

# **FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE KINGDOM OF CAMBODIA**

## **PREAMBLE**

The Government of the Republic of Korea ("Korea") and the Government of the Kingdom of Cambodia ("Cambodia") (hereinafter referred to collectively as the "Parties" and individually as a "Party");

RECOGNIZING their longstanding and strong partnership and the need to strengthen their close economic and trade relations;

CONVINCED that this Agreement will create an expanded and secure market for goods and services and a stable and predictable environment for investment, thus enhancing the competitiveness of their firms in global markets;

SEEKING to establish clear and mutually advantageous rules governing their trade and investment while recognizing the right of the Parties to take measures necessary to achieve legitimate public policy objectives;

COMMITTED to contributing to the harmonious development and expansion of world trade by removing obstacles to trade through the creation of a free trade area;

AFFIRMING their commitment to fostering the development of an open market economy in Asia, and to encouraging the economic integration of Asian economies in order to further the liberalization of trade and investment in the region;

RECOGNIZING the different levels of economic development between the Parties;

DESIRING to promote economic growth, create new employment opportunities, raise living standards and improve public welfare;

RESOLVED to promote transparency and combat corruption as regards all relevant interested parties, including the private sector;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral, regional, and bilateral agreements to which both Parties are party; and

REAFFIRMING their desire to build upon their commitments under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Republic of Korea and the Member Countries of the Association of Southeast Asian Nations as well as other relevant agreements pursuant to the Framework Agreement;

HAVE AGREED as follows:

## **Chapter ONE. GENERAL PROVISIONS**

### **Article 1.1. General Definitions**

For purposes of this Agreement, unless otherwise specified,

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

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

customs administration means authority that is responsible under the law of each Party for the administration and enforcement of its customs laws and regulations:

(a) for Korea, the Ministry of Economy and Finance, or the Korea Customs Service, or their respective successors; and

(b) for Cambodia, the General Department of Customs and Excise of Cambodia;

customs duties means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, but does not include any:

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

(b) duty imposed pursuant to a Party's laws and regulations consistently with Chapter Five (Trade Remedies);

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

(d) duty imposed pursuant to Article 5 of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement; or

1-1

(e) premiums offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions or tariff rate quotas;

customs laws and regulations means the statutory and regulatory provisions relating to the importation, exportation, movement, or storage of goods, the administration and enforcement of which are specifically charged to the customs administration, and any regulations made by the customs administration, under its statutory powers;

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

days means calendar days, including weekends and holidays; existing means in effect on the date of entry into force of this Agreement;

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

GATT 1994 means the General Agreement on Tariffs and Trade 1994, including its notes and supplementary provisions, which is a part of the WTO Agreement;

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

Harmonized System (HS) means the nomenclature of the Harmonized Commodity Description and Coding System defined in the International Convention on the Harmonized Commodity Description and Coding System, including all legal notes thereto, as in force and as amended from time to time;

Joint Committee means the Korea-Cambodia Free Trade Agreement Joint Committee established under Article 10.1 (Joint Committee);

juridical person means any legal entity duly constituted or otherwise organized under applicable laws and regulations, whether for profit or otherwise, and whether private-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;

Korea-ASEAN FTA means the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Republic of Korea and the Member Countries of the Association of Southeast Asian Nations and other relevant agreements stipulated in paragraph 1 of Article 1.4 of the Framework Agreement;

1-2

Measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central or local governments and authorities; and

(b) non-governmental bodies in the exercise of power delegated by central or local governments and authorities;

national means:

(a) for Korea, a Korean national within the meaning of the Nationality Act, as amended; and

(b) for Cambodia, any person who is a Khmer citizen within the meaning of the Constitution of the Kingdom of Cambodia and the Royal Kram No. NS/RKM/0618/008, dated 21 June 2018, promulgating the Law on Nationality, or as may be amended;

originating goods means products or materials that qualify as originating under Chapter Three (Rules of Origin);

person means a natural person or a juridical person;

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

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

technical regulations, standards, and conformity assessment procedures shall have the meanings assigned to those terms in Annex 1 of the Agreement on Technical Barriers to Trade, contained in Annex 1 to the WTO Agreement (hereinafter referred to as the "TBT Agreement").

territory means:

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

1-3

(b) for Cambodia, the territory of the Kingdom of Cambodia, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limits of the territorial sea and airspace over which the Kingdom of Cambodia exercises, in accordance with international law, sovereign rights or jurisdiction;

WTO means the World Trade Organization; and

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

## **Article 1.2. Establishment of a Free Trade Area**

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

### **Article 1.3. Objectives The Objectives of this Agreement Are to:**

(a) achieve the substantial liberalization of trade in goods between the Parties, in conformity with Article XXIV of GATT 1994;

(b) achieve the substantial liberalization of trade in services between the Parties, in conformity with Article V of GATS;

(c) | promote competition in their economies, particularly as it relates to economic relations between the Parties;

(d) enhance transparency of trade and investment related measures of the Parties by sharing best regulatory practices and promoting innovation in areas of mutual interest; and

(e) establish a framework for furthering cooperation to expand and enhance the benefits of this Agreement.

### **Article 1.4. Relations to other Agreements 1. the Parties Reaffirm Their Rights and Obligations Under Existing Bilateral**

and multilateral agreements to which both Parties are party, including the WTO Agreement and the Korea-ASEAN FTA.

1-4

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.

3. Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and any agreement to which both Parties are party, the Parties shall consult with each other with a view to finding a mutually satisfactory solution taking into consideration the general principles of international law.

## **Article 1.5. Extent of Obligations**

Each Party shall, subject to the provisions of this Agreement, ensure the observance of all obligations and commitments under this Agreement by its local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, and local governments or authorities.

1-5

## **Chapter CHAPTER TWO TRADE IN GOODS**

### **Section Section a: Common Provisions**

#### **Article 2.1. Definitions for Purposes of this Chapter:**

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;

duty-free means free of customs duty;

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; and

non-tariff measures means policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded or prices or both.

#### **Article 2.2. Scope and Coverage<sup>2-1</sup>**

Except as otherwise provided in this Agreement, this Chapter shall apply to trade in goods between the Parties.

### **Section Section B: National Treatment**

#### **Article 2.3. National Treatment**

Each Party shall accord national treatment to the goods of the other Party in accordance with Article IM of GATT 1994 including its interpretative notes. To this end, Article II of GATT 1994 and its interpretative notes shall, *mutatis mutandis*, be incorporated into and form part of this Agreement.

### **Section Section C: Tariff Reduction or Elimination**

#### **Article 2.4. Reduction or Elimination of Customs Duties**

1. Except as otherwise provided in this Agreement, neither Party shall increase any existing customs duty as specified in its Schedule in Annex 2-A, or adopt any new customs duty, on an originating good.

2. Except as otherwise provided in this Agreement, each Party shall gradually reduce or eliminate its customs duties on originating goods in accordance with its Schedule in Annex 2-A.

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

4. A Party may unilaterally accelerate the reduction or elimination of customs duties set out in its Schedule in Annex 2-A at any time if it so wishes. Such Party shall notify the other Party through a diplomatic note immediately after completion of the internal procedures required for the amendments to

2-2

enter into force.

5. If at any moment a Party reduces its most-favored-nation (hereinafter referred to as "MFN") applied rate of customs duty after the entry into force of this Agreement, that duty rate shall apply as regards trade covered by this Agreement if and for as long as it is lower than the customs duty rate calculated in accordance with its Schedule in Annex 2-A.

6. For greater certainty, a Party may:

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

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

## **Article 2.5. Customs Valuation**

For purposes of determining the customs value of goods traded between the Parties, the provisions of Article VII of GATT 1994, and the provisions of Part T and the Interpretative Notes of Annex I of the Customs Valuation Agreement shall apply, *mutatis mutandis*.

## **Article 2.6. Transposition of Schedules of Tariff Commitments**

Each Party shall ensure that the transposition of its Schedule of tariff commitments, undertaken in order to implement Annex 2-A in the nomenclature of the revised HS Code following periodic amendments to the HS Code, is carried out without impairing the tariff commitments set out in

Annex 2-A, and in accordance with the agreed transposition guidelines, which are to be adopted by the Committee on Trade in Goods.

## **Section Section D: Special Regimes**

### **Article 2.7. Temporary Admission of Goods<sup>2-3</sup>**

1. Each Party shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

2. Each Party shall, at the request of the person concerned and for reasons its customs administration considers valid, extend the time limit for duty-free temporary admission provided for in paragraph 1 beyond the period initially fixed.

3. Neither Party shall condition the duty-free temporary admission of a good provided for 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 or guarantee in an amount no greater than the customs duties, taxes, fees, and charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(d) be capable of identification when imported and exported;

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

ff) 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 laws and regulations.

4. If any condition that a Party imposes under paragraph 3 has not been

2-4

fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good in addition to any other charges or penalties provided for under its laws and regulations.

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

## **Article 2.8. Duty-free Entry of Commercial Samples of Negligible Value**

Each Party shall grant duty-free entry to commercial samples of negligible value imported from the territory of the other Party, regardless of their origin, but may require that the samples be imported solely for the solicitation of orders for goods, or services provided from the territory, subject to its laws and regulations, of the other Party or a non-Party.

## **Section Section E: Non-Tariff Measures**

### **Article 2.9. Application of Non-Tariff Measures**

1. A Party shall not adopt or maintain any non-tariff measure on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations or in accordance with this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 1 of this Article and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles to trade between the Parties.

### **Article 2.10. Import and Export Restrictions**

1. Except as otherwise provided in this Agreement, neither Party shall 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

2-5

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.

2. Where a Party proposes to adopt an import or export prohibition or restriction on foodstuffs or other products in accordance with paragraph 2 of Article XI of GATT 1994, the Party shall:

(a) make notification in writing to the extent possible before such proposed prohibition or restriction is to take effect; and

(b) provide the other Party with an adequate opportunity for consultation with respect to any matter related to the proposed prohibition or restriction through appropriate mechanisms, which may include subcommittees or working groups established by the Joint Committee.

### **Article 2.11. Technical Consultations on Non-Tariff Measures**

1. A Party may request technical consultations with the other Party (hereinafter referred to as "the requested Party") on a measure the Party considers to be adversely affecting its trade. The request shall be in writing and shall clearly identify the measure and the concerns as to how the measures adversely affect trade between the Party requesting technical consultations (hereinafter referred to as "the requesting Party") and the requested Party.

2. Where the measures are covered by another Chapter, its Chapter-specific consultation mechanism shall be used, unless otherwise agreed between the Parties.

3. Except as provided in Paragraph 2, the requested Party shall respond and enter into technical consultations within 60 days from the receipt of the written request referred to in paragraph 1, unless otherwise determined by the Parties, with a

view to reaching a mutually satisfactory solution within 180 days from the request. Technical consultations may be conducted via any means mutually agreed by the Parties.

4. If the requesting Party considers that the matter is urgent or involves

2-6

perishable goods, it may request that technical consultations take place within a shorter time frame than that provided for under paragraph 3.

5. The technical consultations under this Article shall be without prejudice to rights and obligations pertaining to dispute settlement proceedings under Chapter Eight (Dispute Settlement) and the WTO Agreement.

## **Article 2.12. Import Licensing**

1. Each Party shall ensure that all automatic and non-automatic import licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the Agreement on Import Licensing Procedures as contained in Annex 1A to the WTO Agreement (hereinafter referred to in this article as "Import Licensing Agreement"). Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. 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:

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

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

3. Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government Internet site. To the extent possible, the Party shall do so at least 21 days before the new procedure or modification takes effect.

4. Neither Party shall apply an import licensing procedure to a good of the

other Party unless the Party has complied with the requirements of paragraph 2 and 3 with respect to that procedure.

## **Article 2.13. Fees and Formalities Connected with Importation and Exportation<sup>2-7</sup>**

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

2. Each Party shall promptly publish details of the fees and charges that it imposes in connection with importation or exportation and shall make such information available on the internet.

3. Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of a good of the other Party. Neither Party shall require that any customs documentation supplied in connection with the importation of any good of the other Party be endorsed, certified or otherwise sighted or approved by the importing Party's overseas representatives, or persons or entities with authority to act on the importing Party's behalf, nor impose any related fees or charges.

## **Article 2.14. State Trading Enterprises**

The rights and obligations of the Parties with respect to state trading enterprises shall be governed by Article XVI of GATT 1994, its interpretative notes, and the Understanding on the Interpretation of Article XVI of GATT 1994, which are incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 2.15. Sanitary and Phytosanitary Measures**

1. The objective of this Article is to protect human, animal or plant life or health in the Parties' territories while facilitating trade by minimizing the negative effects on trade between the Parties.

2. This Article shall apply to all Sanitary and Phytosanitary (hereinafter

referred to as "SPS") measures of the Parties, which may, directly or indirectly, affect trade between the Parties, taking into account definitions

2-8

under Annex A to the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "SPS Agreement").

3. The Parties reaffirm their rights and obligations with respect to each other under the SPS Agreement taking into account relevant decisions of the WTO SPS Committee and international standards, guidelines and recommendations.

