Health and Welfare No. 366, July 27, 2006), Articles 22 and 24

Description: Cross-Border Trade in Services

A person that supplies retail, leasing, rental, or repair services related to medical devices must establish an office in Korea.

Sector: Rental Services - Automobiles

Obligations Concerned: Local Presence (Article 12.5)

Measures: Passenger Transport Service Act (Law No. 8095, December 26, 2006), Articles 29 and 30

Enforcement Regulations of the Passenger Transport Service Act (Ordinance of the Ministry of Construction and Transportation No. 530, August 7, 2006), Article 52

Description: Cross-Border Trade in Services

A person that supplies automobile rental services must establish an office in Korea.

Sector: Scientific Research Services and Sea Map Making Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2)

Measures: Marine Scientific Research Act (Law No. 5809, February 5, 1999), Articles 6, 7, and 8

Territorial Sea and Contiguous Zone Act (Law No. 4986, December 6, 1995), Article 5

Description: Cross-Border Trade in Services and Investment

A foreign person, a foreign government, or a Korean enterprise owned or controlled by a foreign person that intends to conduct marine scientific research in the territorial waters or exclusive economic zone of Korea must obtain prior authorization or consent from the Minister of Maritime Affairs and Fisheries whereas a Korean national or a Korean enterprise not owned or controlled by a foreign person need only to provide notification to the Minister of Maritime Affairs and Fisheries.

Sector: Professional Services - Legal Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Attorney-at-law Act (Law No. 8271, January 26, 2007), Articles 4, 7, 21, 34, 45, 58-6, 58-22, and 109

Certified Judicial Scriveners Act (Law No. 7895, March 24, 2006), Articles 2, 3, and 14

Notary Public Act (Law No. 7428, March 31, 2005), Articles 10, 16, and 17

Description: Cross-Border Trade in Services

Only a byeon-ho-sa (Korean-licensed lawyer) registered with the Korean Bar Association may supply legal services.

Only a byeon-ho-sa (Korean-licensed lawyer) may establish the following types of legal entity: beop-yool-sa-mu-so (law office), beop-mu-beop-in (law company with the characteristics of partnership), beop-mu-beop-in (yoo-han) (limited liability law company), or beop-mu-jo-hap (limited liability partnership law office). For greater certainty, a person that is not a Korean-licensed lawyer is not permitted to invest in any of these types of legal entity.

A byeon-ho-sa (Korean-licensed lawyer) or beop-mu-sa (Korean-certified judicial scrivener) who practices in Korea must establish an office in the jurisdiction of the district court in which he or she practices. A gong-jeung-in (Korean notary public) must establish an office in the jurisdiction of the district office of the public prosecutor in which he or she practices.

This entry is subject to the commitments undertaken in the entry for Legal Services - Foreign Legal Consultants in the Schedule to Annex II.

Sector: Professional Services - Labor Affairs Consulting Services

Obligations Concerned: Local Presence (Article 12.5)

Measures: Certified Labor Affairs Consultant Act (Law No. 7796, December 29, 2005), Articles 5, 7-3, and 7-4

Description: Cross-Border Trade in Services

A person that supplies labor affairs consulting services must establish an office in Korea and be a gong-in-no-mu-sa (Korean-licensed labor affairs consultant).

For greater certainty, an enterprise that supplies labor affairs consulting services must consist of at least two gong-in-no-mu-sa (Korean-licensed labor affairs consultant) (including the natural person who is the founder) and must obtain authorization from the Minister of Labor.

Sector: Professional Services - Patent Attorney (byeon-ri-sa)

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Patent Attorney Act (Law No. 7870, March 3, 2006), Articles 3, 5, 6-2, and 6-3

Description: Cross-Border Trade in Services

Only a byeon-ri-sa (Korean-licensed patent attorney) who is registered with the Korean Intellectual Property Office may supply patent attorney services.

Only a byeon-ri-sa (Korean-licensed patent attorney) may establish a gae-in-sa-mu-so (sole proprietorship) or a teuk- heo-beop-in (patent law firm). For greater certainty, a person that is not a Korean-licensed patent attorney may not invest in either of these types of legal entity.

A byeon-ri-sa (Korean-licensed patent attorney) may establish only one office.

Sector: Professional Services - Accounting and Auditing Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Certified Public Accountant Act (Law No. 7796, December 29, 2005), Articles 2, 7, 12, 18, and 23

External Audit of Stock Companies Act (Law No. 7524, May 31, 2005), Article 3

Description: Cross-Border Trade in Services

Only a gae-in-sa-mu-so (sole proprietorships), gam-sa-ban (auditing task forces) or hoe-gye-boep-in (accounting corporation limited liability company) established in Korea by gong-in-hoe-gye-sa (Korean-certified public accountants) registered under the Certified Public Accountant Act may supply accounting and auditing services. For greater certainty, a person that is not a Korean-registered certified public accountant may not invest in any of these types of legal entity.

Only gong-in-hoe-gye-sa (Korean-certified public accountants) in an auditing task force or an accounting corporation may supply auditing services regulated under the External Audit of Stock Companies Act.

This entry is subject to the commitments undertaken in the entry for Professional Services - Foreign Certified Public Accountant in the Schedule of Korea to Annex II.

Sector: Professional Services - Tax Accountant (se-mu-sa)

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Certified Tax Accountant Act (Law No. 7878, March 24, 2006), Articles 6, 13, 16-3, and 20

Guidelines Governing the Work of Tax Agents, Articles 20 and 22

Description: Cross-Border Trade in Services

Only a se-mu-sa-mu-so (sole proprietorships), se-mu-jo- jeong-ban (tax reconciliation task forces) or, se-mu-beop-in (tax agency corporation limited liability company) established in Korea by se-mu-sa (Korean-certified tax accountants) registered under the Certified Tax Accountant Act may supply se-mu-sa (Korean-certified tax accountants) services, including tax reconciliation services and tax representative services. For greater certainty, a person that is not a Korean-registered certified tax accountant may not invest in any of these types of legal entity.

Only a tax reconciliation task force or a tax agency corporation may supply tax reconciliation services.

This entry is subject to the commitments undertaken in the entry for Professional Services - Foreign Certified Tax Accountants in the Schedule of Korea to Annex II.

Sector: Professional Services - Customs Clearance Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Customs Broker Act (Law No. 7796, December 29, 2005), Articles 3, 7, and 9

Description: Cross-Border Trade in Services

Only a gwan-se-sa (customs broker) licensed under the Customs Brokers Act, a corporation incorporated by such customs brokers, or a corporation licensed to engage in the customs-clearance brokerage business under the Customs Broker Act may supply customs-clearance services.

A person that supplies customs-clearance services must establish an office in Korea.

Sector: Engineering and Other Technical Services - Industrial Safety, Health Institution, and Consulting Services

Obligations Concerned: Local Presence (Article 12.5)

Measures: Industrial Safety and Health Act (Law No. 7920, March 24, 2006), Articles 15 and 52-4

Enforcement Decree of the Industrial Safety and Health Act (Presidential Decree No. 19804, December 29, 2006), Article 15-3

Enforcement Regulations of the Industrial Safety and Health Act (Ordinance of the Ministry of Labor No. 265, January 12, 2007), Articles 18 and 136-8

Description: Cross-Border Trade in Services

A person that supplies safety and health management or diagnostic services to industrial workplaces must establish an office in Korea.

A person that supplies industrial safety or hygiene consulting services, such as evaluation and instruction on safety in a work process and evaluation and instruction on the improvement of work environments, must establish an office in Korea.

Sector: Engineering and Other Technical Services - Architectural Services, Engineering Services, Integrated Engineering Services, Urban Planning and Landscape Architectural Services

Obligations Concerned: Local Presence (Article 12.5)

Measures: Certified Architects Act (Law No. 7593, July 13, 2005), Article 23

Enforcement Decree of the Certified Architects Act (Presidential Decree No. 19513, June 12, 2006), Articles 22 and 23

Enforcement Regulations of the Certified Architects Act (Ordinance of the Ministry of Construction and Transportation No. 458, July 18, 2005), Article 13

Engineering Technology Promotion Act (Law No. 7428, March 31, 2005), Article 4

Professional Engineers Act (Law No. 8268, January 26, 2007), Article 6

Special Act on the Safety Control of Public Structures (Law No. 7923, March 24, 2006), Article 9

Enforcement Decree of the Special Act on the Safety Control of Public Structures (Presidential Decree No. 19716, October 26, 2006), Article 11

Construction Technology Management Act (Law No. 7305, December 31, 2004), Articles 25 and 28

Enforcement Decree of the Construction Technology Management Act (Presidential Decree No.19805, December 29, 2006), Articles 49 and 54

Enforcement Regulations of the Construction Technology Management Act (Ordinance of the Ministry of Construction and Transportation No. 545, December 29, 2006), Article 28

Act on Assessment of Impacts of Works on the Environment, Traffic, Disasters, Etc. (Law No. 7573, May 31, 2005), Article 8

Surveying Act (Law No. 8071, December 20, 2006), Article 39

Enforcement Decree of the Surveying Act (Presidential Decree No. 19849, January 24, 2007), Articles 15, 16, and 18

Environmental Testing and Inspection Act (Law No. 8038, October 4, 2006), Article 16

Thermal Spring Management Act (Law No. 8343, April 11, 2007), Article 7

Fire Fighting System Installation Business Act (Law No. 7982, September 22, 2006), Article 4

Description: Cross-Border Trade in Services

A person that supplies architectural services, engineering services, integrated engineering services, or urban planning and landscape architectural services must establish an office in Korea.

For greater certainty, this entry does not apply to the supply of services by a foreign architect through a joint contract with a Korean-licensed architect.

Sector: Business Services - Electronic Billboard Operator Services and Outdoor Advertisement Services

Obligations Concerned: Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Measures: Broadcasting Act (Law No. 8301, January 26, 2007), Articles 13 and 73

Outdoor Advertisements, Etc. Management Act (Law No. 7246, December 23, 2004), Article 11

Enforcement Decree of the Outdoor Advertisements, Etc. Management Act (Presidential Decree No. 19639, August 4, 2006), Articles 31 and 41

Description: Cross-Border Trade in Services and Investment

A foreign national or a Korean national who serves as a dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) of a foreign enterprise may not serve as the dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) or chief programmer of an enterprise that supplies electronic billboard operator services.

At least 30 percent of the electronic billboard programs must be non-commercial public advertisements provided by the central or local government.

A person that supplies outdoor advertising services must establish an office in Korea.

Sector: Business Services - Job Placement Services, Labor Supply and Worker Dispatch Services, and Education Services for Seafarers

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Employment Security Act (Law No. 8249, January 19, 2007), Articles 19 and 33

Enforcement Decree of the Employment Security Act (Presidential Decree No. 19602, June 30, 2006), Articles 21 and 33

Enforcement Regulations of the Employment Security Act (Ordinance of the Ministry of Labor No. 252, June 30, 2006), Articles 17 and 36

Act Relating to Protection for Dispatched Workers (Law No. 8076, December 21, 2006), Article 7

Enforcement Decree of the Act Relating to Protection for Dispatched Workers (Presidential Decree No. 15828, July 1, 1998), Article 3

Enforcement Regulations of the Act Relating to Protection for Dispatched Workers (Ordinance of the Ministry of Labor No.

