Australian Government

Department of Foreign Affairs and Trade

Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea

(Seoul, 8 April 2014)

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Entry into force for Australia: 12 December 2014

AUSTRALIAN TREATY SERIES
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PREAMBLE

The Government of Australia (hereinafter referred to as "Australia") and the Government of the Republic of Korea (hereinafter referred to as "Korea") (hereinafter referred to as "the Parties"):

Reinforcing the longstanding ties of friendship and cooperation between them;

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

Encouraging a closer economic partnership that will bring economic and social benefits, create new employment opportunities, and improve living standards for their people;

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

Promoting a predictable, transparent, and consistent business environment that will assist enterprises in planning effectively and using resources efficiently;

Desiring to strengthen a mutually beneficial cooperative framework to foster creativity and innovation, and promote stronger linkage in and between dynamic sectors of their economies;

Recognising that expanding the economic relationship can assist in promoting sustainable development in its economic, social and environmental dimensions;

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

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

Have agreed as follows:

CHAPTER 1
INITIAL PROVISIONS AND DEFINITIONS

Section A: Initial Provisions

ARTICLE 1.1: ESTABLISHMENT OF A FREE TRADE AREA

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

ARTICLE 1.2: RELATION TO OTHER AGREEMENTS

1. Each Party affirms its existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which both Parties are party, including the WTO Agreement.

2. This Agreement shall not be construed to derogate from any international legal obligation between the Parties that provides for more favourable 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 other agreements to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

ARTICLE 1.3: EXTENT OF OBLIGATIONS

1. In accordance with customary international law and unless otherwise provided in this Agreement, for the purposes of determining a Party's compliance with this Agreement, the exercise of, or failure to exercise, governmental authority of that Party:

(a) by a central, regional or local level of government; or

(b) delegated by a central, regional or local level of government,

shall be considered an exercise of, or failure to exercise, governmental authority by a Party.

2. For greater certainty, and unless otherwise provided in this Agreement, the national treatment obligations included in this Agreement shall apply to a central, regional and local level of government, and the treatment to be accorded by a Party at a regional or local level of government means treatment no less favourable than the most favourable treatment that the

regional or local level of government accords to any goods, services, persons or investments of investors, as described in those national treatment obligations, of the Party of which it forms a part.

Section B: General Definitions

ARTICLE 1.4: DEFINITIONS

For the purposes of this Agreement, unless otherwise specified:

central level of government means:

(a) for Australia, the Commonwealth Government; and

(b) for Korea, the central level of government;

covered investment means, with respect to a Party, an investment, as defined in relevant Chapters, in its territory of an investor of the other Party that is in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

customs administration means:

(a) for Australia, the Australian Customs and Border Protection Service, or its successor; and

(b) for Korea, the Korea Customs Service, or its successor;

customs duty includes any duty or charge of any kind imposed on, or in connection with, the importation of a good of the other Party, including any form of surtax or surcharge imposed on or in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT, or any equivalent provision of a successor agreement to which both Parties are party;

(b) additional customs duty collected as a result of a measure consistent with Chapter 6 (Trade Remedies);

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

(d) 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 established in Appendix 2-A-1;

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

days means calendar days;

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

enterprise of a Party means an enterprise constituted or organised under the law of a Party;

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

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

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

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

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

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

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

Import Licencing Agreement means the *Agreement on Import Licencing Procedures*, in Annex 1A of the WTO Agreement;

Joint Committee means the Joint Committee established in Article 21.3 (Joint Committee);

local level of government means:

(a) for Australia, any government below a regional level of government; and

(b) for Korea, a local government as defined in the *Local Autonomy Act*;

measure includes any law, regulation, procedure, requirement, or practice;

national means:

(a) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* or a permanent resident as defined in accordance with the *Migration Regulations 1994*; and

(b) for Korea, a Korean national within the meaning of the *Nationality Act*;

originating means qualifying under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

person means a natural person or an enterprise;

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

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

regional level of government means:

(a) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory; and

(b) for Korea, "regional level of government" is not applicable;

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

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

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

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

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

territory means:

(a) for Australia, the territory of Australia:

  (i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

  (ii) including Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law; and

(b) for Korea, the land, maritime, and air space 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 may exercise sovereign rights or jurisdiction in accordance with international law and its law;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, in Annex 1C of the WTO Agreement;

WTO means the World Trade Organization; and

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

CHAPTER 2
TRADE IN GOODS

ARTICLE 2.1: SCOPE

Unless otherwise provided, this Chapter shall apply to trade in goods of a Party.

ARTICLE 2.2: NATIONAL TREATMENT

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

ARTICLE 2.3: ELIMINATION OF CUSTOMS DUTIES

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

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

3. If at any moment a Party reduces its applied most-favoured-nation (hereinafter referred to as "MFN") customs duty rate after the date of 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 included in Annex 2-A.

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

5. For greater certainty, a Party may raise a customs duty to the level established in its Schedule to Annex 2-A following a temporary unilateral reduction.

ARTICLE 2.4: GOODS RE-ENTERED AFTER REPAIR OR ALTERATION

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

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

(b) may have resulted in an increased value of the good.

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

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

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

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

ARTICLE 2.5: DUTY-FREE ENTRY OF COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE AND PRINTED ADVERTISING MATERIALS

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

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

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

ARTICLE 2.6: IMPORT AND EXPORT RESTRICTIONS

1. Unless 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 for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its interpretive notes, and to this end Article XI of GATT 1994, including its interpretive notes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Where a Party proposes to adopt an export prohibition or restriction on foodstuffs or energy and mineral resources in accordance with paragraph 2(a) of Article XI of GATT 1994, the Party shall:

(a) seek to limit such proposed prohibition or restriction to the extent necessary, giving due consideration to its possible effects on the other Party's foodstuff or energy and mineral resources security;

(b) provide notice in writing, as far in advance as practicable, to the other Party of such proposed prohibition or restriction and its reasons together with its nature and expected duration; and

(c) on request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to the proposed prohibition or restriction.

ARTICLE 2.7: IMPORT LICENSING

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after the date of entry into force of this Agreement, 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. Prior to applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government Internet site or in a single official journal. To the extent possible, the Party shall do so at least 21 days before the new procedure or modification takes effect.

ARTICLE 2.8: ADMINISTRATIVE FEES AND FORMALITIES

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994, including its interpretive notes, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, and any additional customs duty collected as a result of a measure consistent with Chapter 6 (Trade Remedies)) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

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

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

ARTICLE 2.9: EXPORT DUTIES, TAXES OR OTHER CHARGES

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

ARTICLE 2.10: NON-TARIFF MEASURES

1. Further to Chapter 19 (Transparency), the Parties recognise the importance of ensuring the transparency of non-tariff measures affecting trade between the Parties and that any such measures should not create an unnecessary obstacle to trade between the Parties.

2. To this end, the Committee on Trade in Goods established in Article 21.4 (Committees and Working Groups) shall, when a Party identifies a specific non-tariff measure, review that measure. The Committee on Trade in Goods shall review the non-tariff measure only after either Party objectively demonstrates that the relevant coordination mechanism, technical meeting, committee or working group, if any, that is most closely related to such a measure has failed to produce a satisfactory resolution within a reasonable period of time.

3. The Committee on Trade in Goods shall, for the non-tariff measure referred to in paragraph 2, consider approaches that may better facilitate trade between the Parties and present to the Parties the results of its consideration, including any recommendations, preferably within 12 months. If necessary, the results of the consideration and recommendations of the Committee on Trade in Goods shall be submitted to the next meeting of the Joint Committee for consideration and/or action.

ARTICLE 2.11: COMMITTEE ON TRADE IN GOODS

1. The functions of the Committee on Trade in Goods established in accordance with Article 21.4 (Committees and Working Groups) shall include:

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

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

2. The Committee shall meet on request of a Party or the Joint Committee to consider any matters relating to trade in goods.

ARTICLE 2.12: DEFINITIONS

For the 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;

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

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

ANNEX 2-A
ELIMINATION OF CUSTOMS DUTIES

Section A: Tariff Schedule of Australia

1. Relation to the *Australian Customs Tariff Act 1995*. The items set forth in Section B of this Annex are generally expressed in terms of the corresponding items in Schedule 3 to the *Australian Customs Tariff Act 1995* (Tariff Act) and the interpretation of the items in Section B of this Annex, including the product coverage of subheadings in Section B of this Annex, shall be governed by the Tariff Act. To the extent that the items set forth in Section B of this Annex are identical to the corresponding items in Schedule 3 of the Tariff Act the items in Section B of this Annex shall have the same meaning as the corresponding items in the Tariff Act.

2. Base Rates of Customs Duty. The base rates of customs duty set out in this schedule reflect the Australian most-favoured-nation rates of duty in effect on 1 January 2010.

3. Staging. The following staging categories apply to the elimination of customs duties by Australia pursuant to Article 2.3:

(a) category "0" – customs duties on originating goods provided for in the items in staging category "0" shall be eliminated entirely and such goods shall be free of customs duty on the date of entry into force of this Agreement;

(b) category "3" – customs duties on goods in category 3 shall be reduced to 3.3 per cent on the date this Agreement enters into force and shall then be reduced to 1.7 per cent on 1 January of year two, and such goods shall be free of customs duty, effective 1 January of year three;

(c) category "3A" – the *ad valorem* component of compound customs duties on goods in category 3A shall be reduced to 3.3 per cent on the date this Agreement enters into force and shall then be reduced to 1.7 per cent on 1 January of year two. The specific component of compound customs duties on goods in category 3A shall be reduced to A$8,000 on the date this Agreement enters into force and shall then be reduced to A$4,000 on 1 January of year two. Such goods shall be free of customs duty, effective 1 January of year three;

(d) category "5" – customs duties on goods in category 5 shall be reduced to 4 per cent on the date this Agreement enters into force and shall then be removed in four equal annual stages beginning on 1 January of year two, and such goods shall be free of customs duty, effective 1 January of year five;

(e) category "8A" – customs duties on goods in category 8A shall be removed in five equal annual stages beginning on 1 January of year four, and such goods shall be free of customs duty, effective 1 January of year eight;

4. The base rate of customs duty and staging category for an item are indicated for the item in Australia's Schedule.

5. Interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest Australian dollar.

6. For the purposes of this Schedule, **year one** means the year of entry into force of this Agreement.

7. For the purposes of this Schedule, beginning in year two, each annual stage of tariff reduction shall take effect on 1 January of the relevant year.

Section B: Tariff Schedule of Korea

1. Relation to the Harmonized Tariff Schedule of Korea (HSK). The provisions of this Schedule are generally expressed in terms of the HSK, and the interpretation of the provisions of this Schedule, including the product coverage of subheadings of this Schedule, shall be governed by the General Notes, Section Notes, and Chapter Notes of the HSK. To the extent that provisions of this Schedule are identical to the corresponding provisions of the HSK, the provisions of this Schedule shall have the same meaning as the corresponding provisions of the HSK.

2. Base Rates of Customs Duty. The base rates of customs duty set out in this Schedule reflect the Korean Customs Duty most-favoured-nation rates of duty in effect on 1 January 2010.