4. An exporting Party shall provide timely and appropriate information to an importing Party, where there is a significant change in animal or plant health status or food safety issue in that exporting Party that may affect trade.

5. The Parties shall opportunistically exchange information on SPS matters of mutual interest under this Article and strengthen technical cooperation, capacity building and, upon request, consultation opportunities.

6. For purposes of facilitating implementation and communication on SPS matters of this Article, the Parties shall designate contact points as follows:

(a) for Korea, the Ministry of Agriculture, Food and Rural Affairs; and

(b) for Cambodia, the Ministry of Agriculture, Forestry and Fisheries;

or their respective successors.

7. Neither Party shall have recourse to Chapter Eight (Dispute Settlement) for any matter arising under this Article.

## **Article 2.16. Technical Regulations, Standards and Conformity Assessment Procedures**

1. The Parties reaffirm their existing rights and obligations with respect to each other under the Agreement on Technical Barriers to Trade, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "TBT Agreement").

2. The Parties recognize the importance of the provisions relating to

2-9

transparency in the TBT Agreement. In this respect, the Parties shall take into account relevant decisions and recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995 (G/TBT/1/Rev.14) as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties agree to use relevant international standards as a basis for technical regulations and to ensure that central government bodies use relevant international standards or their relevant parts as a basis for their conformity assessment procedures, except where, as duly explained upon request, such international standards or relevant parts would be ineffective or inappropriate means for the fulfillment of the legitimate objectives as provided in Articles 2.4 and 5.4 of the TBT Agreement respectively.

4. 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 apply the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2 and 5, and Annex 3 of the Agreement, adopted on 13 November 2000 by the WTO Committee on Technical Barriers to Trade (Annex 2 to PART 1 of G/TBT/1/Rev.14), and any subsequent development thereof. Such international standards shall include, inter alia, but are not limited to, those developed by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and Codex Alimentarius Commission (CAC).

5. Where a Party detains, at a port of entry, goods including testing samples for conformity assessment exported from the other Party due to a perceived failure to comply with a technical regulation or a conformity assessment procedure, the reasons for the detention shall be promptly notified to the importer or his or her representative.

6. Each Party shall designate contact points which shall work jointly in order to facilitate the implementation of this Article and communication on the matters of technical barriers to trade arising from this Agreement. The contact points shall be:



(a) for Korea, the Korean Agency for Technology and Standards; and

2-10

(b) for Cambodia, Institute of Standards of Cambodia;

or their respective successors.

## **Section Section F: Institutional Provisions**

### **Article 2.17. Committee on Trade In Goods**

1. For purposes of the effective implementation and operation of this Chapter and Chapter Five (Trade Remedies), the Parties hereby establish a Committee on Trade in Goods consisting of representatives of the Parties.

2. The Committee on Trade in Goods shall meet on the request of a Party or the Joint Committee, at a mutually agreed time, venue, and means, to consider any matter arising under this Chapter and Chapter Five (Trade Remedies).

3. The functions of the Committee on Trade in Goods shall include:

(a) reviewing and monitoring the implementation and operation of this Chapter and Chapter Five (Trade Remedies), and making a report and recommendation, if appropriate;

(b) promoting trade in goods between the Parties, including through consultations on accelerating reduction or elimination of customs duties under this Agreement and other issues as appropriate;

(c) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Joint Committee for its consideration;

(d) addressing any issues related to measure to update each Party's Schedule to reflect amendments of Harmonized System, including adoption and review of transposition guidelines, the transposition of the Parties's Schedules of tariff commitments and exchanging transposed Schedules of tariff commitments and

2-11

(e)

(f)

correlation tables in a timely manner;

discussing any matter arising under this Chapter and Chapter Five (Trade Remedies) as agreed; and

designating contact points, upon request of either Party, which

facilitate communications on specific matters arising from this Chapter and Chapter Five (Trade Remedies).

2-12

## **Chapter CHAPTER THREE RULES OF ORIGIN**

### **Section Section a: Rules of Origin**

#### **Article 3.1. Definitions for Purposes of this Chapter:**

CIF means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation;

competent authority means the government authority or authorities designated by a Party and notified to the other Party;

exporter means a natural or juridical person located in the territory of a Party from where goods are exported by such a person;

FOB means the free-on-board value of a good, inclusive of the cost of transport from the producer to the port or site of final shipment abroad;

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

goods shall include materials or products, which can be wholly obtained or produced, even if they are intended for later use as materials in another production process. For purposes of this Chapter, the terms "goods" and "products" can be used interchangeably and the terms "good" and "product" shall be interpreted accordingly;

Harmonized System shall have the meaning as defined in Article 1.1 (General Definitions);

importer means a natural or juridical person located in the territory of a Party into where goods are imported by such a person;

issuing body means an entity designated or authorized by a Party to issue a

Certificate of Origin and notified to the other Party in accordance with this Chapter;

3-1

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

materials shall include ingredients, raw materials, parts, components, sub- assemblies used in the production process;

non-originating goods or non-originating materials mean goods or materials which do not qualify as originating in accordance with this Chapter;

originating goods shall have the meaning as defined in Article 1.1 (General Definitions);

packing materials and containers for the transportation means the goods used to protect a good during its transportation, different from those materials or containers used for its retail sale;

preferential tariff treatment means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;

Product Specific Rules means the rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content or a combination of any of these criteria;

producer means a person who engages in the production of goods;

production means methods of obtaining a good including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or

assembling a good; and

third country means a non-Party.

## **Article 3.2. Origin Criteria**

1. For purposes of this Agreement, a good imported into the territory of a Party shall be deemed to be originating and eligible for preferential tariff treatment if it conforms to the origin requirements under any one of the following:

(a) a good which is wholly obtained or produced in the territory of the exporting Party as set out and defined in Article 3.3;

3-2

(b)

a good which is produced in the territory of the exporting Party exclusively from originating materials; or

(c) a good which is produced in the territory of the exporting Party using non-originating materials, provided that the good satisfies the applicable requirements set out in Annex 3-A. 2. Except as provided for in Article 3.6, the conditions for acquiring

originating status set out in this Chapter must be fulfilled without interruption in the territory of the exporting Party.

**Article 3.3. Wholly Obtained or Produced Goods Within the Meaning of Article 3.2.1(a), the Following Shall Be Considered to Be Wholly Obtained or Produced In the Territory of a Party:**

(a)

(b) (c)

(d)

(e)

(f)

plants and plant products harvested, picked or gathered after being grown there;

live animals born and raised there;

goods obtained from live animals referred to in subparagraph

(b);

goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;

minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from its soil, waters, seabed or beneath its seabed;

fish, shellfish, and other marine life taken by vessels registered with the Party and entitled to fly its flag, and other products taken by the Party or a person of that Party, from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that the Party has the rights to exploit the natural resources of such waters, seabed and beneath the seabed under international law;

For purposes of determining the origin of fish, shellfish, and other marine life, rights to exploit in Article 3.3(f) include those rights of access to the fisheries resources of a coastal state, as accruing from any agreements or arrangements between a Party and the coastal state at the level of governments or duly authorized private entities.

3-3

(g) fish, shellfish, and other marine life taken from the high seas by vessels registered with the Party and entitled to fly its flag;

(h) goods produced or made on board factory ships registered with a Party and entitled to fly its flag, exclusively from products referred to in subparagraph (f) or (g);

(i) goods taken from outer space provided that they are obtained by the Party or a person of that Party;

(j) goods which are:

(j) waste and scrap derived from production or consumption there, provided that such goods are fit only for disposal, for the recovery of raw materials, or for recycling purposes; or

(k) used goods collected there, provided that such goods are fit only for disposal, for the recovery of raw materials, or for recycling purposes; and

(l) goods obtained or produced in the territory of the Party solely from goods referred to in subparagraphs (a) through (j).

**Article 3.4. Calculation of Regional Value Content**

The regional value content (hereinafter referred to as RVC) of a good, specified in Annex 3-A, shall be calculated by using either of the following formulas:

(a) Direct/Build-Up Method

$VOM + Direct + Direct + Profit + Other\ costs\ labor\ Overhead\ Cost\ Cost\ RVC = \dots \times 100\% \text{ FOB}$

Where: (i) VOM is the value of originating materials, parts or

goods that are acquired or self-produced by the producer in the production of the good;

3-4

ii) direct labour cost includes wages, remuneration and other employee benefits;

Gii) direct overhead cost is the total overhead expense; and

(iv) \_ other costs are the costs incurred in placing the good in the ship or other means of transport for export including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges.

or (b) Indirect/Build-Down Method

FOB - VNM RVC = -â----- x 100% FOB

VNM means value of non-originating materials, which shall be:

(i) the CIF value at the time of importation of the materials, parts or goods; or

(ii) \_ the earliest ascertained price paid for the materials, parts or goods of undetermined origin in the territory of the Party where the working or processing has taken place.

### **Article 3.5. Treatment for Certain Goods**

Notwithstanding Article 3.2, certain goods shall be considered to be originating even if the production process or operation has been undertaken in the Gaeseong Industrial Complex located in the Korean Peninsula, on materials exported from a Party and subsequently re-imported to that Party provided that the conditions set out in Annex 3-B are fulfilled.

### **Article 3.6. Accumulation**

1. Unless otherwise provided for in this Chapter, a good originating in the territory of a Party, which is used in the territory of the other Party as material for a finished good eligible for preferential tariff treatment, shall be considered to be originating in the territory of the latter Party where working or processing of the finished good has taken place.

3-5

2. The Parties may agree to review this Article with a view to extending the application of the accumulation set out in paragraph 1 for purposes of qualifying goods as originating goods under this Agreement.

### **Article 3.7. Non-Qualifying Operations<sup>1</sup>. Notwithstanding Any Provisions In this Chapter, a Good Shall Not Be Considered to Be Originating In the Territory of a Party If the Following Operations Are Undertaken Exclusively by Itself or In Combination In the**

territory of that Party:

(a) preserving operations to ensure that the good remains in good condition during transport and storage;

(b) changes of packaging, breaking-up and assembly of packages;

(c) simpleâ washing, cleaning, removal of dust, oxide, oil, paint or other coverings;

(d) \_ ironing or pressing of textiles;

(e) simple painting and polishing operations;

ff) husking, partial or total bleaching, polishing and glazing of cereals and rice;

(g) operations to color sugar or form sugar lumps;

(h) simple peeling, stoning, or un-shelling;

@) sharpening, simple grinding, or simple cutting;

@ sifting, screening, sorting, classifying, grading, or matching;

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging

operations;

ad affixing or printing marks, labels, logos and other like

distinguishing signs on products or their packaging;

? For purposes of this Article, "simple" generally describes an activity which does not need special skills, or machines, apparatus, or equipment especially produced or installed for carrying out the activity.

3-6

(m) simple mixing of products, whether or not of different kinds;

(n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) simple testing or calibrations; or (p) slaughtering of animals,

2. A good originating in the territory of a Party shall retain its initial originating status, when exported from the other Party, where operations undertaken have not gone beyond those referred to in paragraph 1.

### **Article 3.8. Materials Used In Production**

If a non-originating material undergoes further production such that it satisfies the requirement of this Chapter, the material shall be treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

### **Article 3.9. Direct Consignment**

1. Preferential tariff treatment shall be applied to a good satisfying the requirements of this Chapter and which is transported directly between the territories of the exporting Party and the importing Party.

2. Notwithstanding paragraph 1, a good of which transport involves transit through one or more intermediate third countries, other than the territories of the exporting Party and the importing Party, shall be considered to be consigned directly, provided that:

(a) the good remains under the control of the customs administrations in the intermediate countries; and

3 For purposes of this Article, "simple mixing" generally describes an activity which does not need special skills, or machines, apparatus, or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which result in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

\* "Slaughtering" means the mere killing of animals and subsequent processes such as cutting, chilling, freezing, salting, drying or smoking, for purposes of preservation for storage and transport.

(b) the good has not undergone any operation other than unloading and reloading, storing, or any operation required to keep it in

good condition. Article 3.10: De Minimis 1. A good that does not undergo a change in tariff classification shall be considered as originating if:

(a) for a good, other than that provided for in Chapters 50 through 63 of the Harmonized System, the value of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good;

(b) for a good provided for in Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the total weight of the good;

and the good specified in subparagraphs (a) and (b) meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-

originating materials for any applicable RVC requirement for the good.

### **Article 3.11. Treatment of Packaging and Packing Materials**

1. Packing materials and containers for the transportation and shipment of a good shall not be taken into account in determining the originating status of any good.

2. Packing materials and containers in which a good is packaged for

retail sale, which are classified together with the good, shall not be taken into account in determining the originating status of the good, provided that:

(a) the good is wholly obtained or produced in a Party in accordance with Article 3.2.1(a);

(b) the good is produced in a Party exclusively from originating materials, in accordance with Article 3.2.1(b); or

3-8

(c) the good is subject to a change in tariff classification or a specific manufacturing or processing operation requirement provided in Annex 3-A.

3. If a good is subject to the RVC requirement, the value of the packaging materials and containers in which the good is packaged for retail sale shall be taken into account as originating materials or non-originating materials of the good, as the case may be, in calculating the RVC of the good.