255, July 19, 2006), Article 3

Act on Designation and Management of Free Economic Zones (Law No. 8283, January 26, 2007), Article 17

Seafarers Act (Law No. 8381, April 11, 2007), Articles 100, 101, 103, 104, 106, 107, 122-2, and 122-3

Korea Institute of Maritime and Fisheries Technology Act (Law No. 6457, March 28, 2001), Article 5

Description: Cross-Border Trade in Services and Investment

A person that supplies job placement services for a fee, worker supply services, or worker dispatch (secondment) services must establish an office in Korea.

For transparency purposes, as of March 31, 2007 the types of business to which workers may be seconded are limited to the 26 businesses set forth in the Presidential Decree, but the Minister of Labor can expand the types of business and the secondment period, pursuant to the review and determination by the Committee of the Free Economic Zone.

Only the Korea Seafarers Welfare and Employment Center and regional offices of the Minister of Maritime Affairs and Fisheries may supply seafaring labor supply services.

To become an agent for seafarer personnel management services, a person must register with the Minister of Maritime Affairs and Fisheries as a stock company under the Korean Commercial Code.

Only the Korea Institute of Maritime and Fisheries Technology may provide education and training for seafarers.

Sector: Investigation and Security Services

Obligations Concerned: Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Certified Private Security Act (Law No. 7671, August 4, 2005), Articles 3 and 4

Enforcement Decree of the Certified Private Security Act (Presidential Decree No. 18312, March 17, 2004), Articles 3 and 4

Enforcement Regulations of the Certified Private Security Act (Ordinance of the Ministry of Government Administration and Home Affairs, No. 345, September 7, 2006), Article 3

Description: Cross-Border Trade in Services

Only a juridical person organized under Korean law may supply security services in Korea.

For transparency purposes, only five types of security services are permitted in Korea:

(a) shi-seol-gyung-bee (facility security); (b) ho-song-gyung-bee (escort security); (c) shin-byun-bo-ho (personal security);

(d) gee-gye-gyung-bee (mechanized security);

(e) teuk-soo-gyung-bee (special security).

Sector: Distribution Services Related to Publications

Obligations Concerned: National Treatment (Article 12.2)

Measures: Publication and Printing Promotion Act (Law No. 7941, April 28, 2006), Article 12

Enforcement Decree of the Publication and Printing Promotion Act (Presidential Decree No. 19963, March 27, 2007), Article 7

Enforcement Regulations of the Publication and Printing Promotion Act (Ordinance of the Ministry of Culture and Tourism No. 149, October 27, 2006), Article 7

Description: Cross-Border Trade in Services

A person that imports the following types of foreign publications for the purpose of domestic distribution must obtain a recommendation from the Minister of Culture and Tourism:

(a) publications issued by anti-government subversive entities or groups; or

(b) novels, comics, photo albums, pictorial series and magazines.

Distributors of domestic publications are subject to a review process on an ad hoc basis after distribution takes place.

Sector: Transportation Services - Aircraft Maintenance and Repair Services

Obligations Concerned: Local Presence (Article 12.5)

Measures: Aviation Act (Law No. 8128, December 28, 2006), Articles 137 and 138

Enforcement Regulations of the Aviation Act (Ordinance of the Ministry of Construction and Transportation No. 532, August 18, 2006), Articles 16, 304, and 305

Description: Cross-Border Trade in Services

A person that supplies aircraft maintenance and repair services must establish an office in Korea.

Sector: Education Services - Higher Education

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Market Access (Article 12.4) Senior Management and Boards of Directors (Article 11.9)

Measures: Higher Education Act (Law No. 8240, January 19, 2007), Articles 3, 4, 32, 42, and 43

Enforcement Decree of the Higher Education Act (Presidential Decree No. 19842, January 24, 2007), Article 28

Private School Act (Law No. 7802, December 29, 2005), Articles 3, 5, 10, and 21

Enforcement Decree of the Private School Act (Presidential Decree No. 19546, June 23, 2006), Article 9-3

Decree for the Establishment of the Korea Air and Correspondence University (Presidential Decree No. 19360, February 28, 2006), Articles 1 and 2

Description: Cross Border Trade in Services and Investment

At least 50 percent of the members of the board of directors of a private higher education institution must be Korean nationals. If a foreign person contributes at least 50 percent of the basic property of a higher education institution, up to but not including two thirds of the members of the board of directors of such an institution may be foreign nationals.

For purposes of this entry, basic property means real estate, property designated as basic property by the articles of association, property incorporated into the basic property according to decisions of the board of directors, and an annual budgetary surplus reserve of the institution.

Only non-profit school juridical persons approved by the Minister of Education and Human Resources Development may establish higher education institutions (other than the types of institutions listed in Annex II) in Korea.

The Minister of Education and Human Resources Development may restrict the total number of students per year in the fields of medicine, pharmacology, veterinary medicine, traditional Asian medicine, medical technicians, and higher education for pre-primary, primary, and secondary teachers, and higher education institutions located in the Seoul Metropolitan Area.

For purposes of this entry, "Seoul Metropolitan Area" includes the Seoul Metropolitan City, Incheon Metropolitan City, and Gyeonggi Province.

Only the central or local governments of Korea may establish higher education institutions for training of primary school teachers. Only the central government may establish higher education institutions that supply higher education services to the public through broadcasting.

Sector: Education Services - Adult Education

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Market Access (Article 12.4)

Measures: Establishment and Operation of Private Teaching Institutes and Extracurricular Lessons Act (Law No. 7974, September 22, 2006), Articles 2, 2-2, and 13

Enforcement Decree of the Establishment and Operation of Private Teaching Institutes and Extracurricular Lessons Act (Presidential Decree No. 19717, October 27, 2006), Article 12

Lifelong Education Act (Law No. 6400, January 29, 2001), Articles 22, 23, 24, 25, 26, and 27

Foreign Investment Promotion Act (Law No. 8380, April 11, 2007), Article 4

Consolidated Public Notice for Foreign Investment (No. 2007-69, February 28, 2007, Ministry of Commerce, Industry and Energy), Appendix 2

Description: Cross Border Trade in Services and Investment

The types of adult education institutions that a foreign person may establish in Korea are limited to:

(a) hag-won (private teaching institutes for adults) related to lifelong and vocational education; and

(b) no later than the date this Agreement enters into force, lifelong adult education facilities operated for purposes other than recognizing educational qualifications or conferring diplomas, which include:

(i) education facilities annexed to workplaces, non-governmental organizations, schools and media organizations;

(ii) educational facilities related to the development of knowledge and human resources; and

(iii) on-line lifelong education facilities,

all of which are established for adults.

For purposes of this entry, kag-won (private teaching institutes for adults) are facilities that provide tutoring services on subjects related to lifelong or vocational education to ten people or more for a period of 30 days or longer.

A foreign national hired by a private teaching institute for

adults as a lecturer must possess at least a bachelor's degree or the equivalent and reside in Korea.

Sector: Education Services - Vocational Competency Development Training Services

Obligations Concerned: Local Presence (Article 12.5)

Measures: Workers' Vocational Competency Development Act (Law No. 8294, January 26, 2007), Articles 28, 32, and 36

Enforcement Decree of the Workers' Vocational Competency Development Act (Presidential Decree No. 18911, June 30, 2005), Articles 24 and 26

Enforcement Regulations of the Workers' Vocational Competency Development Act (Ordinance of the Ministry of Labor No. 255, July 19, 2006), Articles 12 and 14

Description: Cross-Border Trade in Services

A person that supplies vocational competency development training services must establish an office in Korea.

Sector: Veterinary Services

Obligations Concerned: Local Presence (Article 12.5)

Measures: Veterinary Affairs Act (Law No. 7546, May 31, 2005), Article 17

Fish Culture Promotion Act (Law No. 8377, April 11, 2007), Article 24

Description: Cross-Border Trade in Services

A person that supplies veterinary or aquatic animal disease inspection services must establish an office in Korea.

Sector: Environmental Services - Waste Water Treatment Services, Waste Management Services, Air Pollution Treatment Services, Environmental Preventive Facilities Business, Environmental Impact Assessment, Soil Remediation and Groundwater Purification Services, and Toxic Chemical Control Services

Obligations Concerned: Local Presence (Article 12.5)

Measures: Water Quality Conservation Act (Law No. 7459, March 31, 2005), Article 62

Development of and Support for Environmental Technology Act (Law No. 7820, December 30, 2005), Articles 17 and 18

Soil Environment Conservation Act (Law No. 7459, March 31, 2005), Article 23-7

Groundwater Act (Law No. 7924, March 24, 2006), Article 29-2

Clean Air Conservation Act (Law No. 7459, March 31, 2005), Article 40

Act on Assessment of Impacts of Works on Environment, Traffic and Disasters (Law No. 7573, May 31, 2005), Article 8

Toxic Chemicals Control Act (Law No. 7849, February 21, 2006), Article 20

Wastes Control Act (Law No. 7459, March 31, 2005), Article 26

Enforcement Decree of the Wastes Control Act (Presidential Decree No. 18471, July 13, 2004), Article 6

Description: Cross-Border Trade in Services

A person that supplies the environmental services listed in the Sector heading must establish an office in Korea.

Sector: Performance Services

Obligations Concerned: National Treatment (Article 12.2)

Measures: Public Performance Act (Law No. 7991, September 27, 2006), Articles 6 and 7

Enforcement Decree of the Public Performance Act (Presidential Decree No. 19798, December 29, 2006), Articles 4 and 6

Enforcement Regulations of the Public Performance Act (Ordinance of the Ministry of Culture and Tourism No. 154, December 29, 2006), Article 4

Ordinance of the Ministry of Justice No. 609, March 5, 2007, Table 5

Description: Cross-Border Trade in Services

A foreign person who intends to engage in a public performance in Korea, or a person who intends to invite a foreign person to engage in a public performance in Korea must obtain a recommendation from the Korea Media Rating Board.

Sector: News Agency (News-tong-sin-sa) Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: News Agency Promotion Act (Law No. 7655, August 4, 2005), Articles 7, 8, 9, 16, and 28

Enforcement Decree of the News Agency Promotion Act (Presidential Decree No. 19507, June 12, 2006), Article 4

Radio Waves Act (Law No. 7815, December 30, 2005), Article 20

Description: Cross-Border Trade in Services and Investment

A news-tong-sin-sa (news agency) organized under foreign law may supply news-tong-sin (news communications) in Korea only under a contract with a news agency organized under Korean law which has a radio station license, such as Yonhap News.

The following persons may not supply news agency services in Korea:

(a) a foreign government;

(b) a foreign person;

(c) an enterprise organized under Korean law whose dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) is not a Korean national or is a person not domiciled in Korea; or

(d) an enterprise organized under Korean law in which a foreign person holds 25 percent or more equity interest.

The following persons may not serve as a dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) or editor of a news agency, or serve as im-won (a member of the board of directors) of Yonhap News or the News Agency Promotion Committee:

(a) a foreign national; or

(b) a Korean national not domiciled in Korea. A foreign news agency may establish a branch or office in Korea for the sole purpose of collecting news. For greater certainty, such branch or office may not distribute news- tong-sin (news

communications) in Korea.

The following persons may not obtain a radio station license:

(a) a foreign national;

(b) a foreign government or its representative; or

(c) an enterprise organized under foreign law.