3. Staging. The following staging categories apply to the reduction or elimination of customs duties by Korea pursuant to Article 2.3:

(a) customs duties on originating goods provided for in the items in staging category "0" shall be eliminated entirely and such goods shall be free of customs duty on the date of entry into force of this Agreement;

(b) customs duties on originating goods provided for in the items in staging category "3" shall be removed in three equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year three;

(c) customs duties on originating goods provided for in the items in staging category "5" shall be removed in five equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year five;

(d) customs duties on originating goods provided for in the items in staging category "7" shall be removed in seven equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year seven;

(e) customs duties on originating goods provided for in the items in staging category "10" shall be removed in 10 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 10;

(f) customs duties on originating goods provided for in the items in staging category "12" shall be removed in 12 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 12;

(g) customs duties on originating goods provided for in the items in staging category "13" shall be removed in 13 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 13;

(h) customs duties on originating goods provided for in the items in staging category "15" shall be removed in 15 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 15;

(i) customs duties on originating goods provided for in the items in staging category "17" shall be removed in 17 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 17;

(j) customs duties on originating goods provided for in the items in staging category "18" shall be removed in 18 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 18;

(k) customs duties on originating goods provided for in the items in staging category "20" shall be removed in 20 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 20;

(l) customs duties on originating goods provided for in the items in staging category "B" shall be reduced by 50 per cent in 10 equal annual stages beginning on the date of entry into force of this Agreement and shall remain at that rate thereafter;

(m) customs duties on originating goods provided for in the items in staging category "S-1" shall be subject to the following provisions:

  (i) for goods entered into Korea from 1 December through 30 April, customs duties shall be eliminated entirely and such goods shall be free of customs duty on the date of entry into force of this Agreement; and

  (ii) for goods entered into Korea from 1 May through 30 November, customs duties shall be removed in 15 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 15;

(n) customs duties on originating goods provided for in the items in staging category "S-2" shall be subject to the following provisions:

  (i) for goods entered into Korea from 1 October through 31 March, customs duties shall remain at base rates; and

(ii) for goods entered into Korea from 1 April through 30 September, customs duties shall be reduced to 30 per cent *ad valorem* on the date of entry into force of this Agreement. Beginning 1 January of year two, customs duties shall be removed in six equal annual stages, and such goods shall be free of customs duty, effective 1 January of year seven;

(o) customs duties on originating goods provided for in the items in staging category "S-3" shall be subject to the following provisions:

(i) for goods entered into Korea from 1 October through 31 March, customs duties shall remain at base rates; and

(ii) for goods entered into Korea from 1 April through 30 September, customs duties shall be removed in 18 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 18;

(p) customs duties on originating goods provided for in the items in staging category "S-4" shall be subject to the following provisions:

(i) for goods entered into Korea from 1 May through 30 November, customs duties shall remain at base rates; and

(ii) for goods entered into Korea from 1 December through 30 April, customs duties shall be reduced to 24 per cent *ad valorem* on the date of entry into force of this Agreement. Beginning 1 January of year two, customs duties shall be removed in four equal annual stages, and such goods shall be free of customs duty, effective 1 January of year five;

(q) customs duties on originating goods provided for in the items in staging category "S-5" shall be subject to the following provisions:

(i) for goods entered into Korea from 1 November through 30 April, customs duties shall remain at base rates; and

(ii) for goods entered into Korea from 1 May through 31 October, customs duties shall be removed in 15 equal annual stages beginning on the date of entry into force of this Agreement, and such goods shall be free of customs duty, effective 1 January of year 15;

(r) customs duties on originating goods provided for in the items in staging category "E" shall remain at base rates; and

(s) no obligations regarding customs duties in this Agreement shall apply with respect to items in staging category "R". Nothing in this Agreement shall affect Korea's

rights and obligations with respect to its implementation of the commitments set out in the WTO document WT/Let/492 (*Certification of Modifications and Rectifications to Schedule LX – Republic of Korea*) dated 13 April, 2005 and any amendments thereto.

4. The base rate of customs duty and staging category are indicated in Korea's Schedule.

5. Interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the rate of customs duty is expressed in monetary units, at least to the nearest Korean won.

6. For the purposes of this Schedule, **year one** means the year of entry into force of this Agreement.

7. For the purposes of this Schedule, beginning in year two, each annual stage of tariff reduction shall take effect on 1 January of the relevant year.

Appendix 2-A-1

Korea

1. This Appendix applies to tariff rate quotas (TRQs) provided for in this Agreement and sets out modifications to the Harmonized Schedule of Korea (HSK) that reflect the TRQs that Korea shall apply to certain originating goods under this Agreement. In particular, originating goods of Australia included under this Appendix shall be subject to the rates of duty as set out in this Appendix in lieu of the rates of duty specified in Chapters 1-97 of the HSK. Notwithstanding any other provision of the HSK, originating goods of Australia in the quantities described in this Appendix shall be permitted entry into the territory of Korea as provided in this Appendix. Furthermore, any quantity of originating goods imported from Australia under a TRQ provided for in this Appendix shall not be counted toward the in-quota amount of any TRQ provided for such goods elsewhere in the HSK.

2. Any enterprise or national of a Party that fulfils Korea's importing legal and administrative requirements shall be eligible to be considered for a quota allocation under this TRQ.

3. Each Party shall implement and administer the TRQs set out in this Appendix in accordance with Article XIII of GATT 1994, including its interpretive notes, and the Import Licensing Agreement.

4. Over the course of each year, Korea's administering authority shall publish, in a timely fashion on its designated publicly available Internet site, administration procedures, utilisation rates and remaining available quantities for each TRQ.

5. Each Party shall notify the other Party of any new or modified administration of a TRQ established in this Appendix prior to its application. On written request of a Party, the Parties shall consult regarding a Party's administration of its TRQs at the next meeting of the Committee on Trade in Goods to arrive at a mutually satisfactory agreement on administration. The Parties shall consider prevailing supply and demand conditions in the consultations.

Butter and other fats and oils derived from milk

6. (a) The aggregate quantity of originating goods of Australia described in subparagraph (c) that shall be permitted to enter duty free in a particular year is specified below:

Year	Quantity (Metric Tonnes)
1	113
2	115
3	118
4	120
5	122
6	125
7	127
8	130
9	132
10	135
11	138
12	141
13	143
14	146
15	Unlimited

(b) Duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be removed in accordance with staging category 15 as described in paragraph 3(h) of Annex 2-A.

(c) Subparagraph (a) applies to the following HSK provisions: 0405100000 and 0405900000.

Fresh, grated or powdered, processed, and all other cheeses

7. (a) The aggregate quantity of originating goods of Australia described in subparagraph (c) that shall be permitted to enter duty free in a particular year is specified below:

Year	Quantity (Metric Tonnes)
1	4,630
2	4,769
3	4,912
4	5,059
5	5,211
6	5,367
7	5,528
8	5,694
9	5,865
10	6,041
11	6,222
12	6,409
13	4,443
14	4,576
15	4,714
16	4,855
17	5,001
18	383
19	394
20	Unlimited

(b) Duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be removed in accordance with:

(i) staging category 13 as described in paragraph 3(g) of Annex 2-A for the following HSK provision: 0406901000;

(ii) staging category 18 as described in paragraph 3(j) of Annex 2-A for the following HSK provisions: 0406101010, 0406101020, 0406101090 and 0406300000; and

(iii) staging category 20 as described in paragraph 3(k) of Annex 2-A for the following HSK provisions: 0406200000, 0406902000, 0406903000, 0406904000 and 0406909000.

(c) Subparagraph (a) applies to the following HSK provisions:

(i) from year 1 through year 12, 0406101010, 0406101020, 0406101090, 0406200000, 0406300000, 0406901000, 0406902000, 0406903000, 0406904000 and 0406909000;

(ii) from year 13 through year 17, 0406101010, 0406101020, 0406101090, 0406200000, 0406300000, 0406902000, 0406903000, 0406904000 and 0406909000; and

(iii) from year 18 through year 19, 0406200000, 0406902000, 0406903000, 0406904000 and 0406909000.

Oranges

8. (a) The aggregate quantity of originating goods of Australia described in subparagraph (c) that shall be permitted to enter duty free in a particular year is specified below:

Year	Quantity (Metric Tonnes)
1	20
2	20
3	20
4	20
5	20
6	20
7	30
8	30
9	30
10	30

After year 10, the in-quota quantity shall remain the same as the quantity of year 10.

(b) Duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be treated in accordance with staging category S-2 as described in paragraph 3(n) of Annex 2-A.

(c) Subparagraph (a) applies to the following HSK provision: 0805100000.

Malt and malting barley

9. (a) The aggregate quantity of originating goods of Australia described in subparagraph (c) that shall be permitted to enter duty free in a particular year is specified below:

Year	Quantity (Metric Tonnes)
1	10,000
2	10,200
3	10,404
4	10,612
5	10,824
6	11,041
7	11,262
8	11,487
9	11,717
10	11,951
11	12,190
12	12,434
13	12,682
14	12,936
15	Unlimited

(b) Duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be removed in accordance with staging category 15 as described in paragraph 3(h) of Annex 2-A.

(c) Subparagraph (a) applies to the following HSK provisions: 1003001000 and 1107100000.

Soybeans for human consumption, identity-preserved

10. (a) The aggregate quantity of originating goods of Australia described in subparagraph (d) that shall be permitted to enter duty free in a particular year is specified below:

Year	Quantity (Metric Tonnes)
1	500
2	550
3	600
4	650
5	700
6	750
7	800
8	850
9	900
10	950
11	1,000

After year 11, the in-quota quantity shall remain the same as the quantity of year 11.

(b) Identity-preserved soybeans means a shipment of soybeans containing not less than 95 per cent of any single variety of soybean and not more than 1 per cent of foreign material. Identity preserved soybeans may not be shipped in bulk, but shall be shipped in bags or containers.

(c) Duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be treated in accordance with staging category E as described in paragraph 3(r) of Annex 2-A.

(d) Subparagraph (a) applies to the following HSK provisions: 1201009010 and 1201009090.

Fodder, other

11. (a) The aggregate quantity of originating goods of Australia described in subparagraph (c) that shall be permitted to enter duty free in a particular year is specified below:

Year	Quantity (Metric Tonnes)
1-14	50,000 (per year)
15	unlimited

(b) Duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be removed in accordance with staging category 15 as described in paragraph 3(h) of Annex 2-A.

(c) Subparagraph (a) applies to the following HSK provision: 1214909090.

Prepared dry milk and other

12. (a) The aggregate quantity of originating goods of Australia described in subparagraph (c) that shall be permitted to enter duty free in a particular year is specified below:

Year	Quantity (Metric Tonnes)
1	470
2	484
3	499
4	514
5	529
6	545
7	561
8	578
9	595
10	613
11	632
12	651
13	35
14	36
15	Unlimited

(b) Duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be removed in accordance with:

(i) staging category 13 as described in paragraph 3(g) of Annex 2-A for the following HSK provision: 1901101010; and

(ii) staging category 15 as described in paragraph 3(h) of Annex 2-A for the following HSK provision: 1901101090.