### **Article 3.12. Accessories, Spare Parts and Tools**

1. For purposes of determining the originating status of a good, accessories, spare parts, tools, and instructional or other information materials presented with the good shall be considered as part of the good and shall be disregarded in determining whether all the non-originating materials used in the production of the good have undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 3-A, provided that:

(a) the accessories, spare parts, or tools, and instructional or other information materials presented with the good are not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts, tools, and instructional or other information materials presented with the good are customary for the good.

2. Notwithstanding paragraph 1, if a good is subject to a RVC criterion as set out in Annex 3-A, the value of the accessories, spare parts, tools, and instructional or other information materials presented with the good shall be taken into account as originating or non-originating materials as the case may be, in calculating the RVC of the good, provided that:

(a) the accessories, spare parts, or tools, and instructional or other information materials presented with the good are not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts, tools,

and instructional or other information materials presented with the good are customary for the good.

### **Article 3.13. Neutral Elements<sup>3-9</sup>**

In order to determine whether a good originates, it shall not be necessary to determine the origin of the following which might be used in its production and not incorporated into the good:

(a) (b) (c)

(d)

(e)

(f)

(g) (h)

fuel and energy; tools, dies and moulds;

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

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

gloves, glasses, footwear, clothing, safety equipment and supplies;

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

catalysts and solvents; and any other goods that are not incorporated into the good but of

which use in the production of the good can reasonably be demonstrated to be a part of that production.

**Article 3.14. Fungible Goods or Materials The Determination of Whether Fungible Goods or Materials Are Originating Shall Be Made Either by Physical Segregation of Each of the Fungible Goods or Materials or, Where Commingled, by the Use of an Inventory Management Method Which Is Recognized In the Generally Accepted Accounting Principles of the Exporting Party, and Should Be Used Throughout the Fiscal Year.**

3-10

## **Section Section B: Operational Certification Procedures**

**Article 3.15. Proof of Origin 1. Any of the Following Shall Be Considered as a Proof of Origin:**

(a) a Certificate of Origin issued by an issuing body in accordance with Article 3.16; or

(b) a Declaration of Origin by an approved exporter in accordance with Article 3.17.

2. A Proof of Origin shall:

(a) be in writing, or any other medium, including electronic format as notified by an importing Party;

(b) specify that the good is originating and meets the requirements of this Chapter; and

(c) contain information which meets the minimum information requirements as set out in Annex 3-C.

3. Each Party shall provide that a Proof of Origin remains valid for one year from the date on which it is issued or completed.

Article 3.16: Certificate of Origin 1. A Certificate of Origin shall be issued by the issuing body of an exporting Party upon an application by an exporter, a producer, or their authorized representative. 2. The exporter, producer, or their authorized representative shall apply in writing or by electronic means for a Certificate of Origin, to the issuing body of the exporting Party in accordance with the exporting Party's laws, regulations, and procedures. 3. A Certificate of Origin shall:

(a) be in the format set out in Annex 3-D;

(b) bear a unique Certificate of Origin number;

(c) be in the English language; and

3-11

(d) bear an authorized signature and official seal of the issuing body of the exporting Party. The signature and seal shall be applied manually or electronically.

4. A Certificate of Origin may: (a) indicate two or more invoices issued for a single shipment; or

(b) contain multiple goods, provided that each good qualifies as an originating good separately in its own right.

5. In circumstances where a Certificate of Origin contains incorrect information, the issuing body of the exporting Party may:

(a) issue a new Certificate of Origin and invalidate the original Certificate of Origin; or

(b) make modifications to the original Certificate of Origin by striking out errors and making any additions or corrections. Any changes shall be certified by the authorized signature and official seal of the issuing body of the exporting Party.

6. Each Party shall provide the names, specimen signatures, addresses, and impressions of official seals of its issuing body to the other Party. Any subsequent changes shall be promptly notified. The Parties shall endeavor to establish a secured website to display such information from the last three years, and such website shall be accessible to the Parties.

7. A Certificate of Origin shall be issued prior to or at the time of shipment, or within seven calendar days after the date of shipment. In exceptional cases where a Certificate of Origin has not been issued prior to or at the time of shipment, or within seven calendar days after shipment due to involuntary errors, omissions, or other valid causes, or in the circumstances referred to in subparagraph 5(a), a Certificate of Origin may be issued retrospectively but no later than one year after the date of shipment. In that case, the Certificate of Origin shall bear the words "ISSUED RETROACTIVELY".

5 The Requirement to circulate the specimen signatures is not necessary when the issuing authority has established the website containing relevant information of Certificate of Origin that the importing Party can access.

° For greater certainty, "seven calendar days" shall include the date of shipment itself.

3-12

8. In the event of theft, loss, or destruction of an original Certificate of Origin, the exporter, producer, or their authorized representative may apply in writing to the issuing body of the exporting Party for a certified true copy of the original Certificate of Origin. The copy shall:

- (a) be issued no later than one year after the date of issuance of the original Certificate of Origin;
- (b) be based on the application for the original Certificate of Origin;
- (c) contain the same Certificate of Origin number and date as the original Certificate of Origin; and
- (d) be endorsed with the words "CERTIFIED TRUE COPY".

### **Article 3.17. Declaration of Origin**

1. A Declaration of Origin referred to in Article 3.15.1(b) may be completed by an approved exporter within the meaning of Article 3.19.

2. A Declaration of Origin shall: (a) be completed in accordance with Annex 3-C; (b) be in the English language; (c) bear the name and signature of the certifying person; and (d) bear the date on which the Declaration of Origin was completed. Article 3.18: Third-Party Invoicing An importing Party shall not deny a claim for preferential tariff treatment for the sole reason that an invoice was not issued by the exporter or producer of a good provided that the good meets the requirements in this Chapter. Article 3.19: Approved Exporter 1. Each Party shall provide for the authorization of an exporter who

exports goods under this Agreement as an approved exporter, in accordance with its laws and regulations. An exporter seeking such authorization must

3-13

apply in writing or electronically and must offer to the satisfaction of the competent authority of the exporting Party all guarantees necessary to verify the originating status of the good for which a Declaration of Origin is completed. The competent authority of an exporting Party may grant the status of approved exporter subject to any conditions which it considers appropriate, including the following:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

that the exporter is duly registered in accordance with the laws and regulations of the exporting Party;

that the exporter knows and understands the rules of origin as set out in this Chapter;



that the exporter has a satisfactory level of experience in export in accordance with the laws and regulations of the exporting Party;

that the exporter has a record of good compliance, measured by risk management of the competent authority of the exporting Party;

that the exporter, in the case of a trader, is able to obtain a declaration by the producer confirming the originating status of the good for which the Declaration of Origin is completed by an approved exporter and the readiness of the producer to cooperate in verification in accordance with Article 3.22 and meet all requirements of this Chapter; and

that the exporter has a well-maintained bookkeeping and record-keeping system, in accordance with the laws and regulations of the exporting Party.

2. The competent authority of an exporting Party shall:

(a)

(b)

(c)

make its approved exporter procedures and requirements public and easily available;

grant the approved exporter authorization in writing or electronically;

provide the approved exporter an authorization code which must be included in the Declaration of Origin; and

3-14

(d) exchange information of the Parties' approved exporters with the other Party through a secured website or any electronic means in relation to the authorization granted.

3. Notwithstanding subparagraph 2(d), a Party shall not be required to provide the information referred to in that subparagraph to the other Party if it has established its own secured website, containing the above information, that is accessible to the other Party.

4. An approved exporter shall have the following obligations:

(a) to allow the competent authority of an exporting Party access to records and premises for the purposes of monitoring the use of authorization, in accordance with Article 3.25;

(b) to complete Declarations of Origin only for goods for which the approved exporter has been allowed to do so by the competent authority of an exporting Party and for which it has all appropriate documents proving the originating status of the goods concerned at the time of completing the declaration;

(c) to take full responsibility for all Declarations of Origin completed, including any misuse; and

(d) to promptly inform the competent authority of an exporting Party of any changes related to the information referred to in subparagraph (b).

5. The competent authority of the exporting Party shall monitor the use of the authorization, including verification of the Declarations of Origin by an approved exporter, and withdraw the authorization where the conditions referred to in paragraph 1 are not met.

6. An approved exporter shall be prepared to submit at any time, on request of the customs administration of the importing Party, all appropriate documents proving the originating status of the goods concerned, including statements from the suppliers or producers in accordance with the laws and regulations of the importing Party as well as the fulfillment of the other requirements of this Chapter.

7 The information includes the legal name and address of the exporter, the approved exporter authorization code, the issuance date and, if applicable, the expiry date of its approved exporter authorization, and a list of goods subject to the authorization, at least at the HS Chapter level.

3-15

## **Article 3.20. Claims for Preferential Tariff Treatment**

1. An importing Party shall grant preferential tariff treatment in accordance with this Agreement to an originating good on the basis of a Proof of Origin.
2. Unless otherwise provided in this Chapter, an importing Party shall provide that, for the purposes of claiming preferential tariff treatment, the importer shall:
  - (a) make a declaration in its customs declaration that the good qualifies as an originating good;
  - (b) have a valid Proof of Origin in its possession at the time the declaration referred to in subparagraph (a) is made; and
  - (c) provide an original or a certified true copy of the Proof of Origin to the importing Party if required by the importing Party.
3. Notwithstanding paragraphs 1 and 2, the importing Party shall not require a Proof of Origin if: (a) the customs value of the importation does not exceed  
US\$ 200 or the equivalent amount in the importing Party's currency or any higher amount as the importing Party may establish; or  
(b) it is a good for which the importing Party has waived the requirement,  
provided that the importation does not form part of a series of importations carried out or planned for the purpose of evading compliance with the importing Party's laws and regulations governing claims for preferential tariff treatment under this Agreement.
4. The customs administration of the importing Party may require, where appropriate, the importer to submit supporting evidence that a good qualifies as an originating good, in accordance with the requirements of this Chapter.
5. The importer shall demonstrate that the requirements referred to in

### **Article 3.9. Have Been Met and Provide such Evidence on Request of the Customs Administration of the Importing Party.3-16**

6. Where a Proof of Origin is submitted to the customs administration of an importing Party after the expiration of the period of time for its submission, such Proof of Origin may still be accepted, subject to the importing Party's laws, regulations, or administrative practices, when failure to observe the period of time results from force majeure or other valid causes beyond the control of the importer or exporter.

### **Article 3.21. Post-Importation Claims for Preferential Tariff Treatment**

1. Each Party, subject to its laws and regulations, shall provide that where a good would have qualified as an originating good when it was imported into that Party, the importer of the good may, within a period specified by its laws and regulations, and after the date on which the good was imported, apply for a refund of any excess duties, deposit, or guarantee paid as the result of the good not having been granted preferential tariff treatment, on presentation of the following to the customs administration of that Party:

- (a) a Proof of Origin and other evidence that the good qualifies as an originating good; and
- (b) such other documentation in relation to the importation as the customs administration may require to satisfactorily evidence the preferential tariff treatment claimed.

2. Notwithstanding paragraph 1, each Party may require, in accordance with its laws and regulations, that the importer notify the customs administration of that Party of its intention to claim preferential tariff treatment at the time of importation.

### **Article 3.22. Verification**

1. For purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good under this Chapter, the competent authority of the importing Party may conduct a verification process by means of:

- (a) a written request for additional information from the importer; (b) a written request for additional information from the exporter

or producer;

(c) a written request that the competent authority of the exporting Party assists in verifying the origin of the good

3-17

(d)

(e)

within the competence and available resources of the exporting Party;

a verification visit to the premises of the exporter or producer in the exporting Party to observe the facilities and the production processes of the good and to review the records referring to the origin, including accounting files; or

any other procedures to which the Parties may agree.

2. The importing Party shall:

(a)

(b)

(c)

for purposes of subparagraph 1(b), send a written request with a copy of the Proof of Origin and the reasons for the request to the exporter or producer of the good;

for purposes of subparagraph 1(c), send a written request with a copy of the Proof of Origin and the reasons for the request to the competent authority of the exporting Party; and

for purposes of subparagraph 1(d), request the written consent of the exporter or producer whose premises are going to be visited, and the competent authority of the exporting Party and state the proposed date and location for the visit and its specific purpose.

3. On request of the importing Party, a verification visit to the premises of the exporter or producer may be conducted with the consent and assistance of the exporting Party, according to the procedures agreed between the importing Party and exporting Party.

4. For a verification under subparagraphs 1(a) through (d), the importing Party shall: (a) allow the importer, exporter, producer, or the issuing body or

(b)

competent authority of the exporting Party between 30 and 90 days from the date of receipt of the written request for information under subparagraphs 1(a) through (c) to respond;

allow the exporter, producer, or the competent authority to consent or refuse the request within 30 days from the date of its receipt of the written request for a verification visit under subparagraph 1(d); and

5. A verification visit under this subparagraph shall only be undertaken after a verification process in accordance with subparagraph (c) has been conducted.

3-18

(c) make a determination following a verification within 90 days from the date of its receipt of the information necessary to make the determination.