Sector: Manufacturing of Biological Products

Obligations Concerned: Performance Requirements (Article 11.8)

Measures: Pharmaceutical Affairs Act (Law No. 8035, October 4, 2006), Article 34

Enforcement Regulations of the Pharmaceutical Affairs Act (Ordinance of the Ministry of Health and Welfare No. 372, October 24, 2006), Article 21

Description: Investment

A person who manufactures blood products must procure raw blood materials from the Korean Red Cross.

Sector: Publishing of Periodicals (Excluding Newspapers)

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Act on the Guarantee of Freedom and Function of Newspapers, Etc. (Law No. 7655, August 4, 2005), Articles 13 and 26

Enforcement Decree of the Act on the Guarantee of Freedom and Function of Newspapers, Etc. (Presidential Decree No. 19507, June 12, 2006), Articles 17, 18, 19, and 20

Description: Cross-Border Trade in Services and Investment

The publisher or the editor-in-chief of an enterprise that publishes periodicals must be a Korean national.

The following persons may not publish periodicals in Korea:

(a) a foreign government or a foreign person;

(b) an enterprise organized under Korean law whose dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) is not a Korean national; or

(c) an enterprise organized under Korean law in which a foreign person holds more than 50 percent of share or equity interest.

A foreign person that publishes periodicals may establish a branch or office in Korea subject to authorization from the Minister of Culture and Tourism. As of the date this Agreement enters into force, such branch or office may print and distribute its periodicals in Korea in the original language, provided that such periodicals are edited in the territory of the other Party.

Sector: Distribution Services - Agriculture and Livestock

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Market Access (Article 12.4)

Measures: Grain Management Act (Law No. 7433, March 31, 2005), Article 12

Livestock Industry Act (Law No. 6821, December 26, 2002), Articles 24 and 27

Seed Industry Act (Law No. 7678, August 4, 2005), Article 142

Feed Management Act (Law No. 7428, March 31, 2005), Article 6

Ginseng Industry Act (Law No. 7275, December 31, 2004), Article 20

Foreign Investment Promotion Act (Law No. 8380, April 11, 2007), Article 4

Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 19826, January 5, 2007), Article 5

Consolidated Public Notice for Foreign Investment (No. 2007-69, February 28, 2007, Ministry of Commerce, Industry and Energy), Appendix 1

Act on Distribution and Price Stabilization of Agricultural and Fishery Products (Law No. 7311, December 31, 2004), Articles 15, 17, and 43

Notice on TRQ Products (Ministry of Agriculture and Forestry Notice No. 2006-76, December 30, 2006), Articles 14 and 20-2

Description: Cross-Border Trade in Services and Investment

A foreign person may not hold 50 percent or more of the shares or equity interest of an enterprise engaged in yook- ryu (meat) wholesaling.

Only the Livestock Cooperatives under the Agriculture Cooperative Act may establish and manage a ga-chook- sijang (livestock market) in Korea.

Only a local government may establish a gong-yeong-domae-sijang (public wholesale market).

Only producersâ organizations or public interest corporations prescribed in the Enforcement Decree of the Act on Distribution and Price Stabilization of Agricultural and Fishery Products may establish a gong-pan-jang (joint wholesale market).

For greater certainty, Articles 12.2 and 12.4 do not prevent

Korea from adopting or maintaining any measure with respect to the administration of the WTO Tariff-Rate-Quota.

Sector: Communication Services - Broadcasting Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirement (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Market Access (Article 12.4) Local Presence (Article 12.5)

Measures: Broadcasting Act (Law No. 8301, January 26, 2007) Articles 8, 9, 12, 13 through 18, 48, and 69 through 71

Enforcement Decree of the Broadcasting Act (Presidential Decree No. 19806, December 29, 2006), Article 57

Korea Educational Broadcasting Corporation Act (Law No. 6970, August 21, 2003), Article 11

Notice on Programming Ratio (Korea Broadcasting Commission Notice No. 2005-2, January 22, 2005)

Notice on Programming Ratio for Terrestrial Digital Multimedia Broadcasting and Program Provider Using the Terrestrial Broadcasting Channel (Korea Broadcasting Commission Notice No. 2006-1, March 29, 2006)

Description: Cross-Border Trade in Services and Investment

Neither a foreign national nor a Korean national who serves as a dae-pyo-ja (e.g., a chief executive officer, president, or similar principal senior officer) of a foreign enterprise may serve as a dae-pyo-ja (eÂ¢.g., a chief executive officer, president, or similar principal senior officer) or chief programmer of a terrestrial broadcaster, satellite broadcasting operator, cable system operator, program provider, signal transmission network business operator, audio cable operator, or relay-only cable operator.

All members of the boards of directors of the Korea Broadcasting System (KBS) and the Korea Educational Broadcasting System (EBS) must be Korean nationals.

A license for a terrestrial broadcaster, cable system operator, satellite broadcasting operator, signal transmission network business operator, or a program provider may only be granted to or held by the Government of Korea, a local government, or a juridical person organized under Korean law.

A license for a relay-only cable operator or an audio cable operator may only be granted to or held by the Government of Korea, a local government, or a Korean person.

A license for a terrestrial broadcaster, relay-only cable operator, cable system operator, satellite broadcasting operator, or a program provider that is engaged in jong-hap- pyeon-sung (multi-genre programming), home shopping, or bo-do (news reporting) is granted through heo-ga (permission), whereas a license for a signal transmission network business operator, audio cable operator or a program provider that is not engaged in jong-hap-pyeon- sung (multi-genre programming), home

shopping, or bo-do (news reporting) is granted through deung-rok (registration).

A foreign government, foreign person, or deemed foreign person may not hold:

(a) an equity interest in a terrestrial broadcaster, relay-only cable operator, or program provider that is engaged in jong-hap-pyeon- sung (multi-genre programming) or bo-do (news reporting);

(b) inthe aggregate more than 33 percent of the total issued stocks or equity interest of a satellite broadcasting operator; or

(c) in the aggregate more than 49 percent of the total issued stocks or equity interest of a cable system operator, a signal transmission network business operator, or a program provider that is not engaged in jong-hap- pyeon-sung (multi-genre programming) or bo-do (news reporting).

No later than three years after this Agreement enters into force, Korea shall permit a deemed foreign person to hold up to 100 percent of the equity interest in a program provider that is not engaged in jong-hap-pyeon-sung (multi- genre programming), bo-do (news reporting), or home shopping.

For transparency purposes, no single person (including "specially related person" under Article 3 of the Enforcement Decree of the Broadcasting Act) may hold in the aggregate more than 30 percent of the total issued stocks or equity interest of a terrestrial broadcaster or a program provider that is engaged in jong-hap-pyeon-sung (multi-genre programming) or bo-do (news reporting), unless such broadcaster primarily provides religious or missionary content. Such limitations do not apply to the Government of Korea and a corporation established by a special law (e.g., Mun-hwa Broadcasting Corporation (MBC), which is established under the Broadcasting Culture Promotion Act).

A terrestrial broadcaster, program provider, cable system operator, or satellite broadcasting operator must include the following percentage of Korean content in its quarterly programming:

(a) 80 percent of the quarterly programming hours of a terrestrial broadcaster or program provider that uses terrestrial broadcasting to provide its programming;

(b) 50 percent of the quarterly programming hours of a cable system operator or a satellite broadcasting operator; and

(c) 50 percent of the quarterly programming hours per channel of a program provider that does not use terrestrial broadcasting to provide its programming.

A terrestrial broadcaster providing programming in the following genres must include the following percentage of Korean content in its annual programming:

(a) Animation: 45 percent of the broadcasterâs annual animation programming hours;

(b) Movies: 25 percent of the broadcasterâs annual movie programming hours; and

(c) Music: 60 percent of the broadcasterâs annual music programming hours.

A cable system operator, satellite broadcasting operator or program provider providing at least some music programming must include Korean content in 60 percent of its annual music programming hours, per channel.

No later than the date this Agreement enters into force, Korea shall not require a cable system operator, satellite broadcasting operator, or program provider providing at least some animation or movie programming to provide a percentage of Korean content in its annual programming hours, per channel, that is greater than:

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(a) Animation: 30 percent of the broadcasterâs annual animation programming hours; and

(b) Movies: 20 percent of the broadcasterâs annual movie programming hours.

Certain separate content quota requirements apply to a broadcaster specialized in religious programming or education programming, or to a terrestrial digital multimedia broadcasting (DMB) operator. A satellite DMB operator is subject to content quota requirements applied to a satellite broadcasting operator.

No later than the date this Agreement enters into force, Korea shall permit no less than 80 percent of a terrestrial broadcasterâs, cable system operatorâs, satellite broadcasting operatorâs, or program providerâs quarterly programming hours of foreign content per genre to be foreign content of a single country (single-country content ceiling).

(c) 50 percent of the quarterly programming hours per channel of a program provider that does not use terrestrial

broadcasting to provide its programming.

A terrestrial broadcaster providing programming in the following genres must include the following percentage of Korean content in its annual programming:

(a) Animation: 45 percent of the broadcaster's annual animation programming hours;

(b) Movies: 25 percent of the broadcaster's annual movie programming hours; and

(c) Music: 60 percent of the broadcaster's annual music programming hours.

A cable system operator, satellite broadcasting operator or program provider providing at least some music programming must include Korean content in 60 percent of its annual music programming hours, per channel.

No later than the date this Agreement enters into force, Korea shall not require a cable system operator, satellite broadcasting operator, or program provider providing at least some animation or movie programming to provide a percentage of Korean content in its annual programming hours, per channel, that is greater than:

(a) Animation: 30 percent of the broadcaster's annual animation programming hours; and

(b) Movies: 20 percent of the broadcaster's annual movie programming hours.

Certain separate content quota requirements apply to a broadcaster specialized in religious programming or education programming, or to a terrestrial digital multimedia broadcasting (DMB) operator. A satellite DMB operator is subject to content quota requirements applied to a satellite broadcasting operator.

No later than the date this Agreement enters into force, Korea shall permit no less than 80 percent of a terrestrial broadcaster's, cable system operator's, satellite broadcasting operator's, or program provider's quarterly programming hours of foreign content per genre to be foreign content of a single country (single-country content ceiling).

For purposes of this entry:

(a) program provider engaged in jong-hap- pyeon-sung (multi-genre programming) means a program provider that offers a combination of news, entertainment, drama, movies, music programming, etc.;

(b) deemed foreign person means a juridical person organized under Korean law in which a foreign government or a foreign person holds in the aggregate more than 50 percent of the juridical person's total issued stocks or equity interest, or whose largest shareholder is a foreign government or a foreign person; and

(c) a "satellite broadcasting operator" includes an operator that uses or leases capacity on a satellite registered in a foreign country.

Sector: Energy Industry - Electric Power Generation Other Than Nuclear Power Generation; Electric Power Transmission, Distribution and Sales

Obligations Concerned: National Treatment (Article 11.3) (1)

Measures: Securities and Exchange Act (Law No. 8315, March 29, 2007), Article 203

Enforcement Decree of the Securities and Exchange Act (Presidential Decree No. 19806, December 29, 2006), Article 87-2

Foreign Investment Promotion Act (Law No. 8380, April 11, 2007), Articles 4 and 5

Enforcement Decree of the Foreign Investment Promotion Act, (Presidential Decree No. 19826, January 5, 2007), Article 5

Consolidated Public Notice for Foreign Investment (No. 2007-69, February 28, 2007, Ministry of Commerce, Industry and Energy), Appendix 1

Notice of Ministry of Finance and Economy (No. 2000-17, September 28, 2000)

Regulation on Supervision of Securities Business (Financial Supervisory Commission Notice No. 2007-3, January 19, 2007), Sec. 7-6

Description: Investment

The aggregate foreign share of KEPCO's issued stocks may not exceed 40 percent. A foreign person may not become the largest shareholder of KEPCO.