(c) Subparagraph (a) applies to the following HSK provisions:

(i) from year 1 through year 12, 1901101010 and 1901101090; and

(ii) from year 13 through year 14, 1901101090.

CHAPTER 3
RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A: Rules of Origin

ARTICLE 3.1: ORIGINATING GOODS

Unless otherwise provided in this Chapter, a good shall be regarded as originating in a Party where:

(a) the good is wholly obtained in the territory of one or both of the Parties within the meaning of Article 3.2;

(b) the good is produced entirely in the territory of one or both of the Parties, exclusively from originating materials;

(c) the good satisfies all applicable requirements of Annex 3-A, as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers; or

(d) the good otherwise qualifies as an originating good in accordance with this Chapter.

ARTICLE 3.2: WHOLLY OBTAINED GOODS

For the purposes of Article 3.1(a), the following goods shall be considered to be wholly obtained in the territory of one or both of the Parties:

(a) mineral goods and other natural resources taken or extracted from the territory of one or both of the Parties;

(b) vegetable goods grown and harvested, picked or gathered in the territory of one or both of the Parties;

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

(d) goods obtained from live animals born and raised in the territory of one or both of the Parties;

(e) goods obtained from hunting, trapping, gathering, capturing, aquaculture or fishing conducted within the land territory, internal waters and the outer limit of the territorial sea of one or both of the Parties;

(f) fish, shellfish and other marine life taken from the sea, seabed, ocean floor or subsoil outside the territorial seas of the Parties by a vessel registered or recorded with a Party and entitled to fly its flag;

(g) goods produced on board a factory ship from the fish, shellfish or other marine life referred to in subparagraph (f), provided that such factory ship is registered or recorded with a Party and entitled to fly its flag;

(h) goods, other than fish, shellfish and other marine life, taken or extracted from the seabed, ocean floor or subsoil outside the territory of one or both of the Parties by a Party or a person of a Party, provided that the Party or person of the Party has rights to exploit such seabed, ocean floor or subsoil;

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

(j) waste and scrap derived from:

  (i) production in the territory of one or both of the Parties; or

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

(k) goods collected from the territory of one or both of the Parties which can no longer perform their original purpose and are fit only for the recovery of raw materials; and

(l) goods produced entirely in the territory of one or both of the Parties exclusively from goods referred to in this Article or from their derivatives, at any stage of production.

ARTICLE 3.3: REGIONAL VALUE CONTENT

1. Where Annex 3-A specifies a regional value content requirement, the regional value content shall be calculated in accordance with one of the following methods:

(a) build-down method

$$RVC = \frac{AV - VNM}{AV} \times 100$$

(b) build-up method

$$RVC = \frac{VOM}{AV} \times 100$$

where,

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

AV is the adjusted value of the good and shall be:

(a) the FOB value of the good determined in accordance with the Customs Valuation Agreement, inclusive of the cost of transport and insurance to the port or site of final shipment abroad; or

(b) if there is no FOB value of the good or it is unknown and cannot be ascertained, the value determined in accordance with the Customs Valuation Agreement, *mutatis mutandis*.

VNM is the value of non-originating materials (including materials of undetermined origin) used in the production of the good, as determined in Article 3.4; and

VOM is the value of originating materials used in the production of the good, as determined in Article 3.4.

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

3. All values for the purposes of calculating regional value content shall be determined in accordance with the Customs Valuation Agreement. For this purpose, the Customs Valuation Agreement shall apply *mutatis mutandis* to domestic transactions.

ARTICLE 3.4: VALUE OF MATERIALS

1. Subject to paragraph 2, the value of non-originating materials referred to in Article 3.3 shall be:

(a) for a material imported directly by the producer of a good, the CIF value at the time of importation of the material; or

(b) for a material acquired within the territory of the Party where the good is produced, the earliest ascertainable value of the non-originating material in the territory of that Party.

2. For the purposes of paragraph 1, the following, where included in accordance with paragraph 1, may be deducted from the value of the non-originating materials:

(a) the value of originating materials used in the production of the non-originating material in the territory of a Party;

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

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

(d) the cost of processing incurred in the territory of one or both of the Parties in the production of the non-originating material.

3. Subject to paragraph 4, the value of originating materials referred to in Article 3.3 shall be:

(a) for a material imported directly by the producer of a good, the CIF value at the time of importation of the material;

(b) for a material acquired within the territory of the Party where the good is produced, the value of the material; or

(c) for a material that is self-produced, the sum of all costs incurred in the production of the material, including general expenses, and an amount for profit equivalent to the profit added in the normal course of trade.

4. For the purposes of paragraph 3, the following, where not included in accordance with paragraph 3, may be added to the value of the originating materials:

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

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

5. For greater certainty, when an originating good is used in the subsequent production of another good, no account shall be taken of the non-originating materials contained in the originating good for the purposes of determining the originating status of the subsequently produced good.

6. For greater certainty, when a non-originating good is used in the subsequent production of another good, an account shall be taken only of the non-originating materials contained in the non-originating good for the purposes of determining the originating status of the subsequently produced good.

ARTICLE 3.5: ACCUMULATION

1. Originating goods of a Party, incorporated into a good in the territory of the other Party, shall be considered to be originating in the territory of the other Party.

2. A good is originating where the good is produced in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements in Article 3.1 and all other applicable requirements in this Chapter.

ARTICLE 3.6: DE MINIMIS

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3-A is nonetheless originating if the value of all non-originating materials that have been used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 per cent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other applicable requirements in this Chapter.

2. Paragraph 1 shall not apply to goods classified in Chapters 1 through 14 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

3. Neither paragraph 1 or 2 shall apply to goods classified under Harmonized System codes 0301 through 0303; 0305 through 0308; 0701 through 0710.10; 0713 through 0714; 0801 through 0810; and 0813.10 through 0813.40.

4. A good classified in Chapters 50 through 63 of the Harmonized System, produced in the territory of a Party, shall be considered to be an originating good if the total weight of all non-originating fibres or yarns used in the production of the component that determines the tariff classification of the good, that do not undergo the applicable change in tariff classification, does not exceed 10 per cent of the weight of the good.

Article 3.7: Fungible Goods and Materials

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

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

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

2. The inventory management method selected in accordance with paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

Article 3.8: Accessories, Spare Parts and Tools

The origin of the accessories, spare parts or tools presented and classified with a good and delivered with the good at the time of importation:

(a) shall be disregarded if the good is subject to a change in tariff classification requirement; and

(b) shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good, if the good is subject to a regional value content requirement,

provided that:

(c) the accessories, spare parts or tools are not invoiced separately from the good and are included in the price of the good, regardless of whether they appear specified or separately identified in the invoice itself; and

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

Article 3.9: Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 3-A.

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

Article 3.10: Packing Materials and Containers for Transportation and Shipment

1. Packing materials and containers for transportation and shipment shall not be taken into account when determining whether a good is originating.

2. For the purposes of paragraph 1, “packing materials and containers for transportation and shipment” means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which the good is packaged for retail sale.

Article 3.11: Indirect Materials

1. In determining whether a good is originating, indirect materials shall be treated as originating.

2. For the purposes of paragraph 1, “indirect materials” means articles used in the production of a good which are not physically incorporated into it, nor form part of it, including:

(a) fuel and energy;

(b) tools, dies and moulds;

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

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

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

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

(g) catalysts and solvents; and

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

ARTICLE 3.12: NON-QUALIFYING OPERATION

1. Notwithstanding other provisions of this Chapter, a good shall not be considered to be originating merely by reason of having undergone one or more of the following operations or processes:

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

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

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

(d) sharpening, simple grinding or crushing or simple cutting;

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

(f) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(g) disassembly; or

(h) mere reclassification of goods without any physical change.

2. All operations and processes carried out in the territory of a Party on a good shall be considered together when determining whether the operations and processes undergone by that good fall within the scope of paragraph 1.

ARTICLE 3.13: OUTWARD PROCESSING ZONES ON THE KOREAN PENINSULA

Notwithstanding Article 3.1, the Parties agree that certain goods shall be considered to be originating even if they have undergone working or processing outside Korea, on materials exported from Korea and subsequently re-imported there, provided that the working or processing is done in the areas designated by the Parties pursuant to Annex 3-B.

ARTICLE 3.14: DIRECT TRANSPORT

1. An originating good shall retain its originating status as determined in accordance with Article 3.1, provided that it is directly transported to the importing Party without passing through the territory of a non-Party.

2. An originating good that is transported through the territory of a non-Party shall not retain its originating status as determined in accordance with Article 3.1 if it:

(a) has undergone any subsequent production or other operation outside the territories of the Parties other than unloading, reloading, storing, repacking, relabelling, splitting up of loads for transport reasons or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party; or

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

Section B: Origin Procedures

ARTICLE 3.15: CERTIFICATE OF ORIGIN

1. A claim that a good should be treated as originating and accepted as eligible for a preferential tariff shall be supported by a Certificate of Origin.

2. The Certificate of Origin shall be completed by the exporter or the producer and shall:

(a) specify that the goods described therein are originating;

(b) be made in respect of one or more goods and may include a variety of goods;

(c) be in a printed format or such other medium including electronic format; and

(d) be completed in English and contain the data elements set out with instructions in Annex 3-C. A model format for a Certificate of Origin is provided in Annex 3-D.

3. Where an exporter in the territory of a Party is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:

(a) its knowledge that the good qualifies as an originating good; or

(b) a written declaration or statement, such as a Certificate of Origin, that the good qualifies as an originating good, provided by the producer.

4. Nothing in this Article shall be construed to require a producer who is not the exporter of the good to provide a Certificate of Origin, or written declaration or statement that the good qualifies as an originating good.

5. A Certificate of Origin shall be applicable to:

(a) a single importation of one or more goods into a Party's territory; or

(b) multiple importations of the goods described therein that occur within the period of validity of the Certificate of Origin.

6. A Certificate of Origin shall remain valid for at least two years, or for such longer period specified by the laws and regulations of the importing Party, after the date on which the Certificate of Origin was signed.

7. For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a Certificate of Origin that has been completed and signed prior to that date.

Article 3.16: Authorised Bodies

1. Further to Article 3.15, for Australia, a Certificate of Origin may be issued by an authorised body following a written application submitted by an exporter or producer.

2. Australia shall provide that its authorised bodies carry out proper examination of each application for a Certificate of Origin to ensure that:

(a) the goods described therein are originating; and

(b) the data to be contained in the Certificate of Origin corresponds to that in supporting documentary evidence submitted.

3. Australia shall provide that its authorised bodies retain copies of Certificates of Origin and supporting documentary evidence for five years after the date of issue. Such documentation may

be maintained in any medium that allows for prompt retrieval, including but not limited to, digital, optical, magnetic or written form.

4. Australia shall provide that an authorised body that has reason to believe that a Certificate of Origin, which it has issued, contains information that is not correct, shall promptly notify in writing the person to whom the Certificate of Origin was issued.

5. Australia shall notify the names, addresses, specimens of the impressions of the official seals of its authorised bodies and other details that the Parties may agree to Korea. Any subsequent change shall be promptly notified.