5. For purposes of paragraph 1, the importing Party shall provide a written notification of the result of verification with the reasons for that result to the importer, exporter, or producer of the good, or the competent authority of the exporting Party that received the verification request.

6. The customs administration of the importing Party may suspend the application of preferential tariff treatment while waiting for the result of verification. The importing Party shall permit the release of the good, but may require that such release be subject to lodgment of a security in accordance with its laws and regulations.

### **Article 3.23. Denial of Preferential Tariff Treatment**

1. The customs administration of the importing Party may deny preferential tariff treatment where:

(a) the good does not meet the requirements of this Chapter; or

(b) the importer, exporter, or producer of the good fails or has failed to comply with any of the relevant requirements of this Chapter for obtaining preferential tariff treatment.

2. If the customs administration of the importing Party denies a claim for preferential tariff treatment, it shall provide the decision in writing to the importer that includes the reasons for the decision.

3. The customs administration of the importing Party may determine that a good does not qualify as an originating good and may deny preferential tariff treatment where:

(a) the customs administration of the importing Party has not received sufficient information to determine that the good is originating;

(b) the exporter, producer, or the competent authority of the exporting Party fails to respond to a written request for information in accordance with Article 3.22; or

(c) the request for a verification visit in accordance with Article 3.22 is refused.

3-19

### **Article 3.24. Minor Discrepancies or Errors**

The customs administration of an importing Party shall disregard minor discrepancies or errors, such as slight discrepancies between documents, omissions of information, typing errors, or protrusions from the designated field, provided that these minor discrepancies or errors do not create doubt as to the originating status of the good.

### **Article 3.25. Record-Keeping Requirement 1. Each Party Shall Require That:**

(a) its exporters, producers, issuing bodies, or competent authorities retain, for at least a period of five years from the date of issuance of the Proof of Origin, or a longer period in accordance with its relevant laws and regulations, all records necessary to prove that the good for which the Proof of Origin was issued was originating; and

(b) its importers retain, for at least a period of five years from the date of importation of the good, or a longer period in accordance with its relevant laws and regulations, all records necessary to prove that the good for which preferential tariff treatment was claimed was originating.

2. The records referred to in paragraph 1 may be maintained in any medium that allows for prompt retrieval, including in digital, electronic, optical, magnetic, or written form, in accordance with the Party's laws and regulations.

### **Article 3.26. Consultations**

The Parties shall consult when necessary to ensure that this Chapter is administered effectively, uniformly, and consistently in order to achieve the spirit and objectives of this Agreement.

### **Article 3.27. Electronic Origin Data Exchange System The Parties May Develop an Electronic Origin Data Exchange System to**

ensure the effective and efficient implementation of this Chapter in a manner jointly determined by the Parties.

3-20

### **Article 3.28. Transitional Provisions for Goods In Transit**

A Party shall grant preferential tariff treatment to an originating good that, on the date of entry into force of this Agreement for that Party:

(a) was being transported to that Party in accordance with Article 3.9; or

(b) had not been imported into that Party,

if a valid claim under Article 3.20 for preferential tariff treatment is made within 180 days of the date of entry into force of this Agreement for that Party, subject to the submission to the customs administration of the importing Party of a Proof of Origin made out retrospectively, together with the documents showing that the goods have been transported directly in accordance with Article 3.9.

### **Article 3.29. Penalties**

Each Party shall adopt or maintain appropriate penalties or other measures against violations of its laws and regulations relating to this Chapter.

### **Article 3.30. Communication Language**

Communications between the importing Party and the exporting Party shall be conducted in the English language.

### **Article 3.31. Contact Points**

Each Party shall, within 30 days from the date of entry into force of this Agreement, designate one or more contact points for the implementation of this Chapter and notify the other Party of the contact details of that contact point or those contact points. Each Party shall promptly notify the other Party of any change to those contact details.

### **Article 3.32. Supporting Documents of Direct Consignment for Purposes of Implementing Article 3.9, Where Transportation Is Effected Through the Territory of One or More Intermediate Countries, other Than That of**

both Parties, the following shall be produced to the relevant government authorities of the importing Party:

3-21

(a)

(b)

a through Bill of Lading issued in the territory of the exporting Party, which includes a combination of any transport documents covering the entire transport route of a good from the exporting Party to the importing Party; or

other relevant supporting documents, if any, as evidence that the requirements of Article 3.9 are being complied with.

3-22

## **Chapter CHAPTER FOUR CUSTOMS PROCEDURES AND TRADE FACILITATION**

### **Article 4.1. Definitions For Purposes of this Chapter:**

(a)

(b)

customs procedure means the measures applied by the customs administration to goods and to the means of transport that are subject to its customs laws and regulations; and

means of transport means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory of a Party carrying natural persons, goods, or articles.

### **Article 4.2. Objectives The Objectives of this Chapter Are to:**

(a)

(b)

(c)

(d)

(e)

ensure predictability, consistency, and transparency in the application of customs laws and regulations of the Parties;

promote efficient administration of customs procedures of the Parties, and the expeditious clearance of goods;

simplify customs procedures of the Parties and harmonize them to the extent possible with relevant international standards;

promote cooperation between the customs administrations; and

facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

### **Article 4.3. Scope This Chapter Shall Apply to Customs Procedures Applied to Goods Traded between the Parties and to the Means of Transport Which Enter or Leave the Customs Territory of Each Party.**

4-1

### **Article 4.4. Consistency**

1. Each Party shall ensure that its customs laws and regulations are consistently implemented and applied throughout its customs territory.

2. In fulfilling the obligation in paragraph 1, each Party shall endeavor to adopt or maintain administrative measures to ensure consistent implementation and application of its customs laws and regulations throughout its customs territory, preferably by establishing an administrative mechanism which assures consistent application of the customs laws and regulations of that Party among its regional customs offices.

### **Article 4.5. Transparency 1. Each Party Shall Promptly Publish, on the Internet to the Extent Possible, the Following Information In a Non-discriminatory and Easily Accessible Manner In Order to Enable Governments, Traders, and other Interested Persons to Become Acquainted with Them: (a) Procedures for Importation, Exportation, and Transit (including Port, Airport, and other Entry-point Procedures), and Required forms and Documents;**

(b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation, or transit;

(d) rules for the classification or valuation of products for customs purposes;

(e) laws, regulations, and administrative rulings of general application relating to rules of origin;

3) import, export, or transit restrictions or prohibitions;

(g) penalty provisions for breaches of import, export, or transit formalities;

(h) procedures for appeal or review;

42

@ agreements to which it is party, or parts thereof with any country or countries relating to importation, exportation, or transit; and

@ procedures relating to the administration of tariff quotas. 2. In particular, each Party shall make available, and update to the extent

possible and as appropriate, the following through the internet:

(a)

(b)

(c)

a description of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested persons of the practical steps needed for importation, exportation, and transit;

the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and

contact information for the inquiry points as well as information on how to make inquiry on customs matters as provided for in Article 4.6.

3. To the extent possible, when developing new, or amending existing, customs laws and regulations, each Party shall publish, or otherwise make readily available such proposed new or amended customs laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed customs laws and regulations, unless such advance notice is

precluded.

#### **Article 4.6. Inquiry Points Each Customs Administration Shall Designate One or More Inquiry Points to Answer Reasonable Inquiry of Interested Persons Concerning Customs Matters and to Facilitate Access to Forms and Documents Required for Importation, Exportation, and Transit.**

#### **Article 4.7. Customs Procedures' Each Party Has the Discretion to State on Its Website the Legal Limitations of this Description.**

43

1. Each customs administration shall ensure that its customs procedures and practices are predictable, consistent, and transparent, and facilitate trade, including through the expeditious clearance of goods.

2. Each customs administration shall ensure that its customs procedures, where possible and to the extent permitted by its customs laws and regulations, conform with the standards and recommended practices of the World Customs Organization.

3. The customs administration shall review its customs procedures with a view to simplifying such procedures to facilitate trade.

#### **Article 4.8. Preshipment Inspection**

1. Each Party shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.

2. Without prejudice to the rights of any Party to use other types of preshipment inspection not covered by paragraph 1, each Party is encouraged not to introduce or apply new requirements regarding their use.

3. Paragraph 2 refers to preshipment inspections covered by the Agreement on Preshipment Inspection in Annex 1A to the WTO Agreement, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

#### **Article 4.9. Advance Rulings**

1. Each Party shall, prior to the importation of a good from a Party into its territory, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information, with regard to:

(a) tariff classification;

(b) whether the good is an originating good in accordance with Chapter Three (Rules of Origin);

(c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts, in accordance with the Customs Valuation Agreement; and

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

2. A Party may require that an applicant have legal representation or registration in that Party. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

3. Each Party shall adopt or maintain procedures for issuing advance rulings which:

(a) specify the information required to apply for an advance ruling;

(b) provide that each Party may at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information, which may include a sample of the goods, necessary to evaluate the application;

(c) ensure that an advance ruling is based on the facts and circumstances presented by the applicant and any other relevant information in the possession of the decision-maker; and

(d) ensure that the advance ruling includes the relevant facts and the basis for its decision.

4. Each Party shall issue an advance ruling within 90 days on receipt of all necessary information.

5. 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 declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the relevant facts, circumstances, and the basis for its decision to decline to issue the advance ruling.

? On request of a Party, the Parties may review the requirements of this paragraph in terms of their contribution towards the trade facilitation through the Committee on Rules of Origin and Customs Procedures.

3 Each Party shall ensure that its registration process is transparent, applications are

considered in a timely manner, and the decision made on an application, and the reasons for it, are promptly advised to the applicant in writing.

6. A Party may reject a request for an advance ruling where the additional information requested, in writing, in accordance with subparagraph 3(b) is not provided within a reasonable and specified period, which is determined at the time of the request for additional information and the Party requests the additional information from the applicant in writing.

7. Each Party shall establish a validity period for an advance ruling of three years from the date of its issuance.

8. Where a Party revokes, modifies, or invalidates an advance ruling, it shall promptly provide a written notice to the applicant setting out the relevant facts and the basis for its decision, where:

(a) there is a change in its laws, regulations, or administrative rules;

(b) incorrect information was provided or relevant information was withheld;

(c) there is a change in a material fact or circumstances on which the advance ruling was based; or

(d) the advance ruling was in error.

9. Where a Party revokes, modifies, or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

10. Each Party may make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

## **Article 4.10. Release of Goods**

1. The customs administration of each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if its requirements for release have not been met.



2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures

that allow the goods to be cleared from customs within a period no longer than that required to ensure compliance with its customs law.

46

3. For goods selected for further examination, such an examination shall be limited to what is reasonable and necessary, and undertaken and completed without undue delay.

4. Each Party shall adopt or maintain procedures allowing the release of goods, prior to the final determination of customs duties, taxes, fees, and charges if such determination is not done prior to, or upon arrival or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, a Party may require a guarantee in accordance with its laws and regulations that does not exceed the amount the Party requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

5. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party may provide for the release of perishable goods from customs control:

(a) under normal circumstances in the shortest possible time; and

(b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs administration.

6. Each Party may give appropriate priority to perishable goods when scheduling any examinations that may be required.

7. Each Party may either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. Each Party may, where practicable and consistent with domestic legislation, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

## **Article 4.11. Risk Management**

1. Each Party shall adopt or maintain a risk management approach and techniques for customs control.

2. Each Party shall design and apply risk management in a manner so as

to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.

47

3. Each Party shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.

4. Each Party shall base risk management on the risk assessment through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

5. The customs administration of each Party shall exchange best practices on risk management techniques. Article 4.12: Post-clearance Audit 1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs and other related laws and regulations. 2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record was audited of the:

(a) results;

(b) reasons for the results; and

(c) person's rights and obligations.

3. The Parties acknowledge that the information obtained in post-clearance audit may be used in further administrative or

judicial proceedings.

4. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

### **Article 4.13. Time Release Studies<sup>1</sup>. Each Party Is Encouraged to Measure the Time Required for the Release**

of goods by its customs administration periodically and in a consistent manner, and to publish the findings thereof, using tools such as the Guide to Measure

48

the Time Required for the Release of Goods issued by the World Customs Organization with a view to:

(a) assessing its trade facilitation measures; and

(b) considering opportunities for further improvement of the time required for the release of goods.

2. Each Party is encouraged to share its experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

### **Article 4.14. Review and Appeal**

1. Each Party shall provide that any person to whom its customs administration issues an administrative decision<sup>2</sup> has the right, within its territory, to:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and

(b) a judicial appeal or review of the decision.

2. 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 4.15.

### **Article 4.15. Confidentiality**

Where a Party provides information to the other Party and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, in accordance with its laws and regulations.

\* For purposes of this Article, "administrative decision" means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision referred to in this Article covers an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a Party's laws and regulations and legal system. For addressing such failure, a Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs administration to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

### **Article 4.16. Customs Cooperation**

1. The customs administration of both Parties may, as deemed appropriate, assist each other, in relation to:

(a) the implementation and operation of this Chapter;

(b) developing and implementing customs best practice and risk management techniques;

(c) simplifying and harmonizing customs procedures; (d) advancing technical skills and the use of technology; (e) application of the WTO Customs Valuation Agreement;

(f) exchanging FTA implementation statistics, formats and types of which are to be mutually agreed by both Parties; and

(g) such other customs issues as the Parties may mutually determine.