The aggregate foreign share of power generation facilities, including cogeneration facilities of heat and power (GHP) for the district heating system (DHS), may not exceed 30 percent of the total facilities in the territory of Korea.

The aggregate foreign share of electric power transmission, distribution and sales businesses should be less than 50 percent. A foreign person may not be the largest shareholder.

(1) Paragraph (a) of the eighth entry of Korea's Schedule to Annex II does not apply to this entry.

Sector: Energy Industry - Gas Industry

Obligations Concerned: National Treatment (Article 11.3) (2)

Measures: Act on the Improvement of Managerial Structure and Privatization of Public Enterprises (Law No. 8050, October 4, 2006), Article 19

Securities and Exchange Act (Law No. 8315, March 29, 2007), Article 203

Foreign Investment Promotion Act (Law No. 8380, April 11, 2007), Articles 4 and 5

Articles of Incorporation of the Korea Gas Corporation (March 26, 2007), Article 11

Description: Investment

Foreign persons, in the aggregate, may not own more than 30 percent of the equity of KOGAS.

(2) Paragraph (a) of the eighth entry of Korea's Schedule to Annex II does not apply to this entry.

Sector: Recreational, Cultural, and Sporting Services - Motion Picture Projection Services

Obligations Concerned: Performance Requirements (Article 11.8) Market Access (Article 12.4)

Measures: Act on Promotion of Motion Pictures and Video Products (Law No. 8280, January 26, 2007), Articles 2, 27, and 40

Enforcement Decree of the Act on Promotion of Motion Pictures and Video Products (Presidential Decree No. 19714, October 26, 2006), Article 19

Description: Cross-Border Trade in Services and Investment

Cinema operators must project Korean motion pictures for at least 73 days per year at each screen in Korea.

Annex I. SCHEDULE OF THE UNITED STATES

Sector: Atomic Energy

Obligations Concerned: National Treatment (Article 11.3)

Level of Government: Central Measures: Atomic Energy Act of 1954, 42 U.S.C. Â§Â§ 2011 et seq. Description: Investment

A license issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import, or export any nuclear "utilization or production facilities" for commercial or industrial purposes. Such a license may not be issued to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (42 U.S.C. § 2133(d)). A license issued by the United States Nuclear Regulatory Commission is also required for nuclear "utilization and production facilities," for use in medical therapy, or for research and development activities. The issuance of such a license to any entity known or believed to be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government is also prohibited (42 U.S.C. Â§ 2134(d)).

Sector: Business Services

Obligations Concerned: National Treatment (Article 12.2) Local Presence (Article 12.5)

Level of Government: Central

Measures: Export Trading Company Act of 1982, 15 U.S.C. §§ 4011- 4021 15 C.F.R. Part 325

Description: Cross-Border Services

Title II of the Export Trading Company Act of 1982 authorizes the Secretary of Commerce to issue "certificates of review" with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.

Only a "person" as defined by the Act can apply for a certificate of review. "Person" means "an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons."

A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a "member" of a qualified applicant. The regulations define "member" to mean "an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement."

Sector: Business Services

Obligations Concerned: National Treatment (Article 12.2) Local Presence (Article 12.5)

Level of Government: Central

Measures: Export Administration Act of 1979, as amended, 50 U.S.C. App. Â§Â§ 2401-2420

International Emergency Economic Powers Act, 50 U.S.C. Â§Â§ 1701-1706

Export Administration Regulations, 15 C.F.R. Parts 730 - 774

Description: Cross-Border Services

With some limited exceptions, exports and re-exports of commodities, software, and technology subject to the Export Administration Regulations require a license from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a license from BIS. An application for a license must be made by a person in the United States.

In addition, release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national and requires the same written authorization from BIS as an export from the territory of the United States.

Sector: Mining and Pipeline Transportation

Obligations Concerned:National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4)

Level of Government: Central

Measures: Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181 and 185(a) 10 U.S.C. § 7435

Description: Investment

Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on-shore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)).

Nationalization is not considered to be denial of similar or like privileges.

Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs, or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. § 7435).

Sector: All Sectors

Obligations Concerned: National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4)

Level of Government: Central

Measures: 22 U.S.C. §§ 2194 and 2198(c)

Description: Investment

The Overseas Private Investment Corporation (OPIC) insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled domestic enterprises.

The United States recognizes that, as of the date of entry into force of this Agreement, OPIC may make arrangements with the Korea Export Insurance Corporation or the Multilateral Investment Guarantee Agency for sharing liabilities assumed under investment insurance, as provided in 22 U.S.C. § 2194, and that Korea is therefore eligible for Most-Favored-Nation treatment under this entry.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4) Senior Management and Boards of Directors (Article 11.9)

Level of Government: Central

Measures: 49 U.S.C. Subtitle VI, Aviation Programs 14C.F R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)

Description: Investment

Only air carriers that are "citizens of the United States" may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers.

USS. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-US. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so.

Under 49 U.S.C. § 40102(a)(15), a citizen of the United States means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; ora USS. corporation of which the president and at least two- thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by US. citizens.

Sector: Specialty Air Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Senior Management and Boards of Directors (Article 11.9)

Level of Government: Central

Measures: 49 U.S.C., Subtitle VII, Aviation Programs 49 U.S.C. § 41703 14CFR. Part 375

Description: Cross-Border Services and Investment

"Foreign civil aircraft" require authority from the Department of Transportation to conduct specialty air services in the territory of the United States.(*) In determining whether to grant a particular application, the Department considers, among other factors, the extent to which the country of the applicant's nationality accords U.S. civil aircraft operators effective reciprocity. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled, or operated by persons who are not citizens or permanent residents of the United States (14 C-F.R. § 375.1). Under 49 U.S.C. § 40102(a)(15), a citizen of the United States means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens.

*A person of Korea will be able to obtain such an authorization if Korea accepts the definition of specialty air services in Chapter 12 and provides effective reciprocity by virtue of this Agreement.

Sector: Transportation Services - Customs Brokers

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Local Presence (Article 12.5)

Level of Government: Central

Measures: 19 U.S.C. § 1641(b)

Description: Cross-Border Services and Investment

A customs broker's license is required to conduct customs business on behalf of another person. Only U.S. citizens may obtain such a license. A corporation, association, or partnership established under the law of any state may receive a customs broker's license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 11.3) Most-Favored-Nation Treatment (Article 11.4)

Level of Government: Central

Measures: Securities Act of 1933, 15 U.S.C. §§ 77c(b), 77f, 77g, 77h,77j, and 77s(a)17 C.F.R. §§ 230.251 and 230.405

Securities Exchange Act of 1934, 15 U.S.C. §§ 78l, 78m,78o(d), and 78w(a)17 C.F.R. § 240.12b-2

Description: Investment

Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

Sector: Communications – Radiocommunications (*)

Obligations Concerned: National Treatment (Article 11.3)

Level of Government: Central

Measures: 47 U.S.C. § 310 (a)-(b) Foreign Participation Order 12 FCC Rcd 23891, paras. 97- 118 (1997)

Description: Investment

The United States reserves the right to restrict ownership of radio licenses in accordance with the above statutory and regulatory provisions, which provide that, inter alia:

(a) no station license may be granted to or held by a foreign government or representative thereof;

(b) no broadcast or common carrier or aeronautical en route or aeronautical fixed station license may be granted to or held by:

(i) an alien or its representative;

(ii) a corporation organized under the laws of a foreign government; or

(iii) a corporation of which more than one fifth of the capital stock is owned of record or voted by an alien or its representative, a foreign government or its representative, or a corporation organized under the laws of a foreign country; and

(c) absent a specific finding that the public interest would be served by permitting foreign ownership of a broadcast licenses, no broadcast station license shall be granted to any corporation directly or indirectly controlled by another corporation of which more than one fourth of the capital stock is owned of record or voted by an alien or its representative, a foreign government or its representative, or a corporation organized under the laws of a foreign country.

(*)Radiocommunications consists of all communications by radio, including broadcasting.

Sector: Professional Services - Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office

Obligations Concerned: National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Local Presence (Article 12.5)

Level of Government: Central

Measures: 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office)

37 C.F.R. Parts 10 and 11 (representation of others before the U.S. Patent and Trademark Office)

Description: Cross-Border Services

As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO):

(a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 11.6(a));

(b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a nonresident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications or applicants located in the country in which he or she resides (37 C.F.R. §11.6(c)); and

(c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a "grandfathered" agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she resides (37 C.F.R. § 10.14(a)-(c)).

Sector: All Sectors

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Local Presence (Article 12.5) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9)

Level of Government: Regional

Measures: All existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico

Appendix I-A. Illustrative list of U.S. regional non-conforming measures (1)

	Sectors in which regional Measures are described	Sectors in which regional measures do not currently affect US specific commitments under the GATS
Business services		
Professional services		
Legal services	x	
Accounting, auditing and bookkeeping services	x	
Architectural services	x	
Engineering services	x	
Integrated engineering services	x	
Urban planning and landscape		

architectural services	x	
Computer and related services		x
Research and development services		x
Real estate services	x	
Rental/leasing services without operators		x
Other business services		
Advertising services		x
Market research and public opinion polling services		x
Management consulting service		x
Services related to man. consulting		x
Technical testing and analysis services		x
Services incidental to agriculture, hunting and forestry		x
Services incidental to fishing		x
Services incidental to mining		x
Services incidental to energy distribution		x
Placement and supply services of Personnel	x	
Investigation and security	x	
Related scientific and technical consulting services		x
Maintenance and repair of equipment		x
Building-cleaning services		x

Photographic services		x
Packaging services		x
Printing, publishing		x
Convention services		x
Other		x
Communication services		
Express delivery services		x
Other delivery services		x
Telecommunication services		x
Audiovisual services		x
Construction and related engineering services	x	
Distribution services		x
Educational services	x	
Environmental services		x
Health related and social services	x	
Tourism and travel related services		x
Recreational, cultural and sporting services (other than audiovisual services)		x
Entertainment services (including theatre, live bands and circus services)		x
News agency services		x
Libraries, archives, museums and other cultural services		x
Sporting and other recreational services		x

Transport services		
Air Transport Services (Maintenance and repair of aircraft)		x
Rail Transport Services	x	
Road Transport Services		x
Pipeline Transport		x
Services auxiliary to all modes of transport		
Cargo-handling services		x
Storage and warehouse services		x
Freight transport agency services		x

(1) This document is provided for transparency purposes only, and is neither exhaustive nor binding. The information contained in this document is drawn from U.S. commitments under the General Agreement on Trade in Services, the May 2005 Revised U.S. Services Offer under the Doha Development Agenda negotiations, and related documents.