ARTICLE 3.17: CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

1. Unless otherwise provided in this Chapter, each Party shall grant preferential tariff treatment to a good imported into its territory from the other Party, provided that:

(a) the importer requests preferential tariff treatment at the time of importation;

(b) the good qualifies as an originating good;

(c) the importer has the Certificate of Origin in its possession at the time the customs import declaration is made, if required by the laws or regulations of the importing Party; and

(d) the importer provides, on request of the importing Party's customs administration, a copy of the Certificate of Origin and such other documentation relating to the importation of the good in accordance with the laws and regulations of the importing Party.

2. An importer should promptly make a corrected customs import declaration in a manner required by the customs administration of the importing Party and pay any duties owing where the importer has reason to believe that a Certificate of Origin on which a claim was based contains information that is not correct.

ARTICLE 3.18: POST-IMPORTATION CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party, the importer of the good may, within a period of at least one year, or for such longer period specified by the laws and regulations of the importing Party, after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation to the customs administration of the importing Party:

(a) a Certificate of Origin and, where appropriate, 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 tariff preference claimed.

ARTICLE 3.19: WAIVER OF CERTIFICATE OF ORIGIN

Each Party shall provide that a Certificate of Origin shall not be required for:

(a) an importation of a good whose customs value does not exceed 1,000 Australian dollars for Australia or 1,000 US dollars or its equivalent amount for Korea, or such higher amount as each Party may establish; or

(b) an importation of a good for which the importing Party has waived the requirement for a Certificate of Origin,

provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 3.15 and 3.17.

ARTICLE 3.20: DISCREPANCIES AND VARIATIONS

1. Where the origin of the good is not in doubt, minor transcription errors or discrepancies in documentation shall not *ipso facto* invalidate the Certificate of Origin, if it is duly established that it does correspond to the goods submitted.

2. Variations in the format of the Certificate of Origin from the model format set out in Annex 3-D shall not invalidate the Certificate of Origin, provided that the Certificate of Origin contains the data elements set out in Annex 3-C.

ARTICLE 3.21: OBLIGATIONS REGARDING EXPORTATIONS

1. Each Party shall provide that an exporter or a producer that has completed and signed a Certificate of Origin, shall, on request, provide a copy of the Certificate of Origin and such other documents to its customs administration, if required by the Party's laws and regulations.

2. Each Party shall provide that an exporter or producer that has completed and signed, or applied for, a Certificate of Origin, and that has reason to believe that the Certificate of Origin

contains information that is not correct, shall promptly notify in writing all persons to whom the Certificate of Origin was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate of Origin.

3. Each Party shall, to the extent permitted by its laws and regulations, maintain penalties for issuing false Certificates of Origin or documentation related to the origin of a good submitted to a customs administration of the importing or exporting Party.

Article 3.22: Record Keeping Requirements

1. Each Party shall provide that:

   (a) an exporter or a producer that completes and signs, or applies for a Certificate of Origin shall maintain, for five years after the date on which the Certificate of Origin was signed, all records necessary to demonstrate that the good for which the producer or exporter provided the Certificate of Origin was an originating good; and

   (b) an importer claiming preferential tariff treatment shall maintain, for five years after the date of importation of the good, such documentation, including a copy of the Certificate of Origin, as the Party may require relating to the importation of the good.

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

Article 3.23: Origin Verification

1. For the purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good, the customs administration of the importing Party may conduct a verification action by means of:

   (a) written requests for information from the importer;

   (b) where the Certificate of Origin was issued by an authorised body, requests to that authorised body to verify the validity of the Certificate of Origin;

   (c) written requests for information from the exporter or producer of the exporting Party;

(d) requests that the customs administration of the exporting Party assist in verifying the origin of the good; or

(e) verification visits to the premises of the exporter or the producer in the territory of the other Party to observe the facilities and the production processes of the good and to review the records referring to origin, including accounting records.

2. For the purposes of paragraphs 1(a), 1(b) and 1(c), the customs administration shall allow the importer, exporter, producer or authorised body a period of 30 days from the date of the written request to respond. During this period the importer, exporter, producer or authorised body may request, in writing, an extension not exceeding 30 days.

3. For the purposes of this Article and Article 3.24, all the information requested by the importing Party and responded to by the exporting Party shall be communicated in English.

4. The customs administration of the importing Party shall complete any action under paragraph 1 to verify eligibility for preferential tariff treatment within the period specified in the laws, regulations or administrative procedures of the importing Party. Upon the completion of the verification action, the customs administration shall provide written advice to the importer, exporter or producer of its decision as well as the legal basis and findings of fact on which the decision was made. Where a verification visit was undertaken, the customs administration shall also provide advice of the decision to the exporting Party.

ARTICLE 3.24: VERIFICATION VISIT

1. Prior to conducting a verification visit under Article 3.23.1(e), the customs administration of the importing Party shall:

(a) make a written request to the exporter or producer to conduct a verification visit of their premises; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

2. An exporter or producer should provide its written consent to a proposed verification visit within 30 days from the receipt of notification in accordance with paragraph 1(a).

3. The written request referred to in paragraph 1(a) shall include:

(a) the identity of the customs administration issuing the request;

(b) the name of the exporter of the good in the exporting Party to whom the request is addressed;

(c) the date the written request is made;

(d) the proposed date and place of the visit;

(e) the objective and scope of the proposed visit, including specific reference to the good that is the subject of the verification referred to in the Certificate of Origin; and

(f) the names and titles of the officials of the customs administration of the importing Party who will participate in the visit.

4. The customs administration of the importing Party shall notify the customs administration of the exporting Party when it requests a verification visit in accordance with this Article.

5. Officials of the customs administration of the exporting Party may participate in the verification visit as observers.

ARTICLE 3.25: DENIAL OF PREFERENTIAL TARIFF TREATMENT

1. The importing Party may deny a claim for preferential tariff treatment or recover unpaid duties in accordance with its laws and regulations, where:

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

(b) the importer, exporter or producer of the good fails or has failed to comply with any of the relevant requirements for obtaining preferential tariff treatment, or to maintain records or documentation in accordance with Article 3.22;

(c) the importer, exporter or producer fails to provide information that the Party requested in accordance with Article 3.23.2 demonstrating that the good is an originating good; or

(d) after receipt of a written notification for a verification visit in accordance with Article 3.24.1, the exporter or producer fails to provide its written consent in accordance with Article 3.24.2 or to provide access to records, production processes or facilities referred to in Article 3.23.1(e) demonstrating that the good is an originating good.

2. The importing Party may suspend or deny, in accordance with its laws and regulations, the application of preferential tariff treatment to a good that is the subject of an origin verification action under Article 3.23 for the duration of that action, or any part thereof.

3. When the importing Party determines that a good is not eligible for preferential tariff treatment, the right of suspension or denial shall extend to any subsequent import of goods that are the same in all respects relevant to the particular rule of origin, until it has been demonstrated that those goods comply with the provisions of this Chapter.

Article 3.26: Non-Party Invoices

The customs administration of the importing Party shall not reject a Certificate of Origin only for the reason that the invoice was issued in the territory of a non-Party.

Article 3.27: Confidentiality

For greater certainty, Article 4.11 (Confidentiality) shall apply to this Chapter.

Article 3.28: Penalties

Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

Article 3.29: Appeal Procedures

The rights of review and appeal in matters relating to the determination of origin under this Chapter shall be granted, in accordance with Article 4.8 (Appeal Procedures), to an importer, exporter or producer of a good.

Article 3.30: Definitions

For the purposes of this Chapter:

adjusted value means the value of a good calculated in accordance with Article 3.3.1;

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, or protection from predators;

CIF value means the value of a good at the time of importation, inclusive of freight, insurance, packing, and all other costs incurred in transporting the good to the importation port;

exporter means a person located in the territory of a Party from where a good is exported by that person;

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

fungible goods or materials means goods or materials that are identical or interchangeable as a result of being of the same kind and commercial quality, possessing essentially the same technical and physical characteristics;

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

good means any merchandise, product, article or material;

material means a good that is used or consumed in the production of another good, and physically incorporated into or classified with that good;

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

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

production means any kind of working or processing, including growing, mining, harvesting, fishing, breeding, raising, trapping, hunting, manufacturing, assembling or disassembling a good; and

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

ANNEX 3-A
PRODUCT SPECIFIC RULES OF ORIGIN

Headnotes to the Schedule

1. The specific rule, or specific set of rules, that applies to a particular heading (4-digit code) or subheading (6-digit code) is set out immediately adjacent to the heading or subheading.

2. When a heading or subheading is subject to alternative specific rules of origin, the rule will be considered to be met if a good satisfies one of the alternatives.

3. Where a specific rule of origin is defined using the criterion of a change of tariff classification, each of the non-originating materials used in the production of the good shall be required to undergo the applicable change of tariff classification. A requirement of a change in tariff classification shall apply only to non-originating materials.

4. Where a specific rule of origin is defined using the criterion of a change in tariff classification, and the rule is written to exclude tariff provisions at the level of a chapter, heading or subheading of the Harmonized System, each Party shall construe the rule of origin to require that materials classified in those excluded provisions be originating for the good to qualify as originating.

5. Chapter notes within this Schedule shall apply to all headings or subheadings within the indicated chapter or group of chapters unless there exists a specific exclusion.

6. Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in this Annex.

7. For the purposes of this Annex:

   subheading means the first six digits in the tariff classification number under the Harmonized System;

   heading means the first four digits in the tariff classification number under the Harmonized System; and

   chapter means the first two digits in the tariff classification number under the Harmonized System.

8. For the purposes of column 3 of this Annex:

CC means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 2-digit level;

CTH means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 4-digit level;

CTSH means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 6-digit level;

WO means that the good must be wholly obtained in the territory of one or both of the Parties within the meaning of Article 3.2;

RVC (40) means that the good must have a regional value content of not less than 40 per cent as calculated under Article 3.3; and

RVC (30/40) means that the good must have a regional value content of either not less than 30 per cent using the build-up method or not less than 40 per cent using the build-down method, as calculated under Article 3.3.

ANNEX 3-B
COMMITTEE ON OUTWARD PROCESSING ZONES ON THE KOREAN PENINSULA

1. Recognising the Republic of Korea's constitutional mandate and security interests, and both Parties' commitment to promoting peace and prosperity on the Korean Peninsula, and the importance of intra-Korean economic cooperation toward that global goal, a Committee on Outward Processing Zones on the Korean Peninsula is established in accordance with Article 21.4 (Committees and Working Groups).

2. The Committee shall be comprised of officials of the Parties. The Committee shall meet within six months after the date of entry into force of this Agreement and at least twice a year thereafter, or at any time as mutually agreed.

3. The Committee shall review the conditions on the Korean Peninsula and identify geographic areas that may be designated as outward processing zones. The Committee shall also establish a maximum threshold for the value of the total input of the originating final good that may be added within the geographic area of the outward processing zone.

ANNEX 3-C
DATA ELEMENTS FOR A CERTIFICATE OF ORIGIN

1. Issuing number;
2. Exporter, including contact details;
3. Blanket period for multiple shipments;
4. Producer, including contact details (optional);
5. Importer, including contact details (optional);
6. Description of good(s);
7. Harmonized System code (six digits);
8. Preference criterion;
9. Observations (optional);
10. Declaration; and
11. Name, signature, company or authorised body and contact details of person completing the Certificate of Origin; and date of issue.