2. The customs administration of both Parties may, as deemed appropriate, share information and experiences on development of customs administration.

3. Each Party shall, to the extent possible, provide the other Party with timely notice of any significant administrative change, modification of laws or regulations, or similar measures related to its laws or regulations that govern importations or exportations, that is likely to substantially affect the operation of this Chapter. The notice can be made in the English language or the Party's language and will be provided to the contact point designated pursuant to Article 4.17.

### **Article 4.17. Consultation and Contact Points**

1. The customs administration of each Party may at any time request consultations with the customs administration of the other Party on any significant matter arising from the implementation or operation of this Chapter, in cases where there are reasonable grounds or truth provided by the requesting Party.

2. In the event that such consultations fail to resolve any such matter, the

requesting Party may refer the matter to the Committee on Rules of Origin and Customs Procedures referred to in Article 4.18 for further consideration.

4-10

3. Each customs administration shall designate one or more contact points for purposes of this Chapter. Information on the contact points shall be provided to the other Party and any amendment of the said information shall be notified promptly.

### **Article 4.18. Committee on Rules of Origin and Customs Procedures**

1. The Parties hereby establish a Committee on Rules of Origin and Customs Procedures (hereinafter referred to as the "Committee") composed of representatives designated by each Party.

2. The Committee shall ensure the proper functioning of this Chapter and Chapter Three (Rules of Origin) and examine all the issues arising from the application of these Chapters.

3. The functions of the Committee may include:

(a) reviewing, discussing, proposing and making appropriate recommendations to the Joint Committee, as necessary, on:

6D) the effective, uniform and consistent administration of this Chapter and Chapter Three (Rules of Origin); including their interpretations and applications, and the enhancement of cooperation in relation to these Chapters; and

ii) revising Annex 3-A (Product Specific Rules) on the basis of the transposition of the Harmonized System (hereinafter referred to as the "HS").

(b) consulting on and endeavouring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the HS and interpretation of this Chapter and Chapter Three (Rules of Origin);

(c) reviewing the possibility of revision and reaching agreement on revision of this Chapter and Chapter Three (Rules of Origin); and

(d) dealing with other matters referred to the Committee by the Joint Committee.

5 For Korea, the representative will be Korea's customs administration. For Cambodia, there shall be co-leads representing ROO and CPTF.

4-11

4. The Committee shall meet every year, or as otherwise agreed, alternating between the Parties.

4-12

## **Chapter CHAPTER FIVE TRADE REMEDIES**

### **Section Section a: Safeguard Measures**

#### **Article 5.1. Definitions for Purposes of this Section:**

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 producers 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 5.2;

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

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, in relation to a particular good, the period from the date of entry into force of this Agreement until three years after the date of completion of tariff reduction or elimination in accordance with that Party's Schedule of tariff commitments in Annex 2-A (Reduction or Elimination of Customs Duties).

## **Article 5.2. Application of a Safeguard Measure**

1. 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 so as to substantially cause serious injury or threat of serious injury to the domestic industry producing a like or directly competitive good, the Party may, to the extent necessary to prevent or remedy the serious injury to its domestic industry and to facilitate its domestic industry's adjustment:

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

5-1

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

G) the most-favored-nation (MFN) applied rate of customs duty on the good in effect at the time the safeguard measure is taken; or

Gi) the base rate of customs duty specified in the Schedules included in Annex 2-A (Reduction or Elimination of Customs Duties) pursuant to Article 2.4 (Reduction or Elimination of Customs Duties).

2. The Parties understand that neither tariff rate quotas nor quantitative restrictions are permissible forms of a safeguard measure.

## **Article 5.3. 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 as practicable prior to applying a safeguard measure, with a view to reviewing the information arising from the investigation and exchanging views on the safeguard 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 shall 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) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of the

5-2

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.

6. A Party shall not apply a safeguard measure more than once on the same good until a period of time equal to the duration of the previous safeguard measure, including any extension, has elapsed commencing from the termination of the previous safeguard measure, provided that the period of non-application is at least two years.

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 in Annex 2-A (Reduction or Elimination of Customs Duties), would have been in effect but for the safeguard measure.

## **Article 5.4. Provisional Safeguard Measures**

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a safeguard measure, which shall take the form of the measures set out in Article 5.2.1(a) or 5.2.1(b), on a provisional basis pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good of the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports substantially cause serious injury or threat of serious injury to the domestic industry.

2. Before a Party's competent authorities may make a preliminary determination, the Party shall in accordance with its domestic laws and regulations 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 to the extent practicable, provide interested parties adequate opportunity after the date it publishes the notice to submit evidence and views regarding the application of a provisional safeguard measure.

3. The applying Party shall notify the other Party before applying a

5-3

safeguard measure on a provisional basis, and shall initiate consultations immediately after applying the provisional safeguard measure.

4. The duration of any provisional safeguard measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 5.3.2 and 5.3.3.

5. | The Party shall promptly refund any tariff increases if the investigation described in Article 5.3.2 does not result in a finding that the requirements of Article 5.2 are met. The duration of any provisional safeguard measure shall be counted as part of the period described in Article 5.3.5(b).

## **Article 5.5. Compensation**

1. Within 30 days after a Party applies a safeguard measure, the Party shall afford an opportunity for the other Party to consult with it regarding adequate means of trade 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 safeguard measure. The applying Party shall provide such compensation as the Parties mutually agree.

2. If the Parties are unable to agree on compensation through consultations under paragraph 1 within 30 days after the consultations begin, the Party against whose originating good the safeguard 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 right of suspension referred to in paragraph 2 shall not be exercised for the first two years during which the safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a safeguard measure conforms to the provisions of this Section.

4. 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.

5. | Any compensation shall be based on the total period of application of the provisional safeguard measure and of the safeguard measure.

## **Article 5.6. Global Safeguard Measures<sup>1</sup>. Each Party Retains Its Rights and Obligations Under Article XIX of GATT**

5-4

1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to measures taken under Article XIX of GATT 1994 and the Safeguards Agreement.

2. At the request of the other Party, the Party intending to take a global safeguard measure shall provide immediately written notification of all pertinent information on the initiation of a global safeguard investigation, the preliminary determination and the final finding of the investigation.

3. Neither Party shall apply, with respect to the same good, at the same time:

(a) a provisional safeguard measure or a safeguard measure; and

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

## **Section Section B: Anti-Dumping and Countervailing Duties**

### **Article 5.7. General Provisions**

1. Except as otherwise provided for in this Agreement, each Party retains its rights and obligations under Article VI of GATT 1994, Anti-Dumping Agreement and SCM Agreement with regard to the application of anti-dumping and countervailing duties.

2. The Parties shall ensure as soon as possible, after any imposition of provisional measures and in any case before the final determination, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures, without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing, and interested parties shall be allowed sufficient time to make their comments.

3. The Parties shall observe the following practices in anti-dumping or countervailing cases between them in order to enhance transparency in the implementation of the WTO Agreement:

(a) when dumping margins are established, assessed, or reviewed under Articles 2, 9.3, 9.5, and 11 of the Anti-Dumping Agreement whether on the weighted-to-weighted basis, transaction-to-transaction basis, or weighted-to-transaction basis under Article 2.4.2 of the Anti-Dumping Agreement, all individual margins, whether positive or negative, should be counted toward the

5-5

average; and

(b) the investigating Party shall request an exporter or producer in the territory of the other Party for the timely response to its questionnaires. When the investigating Party finds major deficiency in information in a questionnaire response from relevant exporter or producer received before the deadline or requires clarifications for the purposes of investigation, the investigating Party shall demand missing information or request clarification of information concerning the answers to the questionnaires. This procedure shall not be used to cause unwarranted delays in the investigation or to circumvent the deadlines which are provided in the Party's domestic laws and regulations.

4. If a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, the Party taking such a decision, may apply the "lesser duty" rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry.

### **Article 5.8. Notification and Consultations**

1. Upon receipt by a Party's competent authorities of a properly documented anti-dumping application with respect to imports from the other Party, and no later than 15 days before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application.

2. 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, as appropriate and in conformity with the procedural rules provided for in the domestic laws and regulations of the Party, 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.

3. The Parties affirm their rights and obligations under Annex II of the Anti-Dumping Agreement and in particular its paragraph 5, and under Articles 12.7 and 12.8 of the SCM Agreement. In the event the investigating authorities intend to make a determination on the basis of the facts available pursuant to Article 6.8 of the Anti-Dumping Agreement and Article 12.7 of the SCM Agreement, the investigating authorities shall endeavor to provide a reasoned and adequate explanation of:

5-6

(a) indication of conditions under which the use of facts available is applicable;

(b) the information which interested parties have failed to submit to the investigating authorities; and

(c) the facts with which the investigating authorities decided to replace the information referred to in subparagraph (b).

### **Article 5.9. Undertakings**

1. After the importing Party's competent authorities initiate an anti-dumping or countervailing duty investigation, the importing Party shall transmit to the exporting Party's embassy located in the importing Party or the exporting Party's competent authorities written information regarding the importing Party's procedures for requesting its authorities to consider a price undertaking, or an undertaking, including the time frames for offering and concluding any such undertaking.

2. In an anti-dumping investigation, where the importing Party's authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the importing Party shall afford due consideration, and adequate opportunity for consultations, to exporters of the exporting Party regarding the proposed price undertaking which, if accepted, may result in suspension of the investigation without imposition of anti-dumping duties, through the means provided for in the importing Party's domestic laws, regulations, and procedures.

3. In a countervailing duty investigation, where the importing Party's authorities have made a preliminary affirmative determination of subsidization and injury caused by such subsidization, the importing Party shall afford due consideration, and adequate opportunity for consultations, to the exporting Party and its exporters, regarding the proposed undertaking which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, through the means provided for in the importing Party's domestic laws, regulations, and procedures.

### **Article 5.10. Investigation after Termination Resulting from a Review**

A Party shall endeavor to examine with special care, any application for initiation of an anti-dumping investigation on an originating good of the other Party on which anti-dumping measures have been terminated in the previous 12 months as a result of a review. Unless this pre-initiation examination indicates that the circumstances have changed, the investigation shall not

5-7

proceed.

### **Article 5.11. Cumulative Assessment**

Without prejudice to Article 3.3 of the Anti-Dumping Agreement and Article 15.3 of the SCM Agreement, when imports from more than one country are simultaneously subject to an anti-dumping or countervailing duty investigation, a Party shall examine, with special care, whether the cumulative assessment of the effect of the imports from the other Party is appropriate in light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods.

### **Article 5.12. Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter Eight (Dispute Settlement) for any matter arising

under this Section.

5-8

## **Chapter CHAPTER SIX ECONOMIC COOPERATION**

### **Article 6.1. Objectives**

1. Recognizing the importance of on-going economic and technical cooperation initiatives, the Parties agree to complement their existing economic partnership in the areas of mutual benefit and interest, taking into account the different levels of development and capacity of the Parties.
2. The Parties agree that the economic and technical cooperation aims at narrowing the development gap between the Parties and maximizing mutual benefits from the implementation and utilization of this Agreement.
3. The Parties agree that the economic cooperation aims at addressing the specific needs and requirements consistent with the priority areas under this Agreement from implementing economic and technical cooperation activities, including capacity building programs and technical assistance, particularly a Work Programme.
4. The Parties acknowledge the need to strengthen and enhance economic, trade and investment cooperation as provided for in this Agreement.

### **Article 6.2. Areas of Cooperation**

1. Economic cooperation under this Chapter shall support the inclusive, effective and efficient implementation and utilization of this Agreement through economic and technical cooperation activities which are trade or investment related as specified in the Work Programme.

2. The Parties shall explore and undertake economic and technical cooperation activities, including capacity building and technical assistance that focus on the following:

- (a) trade and investment promotion;
- (b) agriculture, forestry and fisheries;
- (c) electronic commerce;
- (d) technical regulations, standards and conformity assessment procedures;
- (e) sanitary and phytosanitary measures;

6-1

(f) trade and investment-related legal framework; (g) infrastructure development;

(h) industrial development;

@ information and communication technology; and

@ other matters, as agreed upon between the Parties.

3. Trade Promotion: the Parties shall cooperate in promoting trade and investment activities through government agencies or other bodies. Such cooperation may include, but is not limited to, organizing trade and investment promotion activities, such as trade and investment missions, regular business seminars and fora.

4. Agriculture, Forestry and Fisheries: the Parties, recognizing the existence of opportunities for collaboration and technical cooperation in agriculture, forestry and fisheries and aquaculture, agroindustry, food security, ecotourism and investment in farms and facilities, shall establish cooperation for mutual benefit of the Parties.

5. Electronic Commerce: the Parties, recognizing the fundamental role of electronic commerce in facilitating and expanding trade, shall cooperate to promote the development of electronic commerce with a view to obtaining the maximum benefit of the use of electronic commerce. Such cooperation may include, but is not limited to, assisting small and medium enterprises development in electronic commerce sector, enhancing electronic commerce development policy and regulations and addressing challenges related to the development and use of electronic commerce.