Appendix I-A. Illustrative list of U.S. regional non-conforming measures (2)

Sector	Non-conforming measure by jurisdiction
Legal services (practice of U.S. law)	Residency: lowa, Kansas, Massachusetts, Michigan, Minnesota (or maintain an office in Minnesota), Mississippi, Nebraska, New Jersey, New Hampshire, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia, Wyoming. In-state office: District of Columbia, Indiana, Michigan, Minnesota (or maintain individual residency in Minnesota), Mississippi, New Jersey, Ohio, South Dakota, Tennessee.
Legal services (foreign legal consulting)	Residency: Michigan, Texas. In-state office: Arizona, District of Columbia, Indiana, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Utah.
Accounting, auditing and bookkeeping services	Residency: Arizona, Arkansas, Connecticut, District of Columbia, Idaho, Indiana, lowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, West Virginia. In-state office: Arkansas, Connecticut, lowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont, Wyoming. Citizenship: North Carolina.
Architectural services, urban planning and landscape	Senior Managers and Boards of Directors: Michigan

architecture services	
Engineering services and integrated engineering services	Residency: Idaho, lowa, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia
Real estate services	Residency: South Dakota. Citizenship: Mississippi, New York
Placement and supply services of personnel	Citizenship: Arkansas
Investigation and security	Residency: Maine, Michigan, New York
Construction and related engineering services	In-state office: Michigan
Health and related social services	Corporate form: Michigan, New York
Educational services (Cosmetology schools)	Limited number of licenses: Kentucky
Rail transport services	Incorporation requirement: Vermont

(2) This document is provided for transparency purposes only, and is neither exhaustive nor binding. The information contained in this document is drawn from U.S. commitments under the General Agreement on Trade in Services, the May 2005 Revised U.S. Services Offer under the Doha Development Agenda negotiations, and related documents.

Annex II. EXPLANATORY NOTES

1. The Schedule of a Party to this Annex sets out, pursuant to Articles 11.12 (Non-Conforming Measures) and 12.6 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 11.3 (National Treatment) or 12.2 (National Treatment);

(b) Article 11.4 (Most-Favored-Nation Treatment) or 12.3 (Most-Favored-Nation Treatment);

(c) Article 12.5 (Local Presence); (d) Article 11.8 (Performance Requirements); (e) Article 11.9 (Senior Management and Boards of Directors); or (63) Article 12.4 (Market Access). 2. Each Schedule entry sets out the following elements: (a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the article(s) referred to in paragraph 1 that, pursuant to Articles 11.12.2 (Non-Conforming Measures) and 12.6.2 (Non-Conforming Measures), do not apply to the sectors, subsectors, or activities scheduled in the entry;

(c) Description sets out the scope of the sectors, subsectors, or activities covered by the entry; and

(d) Existing Measures identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Articles 11.12.2 (Non-Conforming Measures) and 12.6.2 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

4. For Korea, foreign person means a foreign national or an enterprise organized under the laws of another country.

5. For greater certainty, Local Presence (Article 12.5) and National Treatment (Article 12.2) are separate disciplines and a measure that is only inconsistent with Local Presence (Article 12.5) need not be reserved against National Treatment (Article 12.2).

Annex II. SCHEDULE OF KOREA

Sector: All Sectors

Obligations Concerned: National Treatment (Article 11.3) Performance Requirements (Article 11.8)

Description: Investment

1. Korea reserves the right to adopt, with respect to the establishment or acquisition of an investment, any measure that is necessary for the maintenance of public order pursuant to Article 4 of the Foreign Investment Promotion Act (2007) and Article 5 of the Enforcement Decree of the Foreign Investment Promotion Act (2007), provided that Korea promptly provides written notice to the United States that it has adopted such a measure and that the measure:

(a) is applied in accordance with the procedural requirements set out in the Foreign Investment Promotion Act (2007), Enforcement Decree of the Foreign Investment Promotion Act (2007), and other applicable law;

(b) is adopted or maintained only where the investment poses a genuine and sufficiently serious threat to the fundamental interests of society;

(c) is not applied in an arbitrary or unjustifiable manner;

(d) does not constitute a disguised restriction on investment; and

(e) is proportional to the objective it seeks to achieve.

2. Without prejudice to any claim that may be submitted to arbitration pursuant to Article 11.16.1, a claimant may submit to arbitration under Section B of Chapter Eleven (Investment) a claim that:

(a) Korea has adopted a measure for which it has provided notice pursuant to paragraph 1; and

(b) the claimant or, as the case may be, an enterprise of Korea that is a juridical person that the claimant owns or controls directly or indirectly, has incurred loss or damage by reason of, or arising out of, the measure.

In the event of such a claim, Section B of Chapter Eleven shall apply, mutatis mutandis, and all references in Section B of Chapter Eleven to a breach, or to an alleged breach, of an obligation under Section A of Chapter Eleven shall be understood to refer to the measure, which would constitute a breach of an obligation under Section A of Chapter

Eleven but for this entry. However, no award may be made in favor of the claimant, if Korea establishes to the satisfaction of the tribunal that the measure satisfies all the conditions listed in subparagraphs (a) through (ec) of paragraph 1.

3. This entry does not apply to the extent that a measure referred to in paragraph 1 is subject to Chapter Thirteen (Financial Services).

Existing Measures: Foreign Investment Promotion Act (Law No. 8380, April 11, 2007), Article 4

Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 19826, January 5, 2007), Article 5

Sector: All Sectors

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description:

Investment

Korea reserves the right to adopt or maintain any measure with respect to the transfer or disposition of equity interests or assets held by state enterprises or governmental authorities.

Such a measure shall be implemented in accordance with the provisions of Chapter Twenty-One (Transparency).

Notwithstanding Article 13.9.3 (Non-Conforming Measures), this entry shall not be treated as a non- conforming measure not subject to Article 13.2 (National Treatment).

This entry does not apply to former private enterprises that are owned by the state as a result of corporate reorganization processes.

For purposes of this entry:

A state enterprise shall include any enterprise created for the sole purpose of selling or disposing of equity interests or assets of state enterprise or governmental authorities.

Cross-Border Trade in Services and Investment

Without prejudice to Korea's commitments undertaken in Annex I and Annex II, Korea reserves the right to adopt or maintain any measure with respect to the transfer to the private sector of all or any portion of services provided in the exercise of governmental authority.

This entry does not apply to a measure inconsistent with Article 11.3 or 12.2 to the extent that the measure affects the supply of express delivery services that the laws of Korea permit. This paragraph does not prevent Korea from establishing or maintaining a state enterprise.

Notwithstanding Article 13.9.3, this entry shall not be treated as a non-conforming measure not subject to Article 13.2.

Existing Measures: Securities and Exchange Act (Law No 8315, March 29, 2007), Article 203

Sector: Acquisition of Land

Obligations Concerned: National Treatment (Article 11.3)

Description: Investment

Korea reserves the right to adopt or maintain any measure with respect to the acquisition of land by foreign persons, except that a juridical person shall continue to be permitted to acquire land where the juridical person:

1. is not deemed foreign under Article 2 of the Foreigner's Land Acquisition Act, and

2. is deemed foreign under the Foreigner's Land Acquisition Act or is a branch of a foreign juridical person subject to approval or notification in accordance with the Foreigner's Land Acquisition Act, if the land is to be used for any of the following legitimate business purposes:

(a) land used for ordinary business activities;

(b) land used for housing for senior management; and

(c) land used for fulfilling land-holding requirements stipulated by pertinent laws.

Korea reserves the right to adopt or maintain any measure with respect to the acquisition of farmland by foreign persons.

Existing Measures: Foreigner's Land Acquisition Act (Law No. 7297, December 31, 2004), Articles 2 through 6

Farmland Act (Law No. 8179, January 3, 2007), Article 6

Sector: Firearms, Swords, Explosives, and Similar Items

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the firearms, swords, and explosives sector, including the manufacture, use, sale, storage, transport, import, export, and possession of firearms, swords, or explosives.

Sector: Disadvantaged Groups

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure that accords rights or preferences to socially or economically disadvantaged groups, such as the disabled, persons who have rendered distinguished services to the state, and ethnic minorities.

Sector: State-Owned National Electronic/Information System

Obligations Concerned: National Treatment (Articles 11.3 and 12.2)

Description: For purposes of this entry only, Korea's Schedule is subject to the following modifications:

(a) for any sector and subsector with regard to which Korea's Annex I contains an entry (other than an entry with regard to "All Sectors") that does not list Market Access as one in the Obligations Concerned element, "None" is inscribed in the Market Access column for modes 1, 2, and 3, and "Unbound except as indicated in the Horizontal commitments section" is inscribed for mode 4;

(b) for any sector and subsector with regard to which Korea's Annex I contains an entry (other than an entry with regard to "All Sectors") that lists a limitation to the Market Access obligation, that limitation is inscribed in the Market Access column with regard to the appropriate mode of supply; and

(c) for any sector and subsector listed in Appendix II-A, Korea's Schedule is modified as indicated in the Appendix I-A.

These modifications shall not affect any limitation relating to sub-paragraph (f) of paragraph 2 of Article XVI of GATS inscribed in the Market Access column of Korea's Schedule.

For greater certainty, an entry of "None" in the Market Access column of Korea's Schedule shall not be construed to alter the application of Article 12.5 as modified by Article 12.6.

Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Articles 11.4 and 12.3)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Korea reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Sector: Communication Services - Broadcasting Services

Obligations Concerned: Most-Favored-Nation Treatment (Articles 11.4 and 12.3)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to the application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

Sector: Transportation Services - Railroad Transportation

Obligations Concerned: Most-Favored-Nation Treatment (Articles 11.4 and 12.3)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving railroad transportation.

Sector: Environmental Services - Treatment and Supply Services for Potable Water; Collection and Treatment Services for Municipal Sewage; Collection, Transportation, and Disposal Services for Municipal Refuse; Sanitation and Similar Services; Nature and Landscape Protection Services (Except for Environmental Impact Assessment Services)

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the following environmental services: treatment and supply of potable water; collection and treatment of municipal sewage; collection, transportation, and disposal of municipal refuse; sanitation and similar services; and nature and landscape protection services (except for environmental impact assessment services).

This entry shall not apply to the supply of the aforementioned services pursuant to a contract between private parties, to the extent private supply of such services is permitted under relevant laws and regulations.

Sector: Atomic Energy - Nuclear Power Generation; Manufacturing and Supply of Nuclear Fuel; Nuclear Materials; Radioactive Waste Treatment and Disposal (including treatment and disposal of spent and irradiated nuclear fuel); Radioisotope and Radiation Generation Facilities; Monitoring Services for Radiation; Services Related to Nuclear Energy; Planning, Maintenance, and Repair Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the atomic energy industry.

Sector: Energy Services - Electric Power Generation other than Nuclear Power Generation; Electric Power Transmission, Distribution, and Sales; Electricity Business

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to electric power generation, transmission, distribution, and sales.

Any such measure shall not decrease the level of foreign ownership permitted in the electric power industry as provided by the entry in Korea's Schedule to Annex I related to Energy Industry (electric power).

Notwithstanding this entry, Korea shall not adopt or maintain any measure inconsistent with Article 11.8.1(f).

Sector: Energy Services - Gas industry

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the import and wholesale distribution of natural gas and the operation of terminals and the national high pressure pipeline network.

Any such measure shall not decrease the level of foreign ownership permitted in the gas industry as provided by the entry in Korea's Schedule to Annex I related to Energy Industry (gas industry).