Instructions for completing the Certificate of Origin

For the purposes of obtaining preferential tariff treatment, a Certificate of Origin must be completed legibly and in full by the exporter or producer or, in the case of Australia by an authorised body, and be in the possession of the importer at the time the declaration is made. Please print or type. If more space is needed, please use additional pages.

Field 1: Provide a unique number for the Certificate.

Field 2: State the full legal name and contact details (including address, telephone number and email) of the exporter.

Field 3: Complete this field if the Certificate covers multiple shipments of the goods described in Field 6 that are to be imported into Korea or Australia during a specified period. "FROM" is the date upon which the Certificate becomes applicable to the goods covered by the blanket Certificate (it may be earlier than the date this Certificate is signed). "TO" is the date upon which the blanket period expires. The importation of a good for which preferential tariff treatment is claimed based on this Certificate must occur between these dates. Dates should be specified in the format DD/MM/YYYY.

Field 4: State the full legal name and contact details (including address, telephone number and email) of the producer. This is an optional field.

Field 5: State the full legal name and contact details (including address, telephone number and email) of the importer. This is an optional field.

Field 6: Provide a full description of each good. The description should contain sufficient detail to relate it to the invoice description and to the Harmonized System (HS) description of the good. If the Certificate covers a single shipment of a good, it should list the quantity and unit of measurement of each good, including the series number, if possible, as well as the invoice number as shown on the commercial invoice. If not known, indicate another unique reference number, such as the shipping order number, purchase order number, or any other number that can be used to identify the goods.

Field 7: For each good described in Field 6, identify the Harmonized System code to six digits.

Field 8: For each good described in Field 6, state which criterion (WO, PE, PSR or Other) is applicable. The rules of origin are contained in this Chapter and Annex 3-A.

NOTE: In order to be entitled to preferential tariff treatment, each good must meet at least one of the criteria below.

Preference criteria

WO The good is wholly obtained in the territory of one or both of the Parties.

PE The good is produced entirely in the territory of one or both of the Parties, exclusively from originating materials.

PSR The good satisfies all applicable requirements of Annex 3-A, as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers.

Other The good otherwise qualifies as an originating good under this Chapter.

Field 9: This field may be used when there is an observation relating to this Certificate, such as, when the good or goods described in Field 6 have been subject to an advance ruling or when the invoice is issued in the territory of a non-Party. This is an optional field.

Field 10: The declaration must contain and certify the following:

The information in this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.

I agree to maintain, and present upon request, documentation necessary to support this Certificate, and to inform, in writing, all persons to whom the Certificate was given of any changes that would affect the accuracy or validity of this Certificate.

The goods originate in the territory of one or both of the Parties and comply with the origin requirements specified for those goods in the Australia – Korea Free Trade Agreement.

This Certificate consists of ______ pages, including all attachments.

Field 11: This field must be completed, signed and dated by the exporter or, when the Certificate is completed by the producer for use by the exporter, by the producer. In the case of Australia, the Certificate may be issued by an authorised body following a written application submitted by the exporter or producer, in which case this field must be completed, signed and dated by the authorised body and bear the official stamp of that authorised body. The date must be the date the Certificate was completed and signed.

ANNEX 3-D
MODEL FORMAT

AUSTRALIA-KOREA FREE TRADE AGREEMENT
CERTIFICATE OF ORIGIN

Please Print or Type   1. Issuing number:

<table>
<tr><td>2. Exporter - name and contact details:</td><td colspan="2">3. Blanket period for multiple shipments:

From: (DD/MM/YYYY) To: (DD/MM/YYYY)</td></tr>
<tr><td>4. Producer - name and contact details (optional field):</td><td colspan="2">5. Importer - name and contact details (optional field):</td></tr>
<tr><td>6. Description of good(s)

(including quantity, invoice number or other unique reference number where appropriate):</td><td>7. Harmonized System code (six digits):</td><td>8. Preference criterion:</td></tr>
<tr><td></td><td></td><td></td></tr>
<tr><td colspan="3">9. Observations (optional field):</td></tr>
<tr><td colspan="3">10. Declaration:

I certify that:

- The information in this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.

- I agree to maintain, and present upon request, documentation necessary to support this Certificate, and to inform, in writing, all persons to whom the Certificate was given of any changes that would affect the accuracy or validity of this Certificate.

- The goods originate in the territory of one or both Parties and comply with the origin requirements specified for those goods in the Australia – Korea Free Trade Agreement.

This Certificate consists of ______ pages, including all attachments.</td></tr>
</table>

11.Signature:	Company or Authorised Body:
Name:	Title:
Date:	Contact details:

CHAPTER 4
CUSTOMS ADMINISTRATION AND TRADE FACILITATION

ARTICLE 4.1: OBJECTIVES

The objectives of this Chapter are to:

(a) simplify customs procedures of the Parties;

(b) ensure predictability, consistency and transparency in the application of customs laws, regulations and administrative procedures of the Parties;

(c) ensure the efficient and expeditious clearance of goods;

(d) facilitate trade between the Parties; and

(e) promote cooperation between the customs administrations, within the scope of this Chapter.

ARTICLE 4.2: TRANSPARENCY

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent and transparent.

2. Further to Article 19.1 (Publication), each Party shall publish on the Internet all customs laws and regulations and any administrative procedures relevant to importation or exportation which it applies or enforces.

3. Each Party shall establish or maintain one or more enquiry points for responding to enquiries from interested persons regarding customs matters covered by this Agreement, and provide details of such enquiry points to the other Party. Information concerning the procedures for making such enquiries shall be easily accessible to the public.

ARTICLE 4.3: HARMONISATION OF DOCUMENTS AND DATA ELEMENTS

1. Each Party shall endeavour to pursue the harmonisation of documentation used in trade and data elements in accordance with international standards.

2. Each Party shall endeavour to use international standards, including the development of a set of common data elements and processes in accordance with the World Customs Organization (hereinafter referred to as "WCO") Customs Data Model and related WCO recommendations and guidelines.

3. Each Party shall work towards the implementation of initiatives that harmonise the data requirements of its respective agencies associated with the importation, exportation or transit of goods, and minimise the submission of trade data, with the objective of allowing importers and exporters to present all required data to one agency.

ARTICLE 4.4: USE OF AUTOMATED SYSTEMS IN THE PAPERLESS TRADING ENVIRONMENT

1. Each customs administration shall apply information technology to support customs operations where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within the WCO.

2. Each customs administration shall endeavour to use information technology that expedites procedures for the release of goods, including the submission and processing of information and data before the arrival of the shipment of those goods, as well as electronic or automated systems for risk management and targeting.

ARTICLE 4.5: RISK MANAGEMENT

In administering customs procedures, each customs administration shall focus resources on shipments of high-risk goods and facilitate the clearance, including release, of low-risk goods.

ARTICLE 4.6: RELEASE OF GOODS

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.

2. In accordance with paragraph 1, each Party shall ensure that its customs administration and other competent authorities adopt or maintain procedures that:

(a) provide for the release of goods within a period no greater than that required to ensure compliance with its laws and regulations;

(b) provide for advance electronic submission and processing of information before the physical arrival of goods to enable the release of those goods on arrival;

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

(d) under circumstances specified in the importing Party's laws, regulations or administrative procedures, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, shipments of eligible goods valued at or less than a specified amount.

3. Each Party shall endeavour to adopt or maintain a system under which goods in need of urgent clearance can obtain customs clearance 24 hours a day including holidays.

ARTICLE 4.7: ADVANCE RULINGS

1. Each Party shall issue, through its customs administration, prior to the importation of a good into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party with regard to:

(a) tariff classification;

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

(c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and

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

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

(a) include a detailed description of the information required to process a request for an advance ruling;

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

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

(d) provide that an advance ruling be issued to the applicant expeditiously, and within a period specified in its laws, regulations or administrative procedures, after the receipt of all necessary information; and

(e) provide that its customs administration provide a written explanation of the reasons for the advance ruling.

3. 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, in accordance with this paragraph, declines to issue an advance ruling, shall promptly notify the requestor in writing, setting forth the relevant facts and the basis for its decision to decline to issue the advance ruling.

4. Each Party shall provide that advance rulings shall be in force from the date they are issued, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged. Subject to paragraphs 1 and 5, an advance ruling shall remain in force for no less than five years, or such other period as specified in the laws, regulations or administrative rulings of the issuing Party.

5. The issuing Party may modify or revoke an advance ruling after the Party notifies the requestor, and where, consistent with this Agreement:

(a) there is a change in its laws and regulations;

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

(c) there is a change in a material fact; or

(d) there is a change in the circumstances on which the ruling was based.

6. The issuing Party may modify or revoke an advance ruling retroactively if the requestor, intentionally or negligently, provided incorrect information or withheld relevant information.

7. Each Party shall endeavour to publish its advance rulings, subject to its laws, regulations and administrative procedures.

ARTICLE 4.8: APPEAL PROCEDURES

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

(a) at least one level of administrative review independent of the official or authority responsible for the determination under review; and

(b) judicial review of the determination or decision taken at the final level of administrative review.

2. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings by its customs administration as it provides to importers in its territory to any person who has:

(a) completed and signed, or applied for, a Certificate of Origin for a good that has been the subject of a determination of origin; or

(b) received an advance ruling in accordance with Article 4.7.

3. 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 the laws, regulations and rules of that Party.

ARTICLE 4.9: CUSTOMS COOPERATION

1. The Parties shall, through their respective customs administrations, enhance their cooperation in customs matters.

2. The Parties affirm their commitment to the facilitation of the legitimate movement of goods and shall exchange expertise on measures to improve customs techniques and procedures, including on risk management, in accordance with the provisions of this Agreement.

3. The Parties shall cooperate in relation to:

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

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

(c) restrictions or prohibitions on imports or exports; and

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

4. Each Party shall endeavour to provide the other Party with advance notice of any proposed laws, regulations or policies governing the administration of customs procedures that are likely to substantially affect the operation of this Agreement.

5. To the extent permitted by each Party's laws, regulations and rules, the customs administrations of the Parties shall endeavour to provide each other with information to assist in the investigation and prevention of infringements of customs laws and regulations.

6. The Parties shall exchange the details of contact points for the exchange of information under this Chapter.

ARTICLE 4.10: BILATERAL CUSTOMS CONSULTATION

1. Each customs administration may consult with the other customs administration on any matter arising from the operation or implementation of this Chapter and on other trade facilitation issues, including tariff classification, customs valuation and origin determination. A Party should promptly respond to any request for consultation on such matters from the other Party.

2. In the event that consultations requested in accordance with paragraph 1 fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Rules of Origin and Trade Facilitation for consideration.

ARTICLE 4.11: CONFIDENTIALITY

1. Further to Articles 22.4 (Disclosure of Information) and 22.5 (Confidentiality), neither Party shall use or disclose information provided by the other Party under this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) except for the purposes for which it was provided, or otherwise as required or authorised by a Party's laws and regulations. The customs administration which supplied that information shall be notified of such other use without delay.