6. Technical Regulations, Standards and Conformity Assessment Procedures: the Parties, recognizing the important role of technical regulations, standards and conformity assessment procedures in facilitating trade in goods, shall, on the basis of mutual benefit, strengthen their cooperation thereon. Such cooperation may include, but is not limited to, the development of testing laboratories and an accreditation network as well as testing programs, and the development of technical regulations, standards and conformity assessment procedures in areas of mutual interest.

7. Sanitary and Phytosanitary Measures: the Parties, recognizing the importance of sanitary and phytosanitary (hereinafter referred to as "SPS") measures in minimizing their negative impact on trade, while protecting human, animal or plant life or health, shall establish cooperation for mutual benefit of the Parties.

8. Trade and Investment-Related Legal Framework: the Parties, recognizing the important role of trade and investment-related legal framework in facilitating trade and investment opportunities, with the financial and technical assistance mobilized and funded by the Parties, shall cooperate to develop and improve commercial legal frameworks. Such cooperation may include, but is not limited to, assisting the development of the legal system such as contract law, commercial law, food law, and other laws agreed upon by the Parties.

9. Infrastructure Development: the Parties shall explore opportunities to cooperate in areas including infrastructural construction development, construction technology and infrastructural construction design.

10. Industrial Development: the Parties shall promote customized industrial cooperation for mutual prosperity in areas including diversifying and upgrading their industrial structures, building energy infrastructure for industrial development and the industrial materials and construction facilities market to meet demand and supply.

11. Information and Communication Technology: the Parties, recognizing the rapid development, led by the private sector, of information and communication technology (hereinafter referred to as "ICT") and of business practices concerning ICT-related services both in domestic and international contexts, shall cooperate to promote the development of ICT and ICT-related services with a view to obtaining the maximum benefit of the use of ICT. Such cooperation may include, but is not limited to, improving ICT policies, the creation of ICT-related services, the provision of e-government services, content development, network security and the protection of privacy, network infrastructure, creative and multimedia industries and ICT infrastructure development.

12. Cooperation to alleviate the economic impact of the pandemic is specified in Annex 6-A. Article 6.3: Capacity Building and Technical Assistance

The Parties, recognizing the development and capacity gaps between the Parties and the importance of capacity building for expanding trade and investment, shall develop capacity building and technical assistance activities,

as agreed upon by the Parties, to support the implementation of this Agreement and other areas as mutually agreed.

## **Article 6.4. Committee on Economic Cooperation<sup>6-3</sup>**

1. For purposes of the effective implementation of this Chapter, a Committee on Economic Cooperation composed of government representatives of each Party shall be established.

2. The functions of the Committee shall include, but are not limited to, the following:

(a) developing and coordinating a Work Programme and its implementing mechanism;

(b) working with other Committees to establish and maintaining effective communication and coordination on economic cooperation activities and relevant issues; and

(c) monitoring and evaluating the implementation of the Work Programme to assess the progress of Work Programme, as well as providing recommendations to the Parties, where necessary, for improving the implementation.

## **Article 6.5. Work Programme**

1. For purposes of this Chapter, the Work Programme means the list of economic and technical cooperation activities mutually determined by the Parties. The Work Programme shall be monitored by the Committee on Economic Cooperation for its effective implementation.

2. The Work Programme shall be developed by the Committee on Economic Cooperation in consultation with other established Committees in this Agreement, taking into consideration the priority areas of Economic Cooperation.

3. To encourage effective implementation and utilization of this Agreement, in the Work Programme the Parties will give priority to the forms of cooperation as below, to the extent possible:

(a) supporting human resources development, capacity building, technical assistance, exchanges of views and information, and financial support from available resources;

(b) raising public awareness of areas of mutual interest;

(c) enhancing access to information and opportunities for businesses;

6-4

(d) conducting joint research and development as well as exchanges of experts;

(e) sharing experience, best practices and the best modality for development of sectors of mutual interest;

ff) formulating development policy and strategy; (g) transferring technology;

(h) conducting professional training programs and joint seminars to disseminate knowledge and experiences in legal practices, and formulating projects to improve trade and investment- related laws;

@ strengthening cooperation at relevant international and regional fora; and

@ other forms of cooperation as agreed upon by the Parties.

4. The Work Programme shall be modified by the Committee as and when necessary, subject to the consent of the Parties.

5. Each Party shall designate relevant officials as contact points for coordinating the implementation of the Work Programme after the entry into force of this Agreement. Each Party shall provide the contact details of their respective contact points, and notify promptly of any change in its contact points or any amendment to the details of its contact points.

6. The Parties shall explore opportunities to include priority investment projects in areas of mutual interest in the Work Programme as agreed upon by the Parties.

## **Article 6.6. Resources**

1. The Parties shall provide resources for economic cooperation under this Chapter according to their mutual agreement.

2. The Parties shall utilize the existing financial channels, or other resources for the economic cooperation Work Programme under this Agreement in accordance with their respective domestic laws and regulations.

3. The Parties, on the basis of mutual benefit, may consider cooperation with, and contribution from:

6-5

(a) non-Parties, development partners; or

(b) sub-regional, regional, or international organizations or institutions,

that are interested in developing mutually beneficial cooperation and partnerships, to support the implementation of the Work Programme.

## **Article 6.7. Non-Application of Dispute Settlement**

Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter.

6-6

Annex 6-A Cooperation to Alleviate the Economic Impact of the Pandemic

General Provisions

1. The Parties acknowledge that the coronavirus (COVID-19) presents an unprecedented and severe global challenge to the health and well-being, livelihood and safety of people that requires a coordinated response to ensure the continued flow of goods, services and personnel in global supply chains.

2. The Parties recognize the potential for developing appropriate activities that reinforce efforts to alleviate the

socioeconomic impact of the pandemic reserving policy space in line with their development objectives.

#### Working to Ensure the Flow of Goods in Global Supply Chains

3. The Parties acknowledge the importance of facilitating timely to the extent possible the transportation and customs clearances of essential goods, such as food, critical medical supplies and personal protection equipment in accordance with the Agreement on Trade Facilitation in Annex 1A to the WTO Agreement and domestic laws and regulations.

4. The Parties shall endeavor to refrain from the introduction of export prohibitions or restrictions, non-tariff barriers on essential goods, including food, pharmaceuticals, and critical medical supplies, ensuring that such measures are targeted, proportionate, transparent, temporary and consistent with the WTO rules.

#### Facilitating the Essential Movement of People

5. The Parties acknowledge the importance of facilitating the essential movement of people to the extent possible, including cross-border business travels, while safeguarding public health in line with their efforts to combat

the pandemic as well as minimize socioeconomic impacts of the pandemic.

6. The Parties also acknowledge the benefit of establishing guidelines to

âThe pandemicâ refers to a disease which the World Health Organisation (WHO) has declared a pandemic, such as COVID-19 on 11 March 2020.

6A-1

provide support and assistance to each other and to facilitate the movement of people, including essential cross-border travel to ensure business continuity in accordance with their domestic laws and regulations, and without undermining the efforts to prevent the spread of the virus.

7. The Parties shall endeavor to enhance cooperation to provide appropriate support and assistance to nationals of each other, especially the most vulnerable, who live, work, and study in the otherâs country, working towards the dignity, health and well-being, safety and fair and effective treatments of those affected by the pandemic as well as facilitating the movement of people as appropriate.

#### Strengthening Solidarity to Control the Spread of the Pandemic

8. The Parties recognize that the pandemic response requires worldwide solidarity and global effort, and reaffirm shared commitment to strengthen solidarity and mutual support to control the spread of the pandemic, by addressing its adverse impact on the societies and economies of both Parties.

9. The Parties recognize the importance of sharing information and experience in order to prevent and control the spread of the pandemic.

#### Minimizing the Negative Impacts on Trade and Investment Arising from the Pandemic to Facilitate an Inclusive, Sustainable and Resilient Economic Recovery

10. The Parties shall endeavor to develop and implement cooperation activities to minimize the negative impacts of the pandemic on trade and investment as mutually agreed by the Parties.

11. The Parties shall endeavor to provide relevant information and best practices in a timely manner to the extent possible when adopting a measure with a foreseeable impact on international trade and investment.

12. The Parties shall endeavor to implement joint initiatives with relevant

stakeholders that contribute to facilitating an inclusive, sustainable and resilient economic recovery of both Parties.

6A-2

## Chapter CHAPTER SEVEN TRANSPARENCY

**Article 7.1. Definitions for Purposes of this Chapter: 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) a ruling that adjudicates with respect to a particular act or

practice. Article 7.2: Publication 1. Each Party shall ensure that its laws, regulations, procedures, and

administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made publicly available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible and practicable, each Party, in accordance with its domestic laws and regulations, shall:

(a) publish in advance measures referred to in paragraph 1 that it proposes to adopt; and

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

### **Article 7.3. Provision of Information**

Upon request of a Party, the other Party shall, to the extent possible and practicable, promptly provide information and respond to questions pertaining to any actual or proposed measures referred to in Article 7.2 that the requesting Party considers might affect the operation of this Agreement, regardless of whether the requesting Party has been previously notified of that

7-1

measure.

### **Article 7.4. Administrative Proceedings**

With a view to administering in a consistent, impartial, and reasonable manner its laws, regulations, procedures, and administrative rulings of general application relating to any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings, applying measures referred to in Article 7.2 to particular persons, goods, or services of the other Party in specific cases, that:

(a) wherever possible, in accordance with its domestic laws and regulations, persons of the other Party that are directly affected by a proceeding are provided reasonable notice 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) persons of the other Party that are directly affected by a proceeding 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 domestic laws and regulations.

### **Article 7.5. Review and Appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative actions relating to any matter 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

7-2

(b) a decision based on the evidence and submissions of record or, where required by its domestic laws and regulations the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic laws and regulations, that any decision referred to in subparagraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

## **Article 7.6. Cooperation on Promoting Increased Transparency and Combating Corruption**

1. The Parties agree to cooperate in bilateral ways to promote transparency in respect of international trade and investment

2. The Parties affirm their resolve to combat bribery and corruption in international trade and investment in accordance with its applicable laws and regulations.

3. The Parties, subscribing to the principles of good administrative behavior, agree to cooperate in promoting regulatory quality and performance, including through exchange of information and best practices on their respective policies and regulations.

7-3

## **Chapter CHAPTER EIGHT DISPUTE SETTLEMENT Article 8.1: Definitions for Purposes of this Chapter: Arbitration Panel Means a Panel Established Under Article 8.7;**

arbitrator means a member of an arbitration panel established under Article 8.7;

candidate means an individual who is under consideration for appointment as the third arbitrator under Article 8.9;

complaining Party means a Party that requests the establishment of an arbitration panel under Article 8.7; and

Party complained against means the Party that is alleged to be in violation of this Agreement, as referred to in Article 8.3.

## **Article 8.2. Objective**

1. The objective of this Chapter is to provide an effective, efficient, and transparent process for the avoidance and settlement of disputes arising under this Agreement.

2. The Parties shall at all times 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 raised in accordance with this Chapter.

## **Article 8.3. Scope**

1. Except as otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement wherever

a Party considers that:

(a) a measure adopted by the other Party is inconsistent with its obligations under this Agreement; or

8-1

(b) the other Party has otherwise failed to carry out its obligations under this Agreement.

2. This Chapter shall not apply to Chapter Six (Economic Cooperation), Section B (Anti-Dumping and Countervailing Duties) in Chapter Five (Trade Remedies), Article 2.15 (Sanitary and Phytosanitary Measures) and Article 7.6 (Cooperation on Promoting Increased Transparency and Combating Corruption), and Annex 3-B (Treatment for Certain Goods).

## **Article 8.4. Choice of Forum**

1. Where a dispute arises under this Agreement and under any other agreement to which both Parties are party, including the WTO agreement, the complaining Party may have recourse to dispute settlement procedures available under any of such agreements 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 8.5. Consultations**

1. Either Party may request consultations with the other Party with respect to any matter relating to the interpretation and application of this Agreement, pursuant to Article 8.3.1.
2. The Party requesting consultations shall make the request in writing and shall give the reasons for the request, including the identification of the specific measure at issue and an indication of the factual and legal basis for the complaint.
3. The Party complained against shall reply within 10 days from the date of the receipt of the request for consultations.
4. The Parties shall enter into consultations in good faith, with a view to reaching a mutually satisfactory solution, within 30 days or within 15 days in cases of urgency, including those concerning perishable goods, from the date of receipt of the request for consultations. Unless the Parties otherwise agree, consultations shall take place in the territory of the Party complained against.
5. During consultations, the Parties shall provide sufficient information to enable a full examination of how the measure at issue might affect the implementation and application of this Agreement. The Parties shall treat any confidential information exchanged in the course of consultations on the same

8-2

basis as the Party providing the information.

6. Consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

## **Article 8.6. Good Offices, Conciliation, or Mediation**

1. Good offices, conciliation, and mediation are procedures that are undertaken voluntarily if the Parties so agree.
2. Good offices, conciliation, or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties and be terminated at any time upon request of either Party.
3. If the Parties agree, good offices, conciliation, or mediation may continue while the proceedings of the arbitration panel provided for in this Chapter are in progress.
4. Proceedings involving good offices, conciliation, or mediation, and, in particular, positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

## **Article 8.7. Establishment of the Arbitration Panel**

1. The complaining Party that made a request for consultations under Article 8.5 may request the establishment of an arbitration panel if:
  - (a) the Party complained against does not enter into consultations within 30 days, or within 15 days in cases of urgency including those concerning perishable goods, from the date of receipt of the request for such consultations; or
  - (b) the Parties fail to resolve the dispute through consultations within 60 days, or within 30 days in cases of urgency including those concerning perishable goods, from the date of receipt of the request for such consultations.
2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against. The complaining Party shall identify in its request, the specific measure at issue, and the factual and legal basis for the complaint sufficient to present the problem clearly.

8-3

## **Article 8.8. Terms of Reference of the Arbitration Panel**

Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of an arbitration panel, the terms of reference of the arbitration panel shall be:

âTo examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 8.7, to make findings, determinations, and, if applicable, recommendations and to present written reports as provided in Articles 8.12 and 8.13.â

## **Article 8.9. Composition of the Arbitration Panel**

1. Unless otherwise agreed by the Parties, an arbitration panel shall consist of three arbitrators.
  2. The complaining Party and the Party complained against shall, within 30 days from the date of receipt of the request for the establishment of the arbitration panel, each appoint one arbitrator, who may be its national, and propose up to three candidates for appointment as the third arbitrator who shall be the chair of the arbitration panel. The candidates for the third arbitrator shall not be nationals of either Party, nor have their usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.
  3. The Parties shall endeavor to agree on and appoint the third arbitrator within 30 days of the appointment of the second arbitrator pursuant to paragraph 2, taking into account the candidates proposed. If the Parties fail to agree on and appoint the third arbitrator within this period, the Parties shall meet within the next seven days and select the chair by lot from the list of candidates proposed by both Parties.
  4. The date of the establishment of an arbitration panel shall be the date on which the third arbitrator is appointed.
  5. All arbitrators shall have expertise or experience in law, international trade, or other matters relating to this Agreement, or in the resolution of disputes arising under international trade agreements. Each arbitrator shall be independent, serve in his or her individual capacities, and not be affiliated with, nor take instructions from, either Party or organization related to the dispute, and shall comply with Annex 8-B.
- 8-4
6. Where a Party considers that an arbitrator does not comply with the requirements of Annex 8-B, the Parties shall consult and replace, if so agreed, that arbitrator in accordance with paragraph 7.
  7. If an arbitrator appointed under this Article resigns or becomes unable to participate in the proceedings, or is to be replaced according to paragraph 6, a successor shall be selected within 15 days in accordance with the appointment method provided for in paragraphs 2 and 3, mutatis mutandis. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended for a period beginning on the date the arbitrator resigns or becomes unable to participate in the proceeding, or is to be replaced according to paragraph 6. The work of the arbitration panel shall resume on the date the successor is appointed.

## **Article 8.10. Proceedings of the Arbitration Panel**

1. The arbitration panel shall meet in closed sessions. The Parties shall be present at the meetings only when invited by the arbitration panel to appear before it.
2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements, or rebuttals in the proceedings. All information provided or written submissions made by a Party to the arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.
3. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.
4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.
5. The arbitration panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international law including the Vienna Convention on the Law of Treaties.
6. The arbitration panel shall make its decisions, including its reports, by consensus, provided that where an arbitration

panel is unable to reach consensus, the decisions may be made by majority vote.

7. Upon request of a Party, or on its own initiative, the arbitration panel

8-5

may seek information from any relevant source and may consult experts to obtain their opinion or technical advice on certain aspects of the matter. Before doing so, the arbitration panel shall seek the views of the Parties, without prejudice to its right to seek information. The arbitration panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

8. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

9. Notwithstanding paragraph 8, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential information and written submissions delivered by the other Party to the arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within 20 days from a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

10. The reports of the arbitration panel shall be drafted without the presence of the Parties. The arbitration panel shall base its report on the relevant provisions of this Agreement, and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitration panel.

11. The reports of the arbitration panel shall contain both the descriptive parts summarizing the submissions or arguments of the Parties, and the findings and determinations of the arbitration panel. If the Parties agree, the arbitration panel may make recommendations for resolution of the dispute in its reports. The findings and determinations and, if applicable, any recommendations of the arbitration panel cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

12. The venue for the arbitration panel proceedings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first meeting of the arbitration panel proceedings to be held in the capital of the Party complained against.

### **Article 8.11. Suspension or Termination of Proceedings 1. Where the Parties Agree, the Arbitration Panel May Suspend Its Work at Any Time for a Period Not Exceeding 12 Months from the Date of such**

agreement. Upon request of a Party, the arbitration panel proceedings shall be resumed after such suspension. In the event of such suspension, the

8-6

timeframes regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If the work of the arbitration panel has been continuously suspended for more than 12 months, the authority of the arbitration panel shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of an arbitration panel by jointly so notifying the chair of the arbitration panel at any time before the issuance of the final report to the Parties.

3. Before the arbitration panel makes its decision, it may, at any stage of the proceedings, propose to the Parties that the dispute be settled amicably.

### **Article 8.12. Interim Report**

1. Unless the Parties otherwise agree, the arbitration panel shall, within 90 days from the date of the establishment of the arbitration panel, issue to the Parties an interim report containing the descriptive parts, the findings and determinations, and, if applicable, any recommendations as to:

(a) whether the measure at issue is inconsistent with the obligations of this Agreement; or

(b) whether a Party has otherwise failed to carry out its obligations under this Agreement,

as well as the applicability of the relevant provisions and the basic rationale behind any findings.



2. Where the arbitration panel considers that the deadline for interim report cannot be met, it may extend the period with the consent of the Parties with the written notification stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of the establishment of the arbitration panel.

3. Either Party may submit written comments to the arbitration panel on its interim report within 15 days from the issuance of the report. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate.

### **Article 8.13. Final Report<sup>1</sup>. Unless the Parties Otherwise Agree, the Arbitration Panel Shall Issue a**

8-7

final report to the Parties within 30 days from the date of issuance of the interim report.

2. Where the arbitration panel considers that the deadline for its final report cannot be met, it may extend the period with the consent of the Parties with the written notification stating the reasons for the delay and the date on which the panel plans to issue its final report. Under no circumstances should the final report be issued later than 150 days after the date of the establishment of the arbitration panel.

3. In cases of urgency, including those concerning perishable goods, the arbitration panel shall make every effort to issue its interim and final reports within half of the respective time periods under Articles 8.12.1 and 8.13.1.

### **Article 8.14. Implementation of the Final Report**

1. The determinations of the final report of the arbitration panel shall be final and binding on the Parties.

2. If, in its final report, the arbitration panel determines that the Party complained against has not conformed to its obligations under the relevant provisions of this Agreement, unless the Parties otherwise agree, the Party complained against shall eliminate the non-conformity immediately, or if this is not practicable, within a reasonable period of time.

3. The reasonable period of time referred to in paragraph 2 shall be mutually agreed by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days from the date of issuance of the final report of the arbitration panel, either Party may refer the matter to the original arbitration panel, which shall determine the reasonable period of time.

4. The Party complained against shall notify to the complaining Party any measures that it has taken to comply with the determinations of the arbitration panel, before the expiry of the reasonable period of time agreed by the Parties or determined by the original arbitration panel in accordance with paragraph 3. Where there is disagreement between the Parties as to whether the Party complained against has eliminated the non-conformity as determined in the final report of the arbitration panel within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to the original arbitration panel.

### **Article 8.15. Non-Implementation, Compensation and Suspension of Concessions or other Obligations<sup>8-8</sup>**

1. If the Party complained against fails to notify the implementing measures before the expiry of the reasonable period of time, or notifies to the complaining Party that implementation is impracticable, or the arbitration panel to which the matter is referred pursuant to Article 8.14.4 determines that the Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days from the date of receipt of the request mentioned in paragraph 1, 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 concessions or other obligations under this Agreement. The complaining Party shall have the right to begin suspending concessions or other obligations 30 days after the notification of such suspension. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

3. Notwithstanding paragraph 2, the complaining Party shall not exercise the right to begin suspending concessions or other obligations under paragraph 2 where:

(a) an examination is being undertaken pursuant to paragraph 6; or

(b) a mutually agreed solution has been reached.

For greater certainty, the complaining Party may not suspend the application of concessions or other obligations before the issuance of the arbitration panel's determination pursuant to this Article.

4. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitration panel. The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.

5. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector or sectors as that in which the report of the arbitration panel referred to in Article 8.13 has found a failure to comply

8-9

with the obligations under this Agreement;

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector or sectors, it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based; and

(c) the level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

6. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraph 2, 3, 4, or 5 have not been met, it may refer the matter to the original arbitration panel.

7. The arbitration panel that is established for purposes of this Article or Article 8.14 shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for purposes of this Article or Article 8.14 shall be appointed pursuant to Article 8.9. The arbitration panel established under this Article or Article 8.14 shall issue its report to the Parties within 20 days on the reasonable period of time and 45 days on the other issues after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

## **Article 8.16. Rules of Procedure**

1. Dispute settlement proceedings under this Chapter shall be governed by the Rules of Procedure set out in Annex 8-A. The Parties in consultation with the arbitration panel may agree to adopt additional rules of procedures not inconsistent with the provisions of the Annex.

2. Any period of time or other rule of procedure for arbitration panel provided for in this Chapter and Annex 8-A may be modified by mutual consent of the Parties.

## **Article 8.17. Expenses**

1. Unless the Parties otherwise agree, each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

8-10

2. Unless the Parties otherwise agree, the costs of the chair of the arbitration panel and other expenses associated with the conduct of its proceedings shall be borne in equal shares by the Parties.

8-11

Annex 8-A Rules of Procedure for Arbitration

Definitions 1. For purposes of this Annex:

adviser means a person retained by a Party to advise or assist that Party in connection with the arbitration panel

proceeding;

assistant means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator; and

representative of a Party means any person appointed by a Party according to its domestic laws and regulations

#### Logistical Administration

2. In case the arbitration panel proceedings are held in the territory of a Party, that Party shall be in charge of the logistical administration of the arbitration proceedings, in particular the organization of hearings, unless the Parties otherwise agree.

#### Notifications

3. Any request, notice, written submissions, or other documents delivered by either Party or the arbitration panel shall be transmitted by delivery against receipt, registered post, courier, facsimile transmission or any other means of telecommunication that provides a record of the sending thereof.

4. A Party shall provide a copy of each of its written submissions to the other Party and to each of the arbitrators. A copy of the document shall also be provided in electronic format.

5. All notifications shall be made and delivered to the Ministry of Trade, Industry and Energy of Korea, or its successor and, to the Ministry of Commerce of Cambodia, or its successor, respectively.

6. Minor errors of a clerical nature in any request, notice, written submission, or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

#### 8A-1

7. If the last day for delivery<sup>1</sup> of a document falls on a public holiday of either Party, the document may be delivered on the next business day.

#### First Submissions

8. The complaining Party shall deliver its first written submission no later than 20 days after the date of the establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of receipt of the complaining Party's first written submission.

#### Operation of Arbitration Panels

9. The chair of the arbitration panel shall preside at all of its meetings. The arbitration panel may delegate to the chair authority to make administrative and procedural decisions.

10. Except as otherwise provided for in this Chapter, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions, or computer links.

11. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may, in consultation with the Parties, permit assistants, interpreters, or translators to be present during such deliberations. Any person presents at such deliberations shall maintain the confidentiality of the arbitration panel proceedings unless such information is already made available to the public.

12. The drafting of any decision and ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

13. Where a procedural question arises that is not covered by this Chapter, the arbitration panel may adopt an appropriate procedure that is not inconsistent with this Chapter, unless it considers that the procedural question may affect in a meaningful manner the way in which it examines matters before it, in which case it shall consult with the Parties.

14. The arbitration panel may, in consultation with the Parties, modify any time period applicable in the arbitration panel proceedings and make such other procedural or administrative adjustments as may be required in the proceedings.

<sup>1</sup> For greater certainty, for purposes of this Annex, the delivery date is the date on which documents that have been submitted arrive at the intended place.

#### 8A-2

15. Unless the Parties otherwise agree, the expenses of an arbitration panel, including the remuneration of the arbitrators, shall be borne by the Parties in equal shares.

#### Hearings

16. Unless the Parties otherwise agree, the arbitration panel shall provide for at least one hearing for the Parties to present their case. The chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel. The chair of the arbitration panel shall notify the Parties of the date, time, and location of the hearing in writing. That information shall also be made publicly available by the Party in charge of the logistical administration of the proceeding, when the Parties agree to make the hearing open to the public in accordance with paragraph 21 of this Annex.