Sector: Distribution Services - Commission Agents' Services, Wholesaling and Retailing of Agricultural Raw Materials and Live Animals (nong chuk san mul)

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to:

(a) commission agentsâ services;

(b) wholesaling (including importation) services; and

(c) retailing services,

with respect to rice, ginseng, and red ginseng.

Sector: Transportation Services - Passenger Road Transportation Services (Taxi Services and Scheduled Passenger Road Transportation Services)

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to taxi services and scheduled passenger road transportation services.

Sector: Transportation Services - Freight Road Transportation Services (not including Road Transportation Services Related to Courier Services)

Obligations Concerned: Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to freight road transportation services, not including road transportation of containerized freight (excluding cabotage) by international shipping companies and road transportation services related to courier services.

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Sector:

Obligations Concerned:

Korea reserves the right to adopt or maintain any measure with respect to freight road transportation services, not including road transportation of containerized freight (excluding cabotage) by international shipping companies and road transportation services related to courier services.

Sector: Transportation Services - Internal Waterways Transportation Services and Space Transportation Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to internal waterways transportation services and space transportation services.

Sector: Transportation Services - Storage and Warehousing Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to storage and warehousing services related to rice.

Sector: Communication Services - Non-monopoly Postal Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to:

(a) the supply of support services to postal offices by military service personnel or other personnel of equivalent status; and

(b) the Minister of Information and Communication not needing authorization from the Minister of Construction and Transportation in determining the total number of vehicles that may belong to the Ministry of Information and Communication and allocating the vehicles to postal offices.

Existing Measures: Postal Service Act (Law No. 8288, January 26, 2007) Military Service Act (Law No. 8243, January 19, 2007)

Regulations on Management of Common-Purpose Motor Vehicles (Presidential Decree No. 19414, March 29, 2006)

Sector: Communication Services - Broadcasting Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Market Access (Article 12.4) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure that:

(a) limits cross-ownership among media sectors;

(b) sets the minimum percentage of issued stocks or equity interest that serves as a threshold to determine whether a juridical person organized under Korean law is a deemed foreign person. This subparagraph does not apply to a program provider that is not engaged in jong-hap-pyeon-sung (multi- genre programming), bo-do (news reporting), or home-shopping;

(c) requires the members of the board of directors of the supplier of broadcasting services to be Korean nationals or residents;

(d) requires a platform operator (e.g., a cable system or satellite broadcasting operator) to retransmit a terrestrial broadcasting channel or to transmit a public interest channel;

(e) with respect to a terrestrial broadcaster, requires a certain percentage of annual programming hours to be newly produced Korean animation, provided that such measure does not materially impair the level of market access afforded U.S. animation content as of April 30, 2007; (1)

(f) with respect to a program provider that primarily provides animation programming or is engaged in jong-hap-pyeon-sung (multi-genre programming), requires a certain percentage of annual programming hours to be newly produced Korean animation, provided that the measure permits the program provider to provide a greater quantity of foreign content than specified in the Communications Services - Broadcasting Services entry in Korea's Schedule to Annex I;

(g) imposes an outsourced production content quota, expenditure requirement for Korean production, or prime time quota, provided that, if such a quota or requirement is applied to a cable system or satellite broadcasting operator or program provider, the measure permits such operator or provider to provide a greater quantity of foreign content than specified in the Communications Services - Broadcasting Services entry in Korea's Schedule to Annex I;

(h) requires a supplier of broadcasting services that provides video on demand (VOD) services to store a certain percentage of Korean content, provided that such a requirement does not result in the storage of videos for which there is negligible

consumer demand; or

(i) restricts or prohibits foreign retransmitted broadcasting services (including foreign cable channels) in a specific category provided that the foreign equity limitations with respect to program providers of that category specified in the Communications Services - Broadcasting Services entry in Korea's Schedule to Annex I are eliminated. This subparagraph does not apply with respect to a supplier of foreign retransmitted broadcasting services approved on or before the date this Agreement is signed and such a supplier may continue to supply its services in accordance with the Broadcasting Act (Law No. 8301, January 26, 2007 and Decision No. 2005-18-144, April 26, 2005).

For purposes of this entry:

(a) deemed foreign person means a juridical person organized under Korean law in which a foreign government or a foreign person holds in the aggregate more than 50 percent of its total issued stocks or equity interest, or whose largest shareholder is a foreign government or a foreign person;

(b) outsourced production content means content produced in Korea by an independent production company organized under Korean law; and

(c) prime time quota means a requirement to provide a certain percentage of Korean content during hours of high viewership.

(1) For purposes of transparency, under the Broadcasting Act (Law No. 8301, January 26, 2007), the Korea Broadcasting Commission (KBC) may require that a specific percentage no greater than 1.5 percent of a terrestrial broadcaster's annual programming hours be newly produced Korean animation. As of April 30, 2007, KBC requires that one percent of the annual programming hours of Korea Broadcasting System (KBS), Mun-hwa Broadcasting Corporation (MBC), and Seoul Broadcasting System (SBS) and 0.3 percent of the annual programming hours of Educational Broadcasting System (EBS) be newly produced Korean animation.

Sector: Communication Services - Broadcasting and Telecommunications Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Market Access (Article 12.4) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

1. Subject to paragraph 2, Korea reserves the right to adopt or maintain any measure with respect to a supplier of subscription-based video services, as part of future regulatory reforms in the broadcasting and telecommunications sectors or taking into account deliberations by the Broadcasting and Telecommunications Convergence Promotion Committee.

2. With respect to subscription-based video services,

(a) any such measure that limits foreign equity shall be applied in accordance with domestic policy determinations regarding the classification of subscription-based video services and shall be no less favorable with respect to a supplier of subscription-based video services than a measure applied pursuant to the Telecommunications Services entry in Koreaâs Schedule to Annex I with respect to a facilities-based supplier of public telecommunications services or the Communications Services-Broadcasting Services entry in Korea's Schedule to Annex I with respect to a cable system operator, as the case may be. Such a measure shall be subject to Article 11.12.1(c); and

(b) any such measure that imposes a domestic content quota may set a level of Korean content no higher than the percentage permitted pursuant to the Communications Services â Broadcasting Services entry in Korea's Schedule to Annex I with respect to a cable system operator. Such a measure shall be subject to Article 11.12.1(c).

For transparency, the Broadcasting and Telecommunications Convergence Promotion Committee is to design policy and reform the regulatory framework on the following areas:

(a) restructuring the regulatory authority and setting a new legal framework;

(b) reviewing the industry's classification system;

(c) licensing and authorization of service suppliers;

(d) ownership and cross-ownership system;

(e) regulations on business activities;

(f) improving technological regulations; (g) realizing universal service; and

(g) addressing the issue of public interest programs in the convergence era.

For purposes of this entry, subscription-based video services means subscription-based video services that are supplied to end-users over dedicated transmission capacity that the supplier owns or controls (including by leasing) and includes Internet Protocol-based Television (IPTV) and Interactive Broadcasting.

Sector: Communication Services - Broadcasting and Audio-Visual Services

Obligations Concerned: Most Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any preferential co-production arrangement for film or television productions. Official co-production status, which may be granted to a co-production produced under such a co-production arrangement, confers national treatment on works covered by a co-production arrangement.

Sector: Communication Services - Broadcasting and Audio-Visual Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure setting criteria for determining whether broadcasting or audio-visual programs are Korean.

Korea shall ensure that this entry is not inconsistent with the Communications Services - Broadcasting Services entry in Korea's Schedule to Annex I or the Communications Services - Broadcasting and Telecommunications Services entry in Korea's Schedule to Annex II.

Sector: Business Services - Real Estate Services (not including Real Estate Brokerage and Appraisal Services)

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to real estate development, supply, management, sale, and rental services, except for brokerage and appraisal services.

Sector: Business Services - Insolvency and Receivership Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to insolvency and receivership services.

Korea reserves the right to adopt or maintain any measure with respect to corporate restructuring services, including corporate restructuring companies, corporate restructuring partnerships, and corporate restructuring vehicles.

For greater certainty, this entry shall not be construed to negatively affect current legitimate investment banking services subject to rights and obligations under Chapter Thirteen (Financial Services).

Sector: Digital Audio or Video Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt any measure to ensure that, upon a finding by the Government of Korea that Korean digital audio or video content or genres thereof is not readily available to Korean consumers, access to such content is not unreasonably denied to Korean consumers. With respect to digital audio or video services targeted at Korean consumers, Korea reserves the right to adopt any measure to promote the availability of such content.

Any measure adopted pursuant to the paragraph above shall be implemented in accordance with the provisions of Chapter Twenty-One (Transparency), as well as Article 12.8 (Transparency in Developing and Applying Regulations), as applicable, be based on objective criteria, and be no more trade-restrictive or burdensome than necessary.

For purposes of this entry, digital audio or video service means a service that provides streaming audio content, films or other video downloads or streaming video content regardless of the type of transmission (including through the Internet), but does not include broadcasting services as defined by the Broadcasting Act as of the date this Agreement enters into force or subscription-based video services as defined in the Communications Services - Broadcasting and Telecommunications Services entry in Korea's Schedule to Annex II.

Sector: Business Services - Cadastral Surveying Services and Cadastral Map-Making Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to cadastral surveying services and cadastral map related services.

Sector: Business and Environmental Services - Examination, Certification, and Classification of Agricultural Raw Materials and Live Animals (nong chuk san mul)

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to examination, certification, and classification of agricultural raw materials and live animal products.

For greater certainty, this entry does not include examinations or testings performed on behalf of producers in advance of the official examinations or testings.

Sector: Business Services - Services Incidental to Agriculture, Hunting, Forestry, and Fishing

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to services incidental to agriculture, forestry, and livestock, including genetic improvement, artificial insemination, rice and barley polishing, and activities related to a rice processing complex.

Korea reserves the right to adopt or maintain any measure with respect to the supply of services incidental to agriculture, hunting, forestry, and fishing by the Agricultural Cooperatives, the Forestry Cooperatives, and the Fisheries Cooperatives.

Sector: Fishing

Obligations Concerned: National Treatment (Article 11.3)

Description: Investment

Korea reserves the right to adopt or maintain any measure with respect to fishing activities in Korea's territorial waters and Exclusive Economic Zone.

Sector: Publishing of Newspapers

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the publishing (including printing and distribution) of newspapers.

Sector: Education Services - Pre-Primary, Primary, Secondary, Higher, and Other Education

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to pre-primary, primary, and secondary education; health and medicine-related higher education; higher education for prospective pre-primary, primary, and secondary teachers; professional graduate education in law; distance education at all education levels (except adult education services, provided that such services do not confer academic credit, diplomas, or degrees); and other education services.

This entry does not apply to the administration of educational testing for foreign use. For greater certainty, nothing in this Agreement affects Korea's authority to select and apply educational testings, or to regulate school curriculum in accordance with domestic education policy.

Sector: Social Services - Human Health Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to human health services.

This entry shall not apply to the preferential measures provided in the Act on Designation and Management of Free Economic Zones (Law No. 8372, April. 11, 2007), and the Special Act on Establishment of Jeju Special Self- Governing Province and Creation of Free International City (Law No, 8372, April. 11, 2007) relating to establishment of medical facilities, pharmacies, and similar facilities, and the supply of remote medical services to those geographical areas specified in those Acts.