2. Unless otherwise provided in this Agreement, any information received in accordance with this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) shall be subject to the same protection as the same kind of information is subject to in accordance with the laws and regulations of the Party receiving the information.

3. Nothing in this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) shall be construed to require a Party to furnish or allow access to information the disclosure of which would:

(a) be contrary to the public interest as determined by its laws, regulations and rules;

(b) be contrary to any of its laws, regulations and rules, including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals; or

(c) impede law enforcement.

ARTICLE 4.12: COMMITTEE ON RULES OF ORIGIN AND TRADE FACILITATION

1. The Committee on Rules of Origin and Trade Facilitation established in accordance with Article 21.4 (Committees and Working Groups) shall comprise officials of each Party responsible for rules of origin and customs matters.

2. The Committee shall consider and, as appropriate, resolve any matter arising under this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) by means of, inter alia, considering common approaches to the interpretation and implementation of those Chapters.

3. The Committee shall meet on request of either Party or the Joint Committee.

ARTICLE 4.13: DEFINITIONS

For the purposes of this Chapter:

customs procedures means the treatment applied by each customs administration to goods that are subject to customs control; and

goods means all goods falling within Chapters 1 to 97 of the Harmonized System, irrespective of the scope of this Agreement.

CHAPTER 5
TECHNICAL BARRIERS TO TRADE AND SANITARY AND PHYTOSANITARY MEASURES

Section A: Technical Barriers to Trade

ARTICLE 5.1: SCOPE

1. Unless otherwise provided in paragraphs 3 and 4, this Section shall apply to all standards, technical regulations, and conformity assessment procedures of the central level of government that may, directly or indirectly, affect trade in goods between the Parties.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance with the provisions of this Section by regional or local government and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

3. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies shall not be subject to the provisions of this Section, but shall be addressed in Chapter 12 (Government Procurement), in accordance with its coverage.

4. This Section shall not apply to sanitary or phytosanitary measures, which are covered in Section B of this Chapter.

ARTICLE 5.2: AFFIRMATION OF THE TBT AGREEMENT

Further to Article 1.2 (Relation to Other Agreements), each Party affirms its existing rights and obligations with respect to each other in the TBT Agreement.

ARTICLE 5.3: INTERNATIONAL STANDARDS, GUIDES AND RECOMMENDATIONS

1. Each Party shall, in accordance with Articles 2.4 and 5.4 of the TBT Agreement, use international standards, guides and recommendations or the relevant parts thereof as a basis for its technical regulations and conformity assessment procedures.

2. Where a Party does not use an international standard, guide or recommendation or the relevant parts thereof as a basis for a technical regulation or conformity assessment procedure, it shall, on request of the other Party, in accordance with Articles 2.5 and 5.4 of the TBT Agreement, explain the reasons for its decision.

3. The Parties shall encourage their respective standards bodies to consult and exchange views on matters under discussion in relevant international or regional bodies that develop international standards, guides, or recommendations relevant to this Section.

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, 5 and Annex 3 of the Agreement*, adopted on 13 November 2000 by the WTO Committee on Technical Barriers to Trade (Annex 4 of G/TBT/9).

ARTICLE 5.4: TECHNICAL REGULATIONS

1. Each Party shall give positive consideration to accepting technical regulations of the other Party as equivalent to its own, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.

ARTICLE 5.5: MARKING AND LABELLING

1. For the purposes of this Article, and in accordance with paragraph 1 of Annex 1 of the TBT Agreement, a technical regulation may include or deal exclusively with marking or labelling requirements.

2. Each Party shall, in accordance with Article 2.2 of the TBT Agreement, ensure that technical regulations, including mandatory marking or labelling of products, are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, such technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective.

3. Where a Party requires mandatory marking or labelling of products:

(a) the Party shall endeavour to minimise the requirements for marking or labelling other than marking or labelling relevant to consumers or users of the product. Where marking or labelling for other purposes is required, including for fiscal purposes, such requirements shall be formulated, in accordance with the TBT Agreement, in a manner that is not more trade restrictive than necessary to fulfil a legitimate objective;

(b) the Party shall, where it requires the use of a unique identification number by economic operators, issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;

(c) the Party shall remain free to require that information on the marks or labels be in a specified language. Where an international system of nomenclature has been accepted by the Parties, such nomenclature may be used. The simultaneous use of additional languages shall not be prohibited, provided that:

  (i) the information provided in the additional languages is identical to that provided in the specified language; or

  (ii) the information provided in the additional languages does not constitute a deceptive statement regarding the product; and

(d) the Party shall, where it considers that legitimate objectives in accordance with the TBT Agreement are not compromised thereby, endeavour to accept:

  (i) non-permanent or detachable labels; or

  (ii) marking or labelling in the accompanying documentation in place of marking or labelling attached to the product.

ARTICLE 5.6: CONFORMITY ASSESSMENT PROCEDURES

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

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

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

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

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

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

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

2. The Parties shall exchange information on the range of mechanisms relevant to conformity assessment procedures in their respective territories with a view to facilitating the acceptance of conformity assessment results.

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

4. A Party shall give positive consideration to a request from the other Party to negotiate agreements for the recognition of the results of the other Party's conformity assessment procedures. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of the other Party, explain the reasons for its decision.

ARTICLE 5.7: JOINT COOPERATION

1. The Parties shall strengthen their cooperation in the fields of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems, and facilitating access to their respective markets. In particular, the Parties shall seek to identify, develop and promote trade facilitating bilateral initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors. These initiatives may include cooperation on regulatory issues, such as:

(a) equivalence of standards and technical regulations;

(b) good regulatory practice;

(c) transparency;

(d) alignment with international standards;

(e) reliance on a supplier's declaration of conformity;

(f) use of accreditation to qualify conformity assessment bodies; and

(g) mechanisms for the recognition of conformity assessment procedures.

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

ARTICLE 5.8: TRANSPARENCY

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations and conformity assessment procedures on terms no less favourable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

3. With a view to enhancing the opportunity for persons and the other Party to be aware of, and to understand proposed technical regulations and conformity assessment procedures, and to be able to provide meaningful comments on such regulations and procedures, a Party publishing a notice or making a notification in accordance with Articles 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement shall:

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

(b) transmit the proposal electronically to the other Party through, in the case of a Korean proposal, the Australian enquiry point established in accordance with Article 10 of the TBT Agreement or, in the case of an Australian proposal, the Korean Coordinator established in accordance with Article 5.9 at the same time as it notifies WTO Members of the proposal in accordance with the TBT Agreement.

Each Party should allow at least 60 days after it transmits a proposal in accordance with subparagraph (b) for the public and the other Party to make comments in writing on the proposal.

4. Each Party shall publish, or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from the public or the other Party in accordance with paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.

5. Where a Party makes a notification in accordance with Article 2.10 or 5.7 of the TBT Agreement, it shall, at the same time, transmit the notification electronically to the other Party through, in the case of a Korean proposal, the Australian enquiry point established in accordance with Article 10 of the TBT Agreement or, in the case of an Australian proposal, the Korean Coordinator established in accordance with Article 5.9.

6. On request of the other Party, a Party shall provide the other Party with information regarding the objective of, and rationale for, a standard, technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

ARTICLE 5.9: COORDINATION MECHANISM

1. Each Party shall nominate a TBT Coordinator and give appropriate information to the other Party when its TBT Coordinator changes. The TBT Coordinators shall work jointly in order to facilitate implementation of this Section and cooperation between the Parties in all matters pertaining to this Section.

2. The TBT Coordinators' functions shall include:

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

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

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

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

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

(f) exchanging information on standards, technical regulations and conformity assessment procedures in response to requests for information from a Party;

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

(h) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;

(i) on request of a Party, consulting on any matter arising under this Section; and

(j) reviewing this Section in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Section in light of those developments.

3. The TBT Coordinators shall communicate with one another by any agreed method that is appropriate for the efficient and effective discharge of their functions.

4. The Parties may, as they consider appropriate, establish an *ad hoc* Working Group, comprising representatives of each Party. The scope and mandate of any *ad hoc* Working Group shall be determined by the Parties. Subject to decisions of the Parties, each *ad hoc* Working Group may:

(a) include government representatives with responsibility for the standards, technical regulations or conformity assessment procedures;

(b) include or consult with non-governmental experts and stakeholders; and

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

5. Where a Party declines a request from the other Party to establish an *ad hoc* Working Group, it shall, on request of the other Party, explain the reasons for its decision.

6. For the purposes of this Section, the TBT Coordinator shall be:

(a) for Australia, the Department of Industry, or its successor; and

(b) for Korea, the Korean Agency for Technology and Standards, or its successor.

ARTICLE 5.10: INFORMATION EXCHANGE

Any information or explanation that a Party provides on request of the other Party in accordance with this Section shall be provided in print or electronically within a reasonable period, and where possible within 60 days.

ARTICLE 5.11: DISPUTE SETTLEMENT

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Section.

ARTICLE 5.12: DEFINITIONS

For the purposes of this Section, **standard**, **technical regulation**, **conformity assessment procedures** and **non-governmental body** shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

Section B: Sanitary and Phytosanitary Measures

ARTICLE 5.13: SCOPE

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

ARTICLE 5.14: AFFIRMATION OF THE SPS AGREEMENT

Further to Article 1.2 (Relation to Other Agreements), each Party affirms its existing rights and obligations with respect to each other in the SPS Agreement.

ARTICLE 5.15: CONTACT POINTS

1. Each Party shall designate a contact point relating to the operation of this Section. For the purposes of this Section, the contact point shall be:

   (a) for Australia, the Department of Agriculture, or its successor; and

   (b) for Korea, the Ministry of Agriculture, Food and Rural Affairs, or its successor.

2. The contact points shall:

   (a) facilitate the exchange of information relating to this Section;

   (b) coordinate the technical meeting referred to in Article 5.16; and

   (c) facilitate any other communications between the Parties on any matter covered by this Section.

ARTICLE 5.16: TECHNICAL MEETINGS

1. The Parties shall hold technical meetings on sanitary and phytosanitary matters at such venues and on such dates as may be agreed by the Parties. Representatives of each Party's competent authorities who have responsibility for sanitary and phytosanitary matters shall participate in the meetings.

2. The technical meetings shall be coordinated by the contact points referred to in Article 5.15.

3. The functions of the technical meetings shall be to:

(a) review and monitor the implementation of this Section;

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

(c) engage in cooperative activities in accordance with Article 5.17.2;

(d) as appropriate, seek to address sanitary and phytosanitary matters of mutual interest to the Parties; and

(e) as appropriate, report the outcomes of discussions of the technical meeting to the Joint Committee.

ARTICLE 5.17: COOPERATION

1. The Parties shall enhance implementation of the SPS Agreement, including through:

(a) cooperating, including exchanging views, in relevant international bodies engaged in food safety and human, animal or plant life or health issues;

(b) facilitating the timely exchange of information on their respective sanitary and phytosanitary measures; and

(c) sharing knowledge and experience.