17. The arbitration panel may convene additional hearings if the Parties so agree.

18. All arbitrators shall be present during the entirety of any hearing.

19. Representatives of a Party, advisers to a Party, interpreters, translators, relevant administration staff, court reporters, and assistants of the arbitrators may attend the hearing(s), irrespective of whether the hearings are open to the public or not. Unless otherwise decided by the arbitration panel, only the representatives and advisers of a Party may address the arbitration panel.

20. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of those persons who will make oral arguments or presentations at the hearing on behalf of that Party and of representatives, advisers, interpreters, and translators of that Party who will be attending the hearing.

21. The hearings of the arbitration panel shall be closed to the public. The hearings can be open to the public partially or completely upon agreement by the Parties.

22. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

argument

(a) argument of the complaining Party; and

8A-3

(b) argument of the Party complained against. rebuttal argument

(a) reply of the complaining Party; and

(b) counter-reply of the Party complained against.

23. The arbitration panel may direct questions to either Party at any time during a hearing.

24. The arbitration panel shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties.

25. Within 20 days from the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arises during the hearing.

#### Questions in Writing

26. The arbitration panel may at any time during the proceedings address questions in writing to a Party or both Parties. The arbitration panel shall deliver the written questions to the Party whom the questions are addressed and shall send a copy of the questions to the other Party.

27. A Party to whom the arbitration panel addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitration panel. Each Party shall be given the opportunity to provide written comments on the reply within five days from the date of receipt.

#### Confidentiality

28. The Parties and their advisers shall, at all times, maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-

confidential summary of the information contained in its submissions that could be disclosed to the public no later than 20 days after the date of either the request or the submission, whichever is later. Nothing in this paragraph shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when

8A-4

making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

#### Ex Parte Communications

29. The arbitration panel shall not meet or contact a Party in the absence of the other Party. Neither Party shall contact any arbitrator in relation to the dispute in the absence of the other Party or other arbitrators.

30. Neither arbitrator shall discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other arbitrators.

#### Interpretation and Translation

31. Unless the Parties otherwise agree, the common working language for the proceedings of the arbitration panel shall be English. If a Party decides to use interpretation during the proceedings, the arrangement and the cost shall be borne by that Party.

32. Any document submitted for use in any proceeding pursuant to this Chapter shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings shall provide an English language translation of that document.

#### Computation of Time

33. All periods of time laid down in this Chapter shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

34. Where, by reason of the operation of paragraph 7, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the last date of receipt of such document.

Other Proceedings 35. In accordance with Articles 8.14.3, 8.14.4, 8.15.6, and 8.15.7, the

referring Party shall deliver its first written submission within 15 days from the date the referral is made, and the Party complained against shall deliver its

8A-5

written counter-submission within 15 days from the date of receipt of the first written submission.

36. If appropriate, the arbitration panel shall fix the time periods for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time periods for arbitration panel proceedings set out in Articles 8.14, 8.15 and this Annex.

37. Unless otherwise provided, this Annex is also applicable to procedures established under Articles 8.14 and 8.15.

38. The reasonable period of time established pursuant to Articles 8.14 and 8.15 normally should not exceed 15 months from the date of issuance of the arbitration panel's final report. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

8A-6

#### Annex 8-B Code of Conduct for Arbitrator

Definitions 1. For purposes of this Annex:

assistant means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator; and

staff, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

#### Responsibilities to the Process

2. Every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests, and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement proceeding are preserved. Former arbitrators must comply with the obligations established in paragraphs 15 through 18.

#### Disclosure Obligations

3. Prior to confirmation of his or her appointment as an arbitrator under Article 8.9, a candidate shall disclose to the Parties any information which may give rise to justifiable doubts, including any interest, relationship, or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships, and matters.

4. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 3 and shall disclose them. The obligation to disclose is a continuing duty which requires an arbitrator to disclose any such interests, relationships, or matters that may arise at any stage of the proceedings. The arbitrator shall disclose such interests, relationships, or matters by communicating them in writing to the Joint Committee for consideration by the Parties.

#### Duties of Arbitrators

##### 8B-1

5. Upon appointment, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceedings.

6. An arbitrator shall carry out all duties fairly and diligently.

7. An arbitrator shall consider only those issues raised in the proceedings and necessary for a decision and shall not delegate the duty to decide to any other person.

8. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of and comply with paragraphs 2, 3, 4, 16, 17, and 18.

9. An arbitrator shall not engage in ex parte communications concerning the proceeding in accordance with paragraphs 29 and 30 of Annex 8-A.

#### Independence and Impartiality of Members of an Arbitration Panel

10. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner, shall avoid creating an appearance of impropriety or bias, and shall not be influenced by self-interest, outside pressure, political considerations, public clamor, and loyalty to a Party or fear of criticism.

11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the arbitrator's duties.

12. An arbitrator shall not use his or her position on the arbitration panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator.

13. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgement.

14. An arbitrator shall avoid entering into any relationship, or acquiring

any financial interest, that is likely to affect the arbitrator's impartiality or that might reasonably create an appearance of impropriety or bias.

#### Obligations of Former Arbitrators

##### 8B-2

15. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

#### Confidentiality

16. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceedings, or acquired during the proceedings, except for the purposes of those proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others, or to adversely affect the interest of others.

17. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication.

18. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's view.

8B-3

## **Chapter CHAPTER NINE EXCEPTIONS**

**Article 9.1. General Exceptions For Purposes of Chapter Two (Trade In Goods), Chapter Three (Rules of Origin), Chapter Four (Customs Procedures and Trade Facilitation), and Chapter Five (Trade Remedies), Article XX of GATT 1994 and Its Interpretative Notes Are Incorporated Into and Made Part of this Agreement, Mutatis Mutandis.!**

**Article 9.2. Security Exceptions**1. **Nothing In this Agreement Shall Be Construed to:**

(a)

(b)

(c)

require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

@

(ii)

(iii)

(iv)

relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as carried on, directly or indirectly, for the purposes of supplying a military establishment;

relating to fissionable and fusionable materials or the materials from which they are derived;

relating to the protection of critical public infrastructure from deliberate attempts intended to disable or degrade such infrastructure; or

taken in time of national emergency, war or other emergency in international relations; or

prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

' 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.

9-1

2. The Joint Committee shall be informed to the fullest extent possible of measures taken under subparagraphs 1(b) and (c) and of their termination.

### **Article 9.3. Taxation**

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. 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 tax convention, the latter shall prevail to the extent of the inconsistency. 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. This Agreement shall only grant rights or impose obligations with respect to taxation measures where they are granted or imposed under Article 2.3 (National Treatment) to the extent provided under Article I of GATT 1994,

4. For purposes of this Article:

(a) tax convention means a convention for the elimination of double taxation with respect to taxes on income and capital gains and the prevention of tax evasion and avoidance or other international taxation agreement or arrangement to which both Parties are party;

(b) taxes and taxation measures do not include customs duties as defined in Article 1.1 (General Definitions) and measures listed in exceptions (b), (c), (d), and (e) of that definition; and

(c) competent authorities means:

@) for Korea, the Deputy Minister for Tax and Customs, Ministry of Economy and Finance, or his or her successor; and

Gi) for Cambodia, the Minister of Economy and Finance or the Minister's authorized representative.

9-2

## **Article 9.4. 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.

## **Article 9.5. Confidentiality Unless Otherwise Provided In this Agreement, Where a Party Provides Information to the other Party In Accordance with this Agreement and**

designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information.

9-3

# **Chapter CHAPTER TEN INSTITUTIONAL AND FINAL PROVISIONS**

## **Section Section a: Institutional Provisions**

### **Article 10.1. Joint Committee1. the Parties Hereby Establish a Joint Committee Composed of Relevant Government Officials of Each Party. It Shall Be Co-chaired by the Minister for Trade, Industry and Energy of Korea and the Minister of Commerce of Cambodia, or Their Respective Designees.**

2. The Joint Committee shall:

(a) review and supervise the implementation and operation of this Agreement;

(b) supervise and coordinate the work of all committees, working groups, and other bodies established under this Agreement;

(c) consider ways to further enhance trade and investment relations between the Parties;

(d) without prejudice to the procedures under Chapter Eight (Dispute Settlement), seek to resolve problems or disputes that may arise relating to the interpretation or application of this Agreement;

(e) monitor the progress of the Work Programme and provide guidance; and



ff) consider any other matter that may affect the operation of this Agreement, or other areas covered by this Agreement as the Parties may agree.

3. The Joint Committee may:

(a) establish and delegate responsibilities to ad hoc and standing committees, working groups, or other bodies;

(b) consider and recommend to the Parties any amendment to this Agreement;

(c) adopt interpretations of the provisions of this Agreement;

10-1

(d) adopt its own rules of procedure; and

(e) make recommendations to the Parties. 4. When a Party submits information considered as confidential under its laws and regulations to the Joint Committee, committees, working groups, or any other bodies, the other Party shall treat that information as confidential. Article 10.2: Procedures of the Joint Committee

1. Unless the Parties agree otherwise, the Joint Committee shall convene:

(a) the first session within 12 months from the entry into force of this Agreement;

(b) in annual regular session thereafter, with such sessions to be held alternately in the territory of each Party; and

(c) in special session within 30 days from receipt of a request of either Party, with such sessions to be held in the territory of the other Party or at such other locations as the Parties may agree.

2. The meetings of the Joint Committee may be held in person or, if agreed by the Parties, by any technological means available to them.

3. All decisions and recommendations of the Joint Committee shall be taken by mutual agreement. Article 10.3: Committees and Working Groups

1. The following Committees are hereby established under the auspices of the Joint Committee.

(a) The Committee on Trade in Goods; in accordance with Article 2.17 (Committee on Trade in Goods)

(b) The Committee on Rules of Origin and Customs Procedures, in accordance with Article 4.18 (Committee on Rules of Origin and Customs Procedures)

(c) The Committee on Economic Cooperation, in accordance with Article 6.4 (Committee on Economic Cooperation)

10-2

2. The Joint Committee may establish additional committees, working groups, or any other bodies, including the Committee on Transparency pursuant to Article 10.6.(b)(Work Programme) under this Agreement.

3. The composition, frequency of meetings, and functions of the committees, working groups, or any other bodies shall be in accordance with the relevant provisions of this Agreement or determined by the Joint Committee consistent with this Agreement.

4. The committees, working groups, or any other bodies shall inform the Joint Committee of their schedules and agendas sufficiently in advance of their meetings. They shall report to the Joint Committee on their activities at each regular meeting of the Joint Committee.

5. The Joint Committee may decide to change or undertake a task

assigned to a committee, a working group, or any other body, or may dissolve a committee, a working group, or any other body.

**Article 10.4. Contact Points 1. In Order to Facilitate Communications between the Parties on Any Trade Matter Covered by this Agreement, the Parties Hereby Establish the Following Contact Points:(a) for Korea, the Ministry of Trade, Industry and Energy; and**

(b) for Cambodia, the Ministry of Commerce; or their respective successors. 2. Upon the request of either Party, the contact point of the other Party shall indicate the office or official responsible for any matter relating to the implementation of this Agreement, and provide the required support to

facilitate communications with the requesting Party. Each Party shall notify the other Party of any change in its contact point in due time.

## **Section Section B: Final Provisions**

### **Article 10.5. Annexes, Appendices, and Footnotes**

The Annexes, Appendices, and footnotes to this Agreement shall form an integral part of this Agreement.

10-3

### **Article 10.6. Work Programme the Parties Shall:**

(a) consult and initiate negotiations on trade in services and investment within one year after the entry into force of this Agreement; and

(b) establish a Committee on Transparency within a reasonable period of time as agreed by the Parties, with a view to the effective implementation and operation of Chapter Seven (Transparency).

### **Article 10.7. Review of the Agreement**

After four years following the date of entry into force of this Agreement, or at any time thereafter upon the request of a Party, the Parties may undertake a review of this Agreement with a view to furthering these objectives of the Agreement. The review may include, but is not limited to, improvement of the market access of the Parties for the purpose of enhancing trade between the Parties.

### **Article 10.8. Amendments**

The Parties may agree, in writing, to amend this Agreement. Any amendment shall enter into force after the Parties exchange written notifications through diplomatic channels certifying that they have completed all necessary domestic legal requirements and procedures, on such date as the Parties may agree. The amendments shall form an integral part of this Agreement.

### **Article 10.9. Amendments to the WTO Agreement**

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall enter into consultation to consider amending the relevant provisions of this Agreement, as appropriate, in accordance with Article 10.8.

### **Article 10.10. Entry Into Force**

This Agreement shall enter into force 60 days after the date on which the Parties have exchanged written notifications through diplomatic channels

10-4

certifying that they have completed all necessary domestic legal requirements and procedures, or on such other date as the Parties may agree in writing. Article 10.11: Termination

Either Party may terminate this Agreement by written notification through

diplomatic channels to the other Party and such termination shall take effect six months after the date of the notification.

### **Article 10.12. Authentic Texts this Agreement Is Drawn Up In Duplicate In the Korean, Khmer and English**

languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Seoul and Phnom Penh, on the 26th day of October, in the year 2021, in the Korean, Khmer and English languages.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA THE KINGDOM OF CAMBODIA

10-5