Sector: Recreational, Cultural, and Sporting Services - Motion Picture Promotion, Advertising, or Post-Production Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Performance Requirements (Article 11.8) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to motion picture promotion, advertising, or post-production services.

Sector: Recreational, Cultural, and Sporting Services - Museum and Other Cultural Services

Obligations Concerned: = National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment Korea reserves the right to adopt or maintain any measure with respect to the conservation and restoration of cultural

heritage and properties, including the excavation, appraisal, or dealing of cultural heritage and properties.

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Sector: Other Recreational Services Obligations Concerned: National Treatment (Article 11.3) Description: Investment Korea reserves the right to adopt or maintain any measure

with respect to tourism in rural, fishery, and agricultural sites.

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Sector: Legal Services - Foreign Legal Consultants

Obligations Concerned: = National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

1. Korea reserves the right to adopt or maintain any measures including but not limited to:

(a)

(b)

(c)

(d)

restrictions on certification, approval, registration, admission, and supervision of, and any other requirements with respect to, foreign country-licensed lawyers or foreign law firms supplying any type of legal services in Korea;

restrictions on foreign country-licensed lawyers or foreign law firms entering into partnerships, commercial associations, affiliations, or any other type of relationship regardless of legal form, with byeon-ho-sa (Korean-licensed lawyers), Korean law firms, beop-mu-sa (Korean-certified judicial scriveners), byeon-ri-sa (Korean-licensed patent attorneys), gong-in-hoe-gye-sa (Korean-certified public accountants), se- mu-sa (Korean-certified tax accountants), or gwan-se-sa (Korean customs brokers);

restrictions on foreign country-licensed lawyers or foreign law firms hiring byeon- ho-sa (Korean-licensed lawyers), beop-mu- sa (Korean-certified judicial scriveners), byeon-ri-sa (Korean-licensed patent attorneys), gong-in-hoe-gye-sa (Korean-certified public accountants), se-mu-sa (Korean certified tax accountants), or gwan- se-sa (Korean customs brokers) in Korea; and,

restrictions on senior management and the board of directors of legal entities supplying foreign legal consulting services, including with respect to the chairman.

Sector: Recreational, Cultural, and Sporting Services - Museum and Other Cultural Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the conservation and restoration of cultural heritage and properties, including the excavation, appraisal, or dealing of cultural heritage and properties.

Sector: Other Recreational Services

Obligations Concerned: National Treatment (Article 11.3)

Description: Investment

Korea reserves the right to adopt or maintain any measure with respect to tourism in rural, fishery, and agricultural sites.

Sector: Legal Services - Foreign Legal Consultants

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

1. Korea reserves the right to adopt or maintain any measures including but not limited to:

(a) restrictions on certification, approval, registration, admission, and supervision of, and any other requirements with respect to, foreign country-licensed lawyers or foreign law firms supplying any type of legal services in Korea;

(b) restrictions on foreign country-licensed lawyers or foreign law firms entering into partnerships, commercial associations, affiliations, or any other type of relationship regardless of legal form, with byeon-ho-sa (Korean-licensed lawyers), Korean law firms, beop-mu-sa (Korean-certified judicial scriveners), byeon-ri-sa (Korean-licensed patent attorneys), gong-in-hoe-gye-sa (Korean-certified public accountants), se- mu-sa (Korean-certified tax accountants), or gwan-se-sa (Korean customs brokers);

(c) restrictions on foreign country-licensed lawyers or foreign law firms hiring byeon- ho-sa (Korean-licensed lawyers), beop-mu- sa (Korean-certified judicial scriveners), byeon-ri-sa (Korean-licensed patent attorneys), gong-in-hoe-gye-sa (Korean-certified public accountants), se-mu-sa (Korean certified tax accountants), or gwan- se-sa (Korean customs brokers) in Korea;

and,

(d) restrictions on senior management and the board of directors of legal entities supplying foreign legal consulting services, including with respect to the chairman.

2. Notwithstanding paragraph 1,

(a) No later than the date this Agreement enters into force, Korea shall allow, subject to certain requirements consistent with this Agreement, U.S. law firms to establish representative offices (Foreign Legal Consultant offices or FLC offices) in Korea, and attorneys licensed in the United States to provide legal advisory services regarding the laws of the jurisdiction in which they are licensed and public international law as foreign legal consultants in Korea.

(b) No later than two years after the date this Agreement enters into force, Korea shall allow FLC offices, subject to certain requirements consistent with this Agreement, to enter into specific cooperative agreements with Korean law firms in order to be able to jointly deal with cases where domestic and foreign legal issues are mixed, and to share profits derived from such cases.

(c) No later than five years after the date this Agreement enters into force, Korea shall allow U.S law firms to establish, subject to certain requirements consistent with this Agreement, joint venture firms with Korean law firms. Korea may impose restrictions on the proportion of voting shares or equity interests of the joint venture firms. For greater certainty, such joint ventures may, subject to certain requirements, employ Korean-licensed lawyers as partners or associates.

3. Korea shall maintain, at a minimum, the measures adopted to implement its commitments in paragraph 2.

For purposes of this entry, U.S. law firm means a law firm organized under U.S. law and headquartered in the United States.

Sector: Professional Services - Foreign Certified Public Accountants

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

1. Korea reserves the right to adopt or maintain any measures, including but not limited to:

(a) restrictions on certified public accountants or accounting corporations registered under foreign laws hiring gong-in-hoe-gye-sa (Korean-certified public accountants);

(b) restrictions on foreign-certified public accountants providing auditing services in Korea; and

(c) restrictions on senior management and the board of directors of legal entities supplying certified public accountancy services, including with respect to the chairman.

2. Notwithstanding paragraph 1,

(a) No later than the date this Agreement enters into force, Korea shall allow, subject to certain requirements consistent with this Agreement:

(i) US. certified public accountants registered in the United States or accounting corporations organized under U.S. law to supply accounting consulting services relating to U.S. or international accounting laws and standards through offices established in Korea; and

(ii) US. certified public accountants registered in the United States to work in hoe-gye-beop-in (Korean accounting corporations).

(b) No later than five years after the date this Agreement enters into force, Korea shall allow U.S. certified public accountants registered in the United States to invest in any hoe-gye-beop-in (Korean accounting corporations), subject to certain requirements consistent with this Agreement, provided that:

(i) gong-in-hoe-gye-sa (Korean registered certified public accountants) shall own more than 50 percent of the voting shares or equity interest of the hoe-gye-beop-in, and

(ii) any single U.S. certified public accountant registered in the United States owns less than 10 percent of the voting shares or equity interests of the hoe-gye-beop-in.

3. Korea shall maintain, at a minimum, the measures adopted to implement its commitments in paragraph 2.

For purposes of this entry, a U.S. accounting corporation means an accounting corporation or partnership organized under U.S. law and headquartered in the United States.

Sector: Professional Services - Foreign Certified Tax Accountants

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Senior Management and Boards of Directors (Article 11.9) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

1. Korea reserves the right to adopt or maintain any measures, including but not limited to:

(a) restrictions on certified tax accountants or tax agency corporations registered under foreign laws hiring se-mu-sa (Korean- certified tax accountants) or gong-in-hoe- gye-sa (Korean-certified public accountants);

(b) restrictions on foreign-certified tax accountants providing tax reconciliation services and tax representative services in Korea; and

(c) restrictions on senior management and the board of directors of legal entities supplying certified tax accountancy services, including with respect to the chairman.

Notwithstanding paragraph 1,

(a) No later than the date this Agreement enters into force, Korea shall allow, subject to certain requirements consistent with this Agreement:

(i) the establishment of offices in Korea by U.S. certified tax accountants registered in the United States or tax agency corporations organized under the U.S. laws to provide tax consulting services with respect to USS. or international tax laws and taxation system; and

(ii) US. certified tax accountants registered in the United States to work in se-mu-beop-in (Korean tax agency corporations).

(b) No later than five years after this Agreement enters into force, Korea shall allow U.S. certified tax accountants registered in the United States to invest in any se-mu-beop-in (Korean tax agency corporations), subject to certain requirements consistent with this Agreement, provided that:

(i) se-mu-sa (Korean-certified tax accountants) shall own more than 50 percent of the voting shares or equity interests of the se-mu-beop-in; and

(ii) any single U.S. certified tax accountant registered in the United States owns less than 10 percent of the voting shares or equity interests of the se-mu-beop-in.

3. Korea shall maintain, at a minimum, the measures adopted to implement its commitments in paragraph 2.

For purposes of this entry, a U.S. tax agency corporation means a tax agency corporation or partnership organized under U.S. law and headquartered in the United States.

Sector: Business Services

Obligations Concerned: National Treatment (Article 12.2) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services

Korea reserves the right to adopt or maintain any measure with respect to the exportation and re-exportation of controlled commodities, software, and technology.

Only persons residing in Korea may apply for a license to export or re-export such commodities, software, or technology.

As of the date this Agreement is signed, Korea is in the process of modifying the measures relevant to this entry. The Parties agree that they will consult after that process is completed to determine whether an amendment to this entry is necessary in light of those modifications.

Existing Measures: Technology Development Promotion Act (Law No. 7949, April 28, 2006)

Atomic Energy Act (Law No. 7806, December 30, 2005) Foreign Trade Act (Law No. 8356, April 11, 2007)

Announcement of the Ministry of Science and Technology (April 12, 2007), No. 2007-3

Announcement of the Ministry of Commerce, Industry and Energy (April 12, 2007), No. 2007-51

The Customs Act (Law No. 8136, December 30, 2006)

Sector: All Sectors

Obligations Concerned: National Treatment (Articles 11.3) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9)

Description: Investment

Korea reserves the right to adopt or maintain any measure with respect to an investment to supply a service in the exercise of governmental authority, as that term is defined in Article 12.1.6 (Scope and Coverage), such as law enforcement and correctional services. This entry does not apply to:

(a) an investor or covered investment that has entered into an agreement with Korea with respect to the supply of such services; or

(b) a measure adopted or maintained by Korea

to the extent that the measure is subject to Chapter Thirteen (Financial Services).

Sector: Transportation Services - Maritime Passenger Transportation and Maritime Cabotage

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Senior Management and Boards of Directors (Article 11.9) Performance Requirements (Article 11.8) Local Presence (Article 12.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the provision of international maritime passenger transportation services, maritime cabotage, and the operation of Korean vessels, including the following measures:

A person that supplies international maritime passenger transportation services must obtain a license from the Minister of Maritime Affairs and Fisheries, which is subject to an economic needs test.

Maritime cabotage is reserved for Korean vessels. Maritime cabotage includes maritime transportation between harbors located along the entire Korean peninsula and any adjacent islands. Korean vessel means:

(a) a vessel owned by the Korean government, a state enterprise, or an institution established under the Ministry of Maritime Affairs and Fisheries;

(b) a vessel owned by a Korean national;

(c) a vessel owned by an enterprise organized under the Korean Commercial Code;

(d) a vessel owned by an enterprise organized under foreign law that has its principal office in Korea and whose dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) is a Korean national. In the event there is more than one, all dae-pyo-ja must be Korean nationals.

For greater certainty, measures relating to the landside aspects of port activities are subject to the application of Article 23.2 (Essential Security).