2. The Parties shall explore opportunities for further cooperation and collaboration on sanitary and phytosanitary matters of mutual interest at the bilateral, regional and multilateral levels consistent with the provisions of this Section.

3. Where a Party makes a notification in accordance with paragraph 5(b) or 6(a) of Annex B of the SPS Agreement, it shall provide a copy of the notification to the contact point of the other Party at the same time as the notification is provided to the WTO.

ARTICLE 5.18: DISPUTE SETTLEMENT

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising in this Section.

CHAPTER 6
TRADE REMEDIES

Section A: Safeguard Measures

ARTICLE 6.1: APPLICATION OF A SAFEGUARD MEASURE

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

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

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

(i) the most-favoured-nation (hereinafter referred to as "MFN") applied rate of duty on the good in effect at the time the safeguard measure is applied; and

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

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

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

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

ARTICLE 6.2: CONDITIONS AND LIMITATIONS

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with the procedures and requirements provided for in

Articles 3 and 4.2 of the Safeguards Agreement, and to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

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

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

4. Neither Party shall apply or maintain 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 applying Party determine, in conformity with the procedures specified in this Article, that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed three years; or

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

5. Neither Party shall apply a safeguard measure more than once against the same good.

6. No safeguard measure or provisional safeguard measure shall be applied against a particular good while a global safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement in respect of that good is in place. In the event that a global safeguard measure is taken in respect of a particular good, any existing safeguard measure or provisional safeguard measure which is taken against that good in accordance with this Section shall be terminated.

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

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

Article 6.3: Provisional Safeguard Measure

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

2. Before applying a provisional safeguard measure the applying Party shall notify the other Party and shall immediately initiate consultations after applying the provisional safeguard measure.

3. The duration of any provisional safeguard measure shall not exceed 200 days, during which time the applying Party shall comply with the requirements of Article 6.2.1.

4. The applying Party shall promptly refund any additional customs duties collected as a result of a provisional safeguard measure if the investigation conducted in accordance with Article 6.2.1 does not result in a finding that the requirements of Article 6.1 have been met. The duration of any provisional measure shall be counted as part of the period described in Article 6.2.4(b).

Article 6.4: Compensation

1. No later than 30 days after it applies a safeguard measure, a Party shall afford an opportunity for the other Party to consult with it regarding appropriate trade liberalising 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 within 30 days after consultations begin in accordance with paragraph 1, 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 applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions in accordance with paragraph 2 shall terminate on the date the safeguard measure terminates.

Article 6.5: Global Safeguard Measures

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement and the Agreement on Agriculture. This Agreement shall not confer any additional rights or impose any additional obligations on the Parties with respect to measures applied under Article XIX of GATT 1994 and the Safeguards Agreement or the Agreement on Agriculture, except that a Party applying such a measure under Article XIX of GATT 1994 and the Safeguards Agreement may exclude imports of an originating good of the other Party, from the measure.

ARTICLE 6.6: DEFINITIONS

For the purposes of Section A:

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

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

safeguard measure means a measure described in Article 6.1;

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

substantial cause means the dominant cause that contributes more than any other individual cause;

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

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

Section B: Agricultural Safeguard Measures

ARTICLE 6.7: AGRICULTURAL SAFEGUARD MEASURES

1. Notwithstanding Article 2.3 (Elimination of Customs Duties), a Party may apply an agricultural safeguard measure on an originating agricultural good listed in that Party's Schedule to Annex 6-A, if the aggregate volume of imports of that good in any calendar year exceeds a trigger level set out in that Party's Schedule to Annex 6-A.

2. The duty to be applied as the agricultural safeguard measure under paragraph 1 shall not exceed the lesser of:

(a) the prevailing MFN applied rate;

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

(c) the duty rate set out in the applying Party's Schedule to Annex 6-A.

3. Neither Party shall maintain an agricultural safeguard measure under this Article beyond the end of the calendar year in which it has applied the measure.

4. Neither Party shall apply or maintain an agricultural safeguard measure on an originating agricultural good if the period specified in the agricultural safeguard provisions of the Party's Schedule to Annex 6-A has expired.

5. Neither Party shall apply or maintain an agricultural safeguard measure under this Article and at the same time apply or maintain, on the same good:

(a) a safeguard measure under this Agreement;

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

(c) a safeguard measure applied under the Agreement on Agriculture.

6. A Party shall implement agricultural safeguard measures in a transparent manner. Within 60 days after applying a measure, the Party applying an agricultural safeguard measure shall notify the other Party in writing and provide it with relevant data concerning the measure including trade volumes. On request, the Party applying the agricultural safeguard measure shall consult with the other Party with respect to the conditions of the application of such agricultural safeguard measure.

7. A good which is *en route* on the basis of a contract settled before the agricultural safeguard measure is applied shall be exempted from the application of the safeguard measure provided that it may be counted in the volume of imports of the good in question during the following calendar year for the purposes of triggering the provisions of paragraph 1 in that calendar year.

8. The implementation and operation of this Article may be the subject of discussion and review in the Committee on Trade in Goods.

Section C: Anti-dumping and Countervailing Measures

ARTICLE 6.8: ANTI-DUMPING AND COUNTERVAILING MEASURES

1. Each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing measures. Unless otherwise provided in this Chapter, nothing in this Agreement shall be construed to confer any additional rights or impose any additional obligations on a Party with respect to anti-dumping or countervailing measures.

2. In order to enhance transparency in the implementation of the WTO Agreement:

(a) the Parties confirm their current practice of counting toward the average all individual margins, whether positive or negative, when anti-dumping margins are established on the weighted-to-weighted basis or transaction-to-transaction basis, or weighted-to-transaction basis, and share their expectation that such practice will continue; and

(b) the Party making such a decision to impose an anti-dumping duty in accordance with Article 9.1 of the Anti-Dumping Agreement, shall normally 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 6.9: NOTIFICATION AND CONSULTATIONS

1. After receipt by a Party's competent authorities of a properly documented anti-dumping application relating to imports from the other Party and before proceeding to initiate an investigation, the Party shall give written notice, at the earliest possible opportunity, to the other Party and, immediately after initiating an investigation, shall afford the other Party an adequate opportunity to make inquiries and representations regarding the application.

2. As soon as possible after an application for countervailing measures is accepted by the competent authorities of a Party and before the initiation of an investigation, if products of the

other Party may be subject to such investigation, the other Party shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

ARTICLE 6.10: UNDERTAKINGS

1. After a Party's competent authorities initiate an anti-dumping or countervailing duty investigation, that Party shall give written notice, which shall include information about the availability of undertakings, to the other Party.

2. In an anti-dumping investigation, where a Party's competent authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, that Party shall, to the extent possible, inform exporters of the other Party about the availability of undertakings and extend reasonable consideration to undertakings requested by the exporters of the other Party.

3. In a countervailing duty investigation, where a Party's competent authorities have made a preliminary affirmative determination of subsidisation and injury caused by such subsidisation, that Party shall inform the other Party and to the extent possible exporters of the other Party, about the availability of undertakings and extend reasonable consideration to undertakings requested by the other Party or the exporters of the other Party.

ANNEX 6-A
AGRICULTURAL SAFEGUARD MEASURES

Schedule of Korea

1. This Annex sets out those originating goods that may be subject to agricultural safeguard measures under Article 6.7, the trigger levels for applying such measures, and the maximum duty that may be applied each year for each such good:

(a) for beef as covered below;

Coverage: HSK provisions 0201.10.0000, 0201.20.1000, 0201.20.9000, 0201.30.0000, 0202.10.0000, 0202.20.1000, 0202.20.9000 and 0202.30.0000

Year	1	2	3	4	5	6
Trigger Level (MT)	154,584	157,676	160,829	164,046	167,327	170,673
Safeguard Duty (%)	40	40	40	40	40	30

Year	7	8	9	10	11	12
Trigger Level (MT)	174,087	177,569	181,120	184,742	188,437	192,206
Safeguard Duty (%)	30	30	30	30	24	24

Year	13	14	15	16
Trigger Level (MT)	196,050	199,971	203,970	NA
Safeguard Duty (%)	24	24	24	0

(b) for malt (not roasted) and malting barley as covered below;

Coverage: HSK provisions 1003.00.1000 and 1107.10.0000

Year	1	2	3	4	5	6
Trigger Level (MT)	147,486	150,436	153,444	156,513	159,644	162,836
Safeguard Duty (%)						
1003.00.1000(513%)	502	479	455	432	408	385
1107.10.0000(269%)	263	258	252	246	240	216

Year	7	8	9	10	11	12

Trigger Level (MT)	166,093	169,415	172,803	176,259	179,785	183,380
Safeguard Duty (%)						
1003.00.1000(513%)	361	338	315	291	268	244
1107.10.0000(269%)	207	199	190	181	139	127

Year	13	14	15	16
Trigger Level (MT)	187,048	190,789	194,605	NA
Safeguard Duty (%)				
1003.00.1000(513%)	221	197	174	0
1107.10.0000(269%)	115	103	91.5	0

(c) for maize (other) as covered below;

Coverage: HSK provision 1005.90.9000

Year	1	2	3	4	5	6
Trigger Level (MT)	33,053	33,714	34,388	35,076	35,777	36,493
Safeguard Duty (%)	313	298	283	268	253	190

Year	7	8
Trigger Level (MT)	37,223	NA
Safeguard Duty (%)	167	0

(d) for sugar as covered below;

Coverage: HSK provision 1701.99.0000

Year	1	2	3	4	5	6
Trigger Level (MT)	946	965	984	1,004	1,024	1,044
Safeguard Duty (%)	35	35	35	35	35	35

Year	7	8	9	10	11	12
Trigger Level (MT)	1,065	1,087	1,108	1,131	1,153	1,176
Safeguard Duty (%)	35	35	35	35	35	35

Year	13	14	15	16	17	18	19
Trigger Level (MT)	1,200	1,224	1,248	1,273	1,299	1,325	NA
Safeguard Duty (%)	35	35	35	35	35	35	0

2. For greater certainty, no agricultural safeguard measure may be applied or maintained after the date the safeguard duties set out above are zero.

CHAPTER 7
CROSS-BORDER TRADE IN SERVICES

ARTICLE 7.1: SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale or delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;

(d) the presence in its territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. Articles 7.4, 7.7, and 7.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.

3. This Chapter shall not apply to:

(a) financial services as defined in Article 8.20 (Definitions), except that paragraph 2 shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 8.20 (Definitions) in a Party's territory;

(b) government procurement;

(c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; or

(d) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system services; and

(iv) specialty air services.

The Parties note the multilateral negotiations pursuant to the review of the GATS Annex on Air Transport Services. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

4. This Chapter shall not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and shall not confer any right on that national with respect to that access or employment.

5. This Chapter shall not apply to services supplied in the exercise of governmental authority in a Party's territory. A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

ARTICLE 7.2: NATIONAL TREATMENT

1. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

ARTICLE 7.3: MOST-FAVOURED-NATION TREATMENT

Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-Party.