Appendix II-A. Korea

For the following Sectors, Korea's obligations under Article XVI of the General Agreement on Trade in Services as set out in Korea's Schedule of Specific Commitments under the GATS(GATS/SC/48, GATS/SC/48/Supp1.1, GATS/SC/48/Suppl.l/Rev.1, GATS/SC/A8/Suppl.2, GATS/SC/48/Suppl.3, and GATS/SC/48/Suppl. 3/Rev.1) are improved as described.

Sector/Subsector	Market Access Improvements
Research and Development Services:	

a. Research and development services on natural sciences	Insert new commitments with "None" for modes 1 and 2, "Unbound" for mode 3 and "Unbound except as indicated in the Horizontal Commitments section." for mode 4
b. Research and development services on social sciences and humanities	Modify mode land 2 limitations from "Unbound" to "None"
c. Interdisciplinary research and development services	Insert new commitments with âNoneâ for modes land 2, "Unbound" for mode 3 and "Unbound except as indicated in the Horizontal Commitments section" for mode 4
Market research and public opinion polling services	Modify mode land 2 limitations from "Unbound" to "None"
Services incidental to mining	Modify mode land 2 limitations from "Unbound" to "None"
Packaging services	Modify mode land 2 limitations from "Unbound" to "None"
Convention services other than Convention agency services	Insert new commitments with "None" for mode 1, 2 and 3 and "Unbound except as indicated in the Horizontal Commitments section" for mode 4
Tourism and travel related services :	
a. Beverage serving services without entertainment. Excluding rail and air transport related facilities in beverage serving services without entertainment	Insert new commitments with “Unbound*” for mode 1, “None” for mode 2and 3 and “Unbound except as indicated in the Horizontal Commitments section” for mode 4
b. Tour operator services	Insert new commitments with “None” for mode 1, 2 and 3 and “Unbound except as indicated in the Horizontal Commitments section” for mode 4
c. Tourist Guides Services	Modify mode 3 from “Only travel agencies are allowed to supply tourist guide services” to “None

Annex II. Schedule of the United States

Sector: Communications

Obligations Concerned: Most-Favored-Nation Treatment (Articles 11.4 and 12.3)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures (*) or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

(*) In applying such a reciprocity measure, the FCC determines whether another country accords effective competitive opportunities to U.S. service suppliers. In making that determination the FCC considers whether that country accords no less favorable treatment to U.S. service

suppliers than domestic service suppliers and does not limit the number of service suppliers in its market, among other factors.

Sector: Social Services

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Local Presence (Article 12.5) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9)

Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

Sector: Minority Affairs

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Local Presence (Article 12.5) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act.

Existing Measures: Alaska Native Claims Settlement Act, 43 U.S.C. Â§ 1606(f) and (h)

Sector: Maritime Transportation Services and Operation of U.S.- flagged Vessels

Obligations Concerned: National Treatment (Articles 11.3 and 12.2) Most-Favored-Nation Treatment (Articles 11.4 and 12.3) Local Presence (Article 12.5) Performance Requirements (Article 11.8) Senior Management and Boards of Directors (Article 11.9)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

(a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;

(b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;

(c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;

(d) requirements related to documenting a vessel under the U.S. flag;

(e) promotional programs, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements;

(f) certification, licensing, and citizenship requirements for crew members on U.S.-flagged vessels;

(g) manning requirements for U.S.-flagged vessels;

(h) all matters under the jurisdiction of the Federal Maritime Commission; (1)

(i) negotiation and implementation of bilateral and other international maritime agreements and understandings;

(j) limitations on longshore work performed by crew members;

(k) tonnage duties and light money assessments for entering U.S. waters; and

(l) a certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation. However, the treatment in (b) is conditional upon obtaining comparable market access in these sectors from Korea:

(a) vessel construction and repair; and

(b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines, and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies. For greater certainty, measures relating to the landside aspects of port activities are subject to the application of Article 23.2 (Essential Security).

Existing Measures: Merchant Marine Act of 1920, §§ 19 and 27, now codified at 46 U.S.C. §§ 12101, 12120, 12132, 42101-42109, 55102, 55105-55108, 55110, 55115-55117, 55119

Jones Act Waiver Statute, 64 Stat 1120, 46 U.S.C.App., note preceding Section 1

Shipping Act of 1916, 46 U.S.C. §§ 50501, 56101,57109

Merchant Marine Act of 1936, 46 U.S.C. App. §§1151 et seq., 1171 et seq., and 46 U.S.C. §§ 50111,53301-53312, 53701-53717, 53721-53725, 53731-53735, 55304, 55305, 57101, 57104, 57301-57308

Merchant Ship Sales Act of 1946, 50 U.S.C. App. §1738

46 U.S.C. §§ 55109, 55111, 55118, 60301, 60302,60304-60306, 60312, 80104

46 U.S.C. §§ 12101 et seq. and 31301 et seq.

46 U.S.C. §§ 8904 and 31328(2)

Passenger Vessel Act, 46 U.S.C. § 55103

42 U.S.C. §§ 9601 et seq.; 33 U.S.C. §§ 2701 etseq.; 33 U.S.C. §§ 1251 et seq.

46 U.S.C. §§ 3301 et seq., 3701 et seq., 8103, and12107(b)

Shipping Act of 1984, 46 U.S.C. §§ 40701-40706,41107-41109

The Foreign Shipping Practices Act of 1988, 46 U.S.C. §§ 42301 et seq.

Merchant Marine Act, 1920, 46 U.S.C. §§ 50101 et seq.

Shipping Act of 1984, 46 U.S.C. §§ 40101 et seq.

Alaska North Slope, 104 Pub. L. 58; 109 Stat. 557

Longshore restrictions and reciprocity, 8 U.S.C. §§ 1101 et seq.

Vessel escort provisions, Section 1119 of Pub. L.106-554, as amended

Nicholson Act, 46 U.S.C. § 55114

Commercial Fishing Industry Vessel AntiReflagging Act of 1987, 46 U.S.C. § 2101 and 46

Sector: All

Obligations Concerned: Market Access (Article 12.4)

Description: Cross-Border Services

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services as set out in the U.S. Schedule of Specific Commitments under the GATS (GATS/SC/90, GATS/SC/90/Supp1.1, GATS/SC/90/Suppl.2, and GATS/SC/90/Supp1.3).

For purposes of this entry only, the U.S. Schedule of Specific Commitments is modified as indicated in Appendix III-A.

Sector: All

Obligations Concerned: Most-Favored-Nation Treatment (Articles 11.4 and 12.3)

Description: Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Appendix II-A. United States

For the following Sectors, U.S. obligations under Article XVI of the General Agreement on Trade in Services as set out in the U.S. Schedule of Specific Commitments under the GATS (GATS/SC/90, GATS/SC/90/Supp!.1, GATS/SC/90/Supp!.2, and GAT S/SC/90/Supp!.3) are improved as described.

Sector/Subsector	Market Access Improvements
Foreign Legal Consulting Services.	Insert new commitments for the following states: Louisiana, New Mexico: No limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section." Arizona, Indiana, Massachusetts, North Carolina, Utah: No limitations modes 1-2; for made 3 "in-state law office required," and mode 4 "Unbound, except as indicated in the horizontal section. Additionally, an in-state law office required." Missouri: No limitations modes 1-2; for mode 3 "Association with in-state law office required," and mode 4 "Unbound, except as indicated in the horizontal section. Additionally, association with an in-state law office required."
Accounting, Auditing and Bookkeeping Services	Modify mode 3 limitation as follows: Sole proprietorships or partnerships are limited to persons licensed as accountants. Modify mode 4 limitation as follows: In addition, an in-state office must be maintained to receive a license to perform audits in.
Engineering Services Integrated Engineering Services	Replace existing description of Mode 4 with "Unbound, except as indicated in the horizontal section."
Research and development services: R&D services on natural sciences, social sciences and humanities, and interdisciplinary R&D services, excluding R&D financed in whole or in part by public funds	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Technical testing and analysis services, other than	Insert new commitments with no limitations for

government- mandated services or services financed in whole or in part by public funds.	modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Other business services, except for convention services. (Delete "Translation and interpretation services only").	Insert new commitments for all "Other business services" with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Express Delivery Services (as defined in the FTA annex)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Other Delivery Services	Insert new commitments with modes 1 and 3 limited as follows: "None, except unbound for services supplied by the U.S. Postal Service in accordance with a universal service obligation as provided under domestic law (2) or the Universal Postal Union Acts, no limitations on mode 2, and mode 4" Unbound, except as indicated in the horizontal section."
Higher Education Services (except flying instruction) (3)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Motion Picture & Video Tape Home Video Entertainment Production and Distribution. Promotion or advertising services Motion picture or video tape (4) production services Motion picture or video tape (4) distribution services. Other services in connection with motion pictures and video tape* production and distribution. Motion Picture Projection Services Radio and Television Services Radio and Television Distribution Services. Other services in connection with motion pictures and video tape (4) production and distribution (5)	Insert commitments according to this revised classification with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Environmental Services Wastewater Management, excluding Water for Human Use (Wastewater services (contracted by private industry)). Solid/hazardous waste management (contracted by private industry). Refuse disposal services Sanitation and Similar Services. Protection of ambient air and climate (Services to reduce exhaust gases and other emissions to improve air quality). Remediation and cleanup of soil and water (Treatment, remediation of contaminated/ polluted soil and water). Noise and vibration abatement (Noise abatement services). Protection of biodiversity and landscape (Nature and landscape protection services). Other environmental and ancillary services (Other services not classified elsewhere)	Insert commitments according to this revised classification with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Physical well-being services (6) (7)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."

Road freight transport	Insert new commitments for domestic transportation with No limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Cargo-handling services, Storage and warehouse services, and Freight transport agency services, except maritime or air transport services	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."

(2) Under U.S. law, the universal service obligation requires the U.S. Postal Service to receive, transmit, and deliver throughout the United States written and printed matter, parcels, and like materials.

(3) For transparency purposes, individual U.S. institutions maintain autonomy in admission policies, in setting tuition rates, and in the development of curricula or course content. Educational and training entities must comply with requirements of the jurisdiction in which the facility is established. In some jurisdictions, accreditation of institutions or programs may be required. Institutions maintain autonomy in selecting the jurisdiction in which they will operate, and institutions and programs maintain autonomy in choosing to meet standards set by accrediting organizations as well as to continue accredited status. Accrediting organizations maintain autonomy in setting accreditation standards. Tuition rates vary for in-state and out-of-state residents. Additionally, admissions policies include considerations of equal opportunity for students (regardless of race, ethnicity, or gender), as permitted by domestic law, as well as recognition by regional, national, and/or specialty organizations; and required standards must be met to obtain and maintain accreditation. To participate in the U.S. student loan program, foreign institutions established in the United States are subject to the same requirements as U.S. institutions.

(4) For purposes of clarity, this class refers to theatrical and non-theatrical motion pictures, whether provided on fixed media or electronically.

(5) For greater clarity, distribution services in this context may include the licensing of motion pictures or video tapes to other service providers for exhibition, broadcasting, or other transmission, rental, sale or other use.

(6) For transparency purposes, this subsector includes physical well-being services such as delivered by, inter alia, fitness centers, spas, salons, massage (excluding therapeutic massage), and ayurvedics. This subsector does not include regulated medical services.

(7) For greater certainty, nothing in this commitment authorizes the provision of unregulated substances or affects the ability of state authorities to regulate substances that may be affiliated with these services.