ARTICLE 7.4: MARKET ACCESS

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or

(iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 7.5: LOCAL PRESENCE

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

ARTICLE 7.6: NON-CONFORMING MEASURES

1. Articles 7.2 through 7.5 shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 7.2, 7.3, 7.4 or 7.5.

2. Articles 7.2 through 7.5 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

ARTICLE 7.7: DOMESTIC REGULATION

1. Where a Party requires authorisation for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. On request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorisation requirements that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure, as appropriate for individual sectors, that such measures are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect between the Parties under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

4. Subject to its laws and regulations, a Party shall permit service suppliers of the other Party to use the enterprise names under which they trade in the territory of the other Party and otherwise ensure that the use of the enterprise names is not unduly restricted.

ARTICLE 7.8: TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS

Further to Chapter 19 (Transparency):

(a) each Party shall establish or maintain appropriate mechanisms for responding to enquiries from interested persons regarding its regulations relating to the subject matter of this Chapter; and

(b) if a Party does not provide, in accordance with Article 19.1.2, advance notice of and opportunity for comment on regulations it proposes to adopt relating to the subject matter of this Chapter, it shall, on request of the other Party, address in writing the reasons for not doing so.

ARTICLE 7.9: RECOGNITION

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 5, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-Party, nothing in Article 7.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party.

3. On request of the other Party, a Party shall promptly provide information, including appropriate descriptions, concerning any recognition agreement or arrangement that the Party has concluded. For recognition arrangements entered into by relevant bodies in its territory, a Party shall encourage those bodies to provide the same information.

4. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if that other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education or experience obtained, requirements met, or licences or certifications granted in that other Party's territory should be recognised.

5. A Party shall not accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the

authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

6. Annex 7-A shall apply to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

ARTICLE 7.10: PAYMENTS AND TRANSFERS

1. Each Party shall permit all payments and transfers relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such payments and transfers relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of the payment or transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a payment or transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:

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

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

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

(d) criminal or penal offences; or

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

ARTICLE 7.11: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantive business operations in the territory of the other Party. If,

before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantive business operations in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent possible, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party on request of the other Party.

ARTICLE 7.12: AUDIOVISUAL CO-PRODUCTION

Recognising that audiovisual, including film, animation and broadcasting program co-productions can significantly contribute to the development of the audiovisual industry and to the intensification of cultural and economic exchange between them, the Parties hereby agree on Annex 7-B.

ARTICLE 7.13: DEFINITIONS

For the purposes of this Chapter:

aircraft repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called "line maintenance";

computer reservation system services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

cross-border trade in services or **cross-border supply of services** means the supply of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an enterprise as defined in Article 1.4 (Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise organised or constituted under the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;

professional services means services, the supply of which requires specialised post-secondary education, or equivalent training or experience or examination, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by tradespersons or vessel and aircraft crew members;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution but does not include the pricing of air transport services nor the applicable conditions;

service supplier of a Party means a person of that Party that seeks to supply or supplies a service; and

specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

ANNEX 7-A
PROFESSIONAL SERVICES

1. On request of the other Party, a Party shall provide information concerning standards and criteria for the licensing and certification of professional service suppliers, including information concerning the appropriate regulatory or other body to consult regarding these standards and criteria. These standards and criteria include requirements regarding education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection.

2. Each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for licensing and certification, to provide recommendations to the Joint Committee on mutual recognition, and to develop procedures for the temporary licensing arrangements of professional service suppliers of the other Party with respect to the professional services sectors or sub-sectors listed below and any other sectors or sub-sectors that may be mutually agreed by the Parties:

(a) engineering services;

(b) architectural services;

(c) veterinary services;

(d) healthcare services provided by pharmacists and radiographers; and

(e) accounting services.

3. The Parties hereby establish a Working Group on Professional Services, comprising representatives of each Party, to facilitate the activities set out in paragraphs 1 and 2. The Working Group shall meet within three years after the date of entry into force of this Agreement unless the Parties otherwise agree.

4. The Working Group should consider, for professional services generally and, as appropriate, for individual professional services:

(a) procedures for fostering the development of mutual recognition arrangements between relevant professional bodies of the Parties;

(b) the feasibility of developing model procedures for the licensing and certification of professional service suppliers;

(c) measures maintained at the central or regional level of government that would prevent the development of a mutual recognition arrangement or prevent a service supplier of a Party from receiving the benefits of such an arrangement; and

(d) other issues of mutual interest relating to the supply of professional services.

5. The Working Group shall consider, as appropriate, relevant bilateral, plurilateral, and multilateral agreements relating to professional services.

6. The Working Group shall report to the Joint Committee on its progress, including with respect to any recommendation for initiatives to promote mutual recognition of standards and criteria and temporary licensing, and on the further direction of its work, no later than three years after the date of entry into force of this Agreement.

7. On receipt of a recommendation referred to in paragraphs 2 and 6, the Joint Committee shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Joint Committee's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

8. The Joint Committee shall review the implementation of this Annex at least once every two years.

ANNEX 7-B
AUDIOVISUAL CO-PRODUCTION

ARTICLE 1: COMPETENT AUTHORITIES

1. Each Party shall designate a competent authority for the purpose of implementing this Annex. Either Party may change its appointed competent authority by giving notice to the other Party through diplomatic channels. The change in competent authority shall take effect 28 days after the notice has been received.

2. The competent authorities may examine the implementation of this Annex and consult with each other to resolve any difficulties arising out of its application.

ARTICLE 2: APPROVAL OF AUDIOVISUAL CO-PRODUCTIONS

1. Provisional approval from the competent authorities should be received before the commencement of the making of an audiovisual co-production work, subject to each Party's relevant domestic regulatory or policy arrangements. It is the responsibility of the co-producer or co-producers to provide any documentation required by the competent authorities to enable the competent authorities to complete their provisional approval processes.

2. In granting provisional approval to an audiovisual work as an audiovisual co-production, each competent authority may stipulate conditions of approval, framed in order to achieve the general aims and objects of this Annex.

3. Upon completion of production, it is the responsibility of the co-producers to submit to the competent authorities the completed audiovisual work and any documentation required by the competent authorities to enable the competent authorities to complete their approval process.

4. In granting provisional or final approval to audiovisual works under this Annex, the competent authorities, in consultation, shall apply the provisions of this Annex, and recognise the arrangements made in the *Memorandum of Understanding on the Implementation of the Annex on Audiovisual Co-Production*.

5. In the event that approval by both the competent authorities is not granted, the audiovisual work concerned shall not be considered to be approved for the purposes of this Annex.

6. An audiovisual work will be recognised as having completed the provisional or final approval process, as applicable, once the competent authority provides written notification to

the co-producer that the approval has been granted and specifies the conditions upon which the approval is granted.

7. The approval of an audiovisual work as an audiovisual co-production by the competent authorities shall not bind the relevant authorities of either Party to permit the public exhibition of the resulting audiovisual co-production.

ARTICLE 3: CO-PRODUCER STATUS

The competent authorities shall ensure that:

(a) the Australian co-producer satisfies all the conditions relating to status which would be required to be fulfilled, if that co-producer were the only producer, in order for the production to be eligible as an Australian audiovisual work under Australian legislation;

(b) the Korean co-producer satisfies all the conditions relating to status which would be required to be fulfilled, if that co-producer were the only producer, in order for the production to be eligible as a Korean audiovisual work under Korean legislation; and

(c) none of the co-producers are linked by common management, ownership or control, save to the extent that it is inherent in the making of the audiovisual co-production itself.

ARTICLE 4: THIRD COUNTRY CO-PRODUCTIONS

1. Where either Party maintains with a third country an audiovisual co-production agreement, or arrangement of less-than-treaty status, the competent authorities may jointly approve an audiovisual work as an audiovisual co-production under this Annex that is to be made in conjunction with a co-producer from that third country.

2. Both the financial and creative contributions of a third country co-producer shall account for not less than the percentage required under each Party's relevant domestic regulatory or policy arrangements.

3. Any third country co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce an audiovisual work under the terms of the co-production agreement, or arrangement of less-than-treaty status, in force between that co-producer's country and either Party.

ARTICLE 5: ENTITLEMENT TO BENEFITS

1. An audiovisual co-production shall be entitled to:

   (a) the full enjoyment of all the benefits which are accorded to national audiovisual works of either Party; and

   (b) any benefits which may be granted to national audiovisual works of either Party, subject to that Party's laws as in force from time to time.

2. Any subsidies, tax incentives, or other financial incentives which may be granted by either Party in relation to an audiovisual co-production shall accrue to the co-producer who is permitted to claim those benefits in accordance with the existing measures of that Party.

3. Such subsidies, tax incentives or other financial benefits shall not be assigned or disposed of except to or for the benefit of an enterprise or national of that Party, or in the case of a third country co-production under Article 4 (Third Country Co-Productions) of this Annex, any individual or enterprise that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article.

4. An audiovisual work made in accordance with an approval by the competent authorities under this Annex but completed after the termination of this Annex shall be treated as an audiovisual co-production and its co-producers shall accordingly be entitled to all the benefits of this Annex.

ARTICLE 6: IMPORT OF EQUIPMENT

Each Party shall provide, in accordance with its respective laws, regulations and procedures, temporary admission of cinematographic and technical equipment for the making of audiovisual co-productions free of import duties and taxes. The equipment may be exported by the importer free of duties and taxes, in accordance with the respective Party's laws, regulations and procedures.

ARTICLE 7: IMMIGRATION FACILITATION

Each Party shall permit nationals of the other Party, and in the case of a third country co-production under Article 4 (Third Country Co-Productions) of this Annex, any individual that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article, to travel to, enter and remain in its territory for the purpose of making or exploiting an audiovisual co-production, subject to the requirement that such individuals comply with the laws, regulations and procedures relating to entry into and temporary stay in its territory.

ARTICLE 8: CONTRIBUTIONS

1. Each co-producer shall have a financial contribution of not less than 20 per cent of the total financial contribution for an audiovisual co-production other than animation works intended for broadcast use. With respect to broadcast animation works, this contribution shall not be less than the percentage required under each Party's relevant domestic regulatory or policy arrangements.

2. The performing, technical and craft contribution (being the "creative" contribution) of each co-producer to an audiovisual co-production shall be in reasonable proportion to each co-producer's financial contribution.

ARTICLE 9: LOCATION FILMING

The competent authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers.

ARTICLE 10: PARTICIPATION

1. Subject to the provisions of Article 10.2 to 10.5 of this Annex, individuals participating in the making of audiovisual co-productions shall be co-producers.

2. Performers who are citizens or permanent residents of countries other than the participating co-production countries may be engaged in the audiovisual co-production:

(a) where the competent authorities are satisfied that there are exceptional circumstances;

(b) where script or financing of the audiovisual co-production dictates their participation; or

(c) in the case of approved location filming in a country other than that of the participating co-production countries, in minor roles where this is reasonably necessary.

3. Where the competent authorities have approved location filming in a country other than that of the participating co-production countries in accordance with Article 9, citizens or permanent residents of that country may be employed as crowd artists or to perform other services necessary for the location work to be undertaken.

4. The competent authorities may approve the participation of restricted numbers of technical personnel who are citizens or permanent residents of countries other than the

participating co-production countries where the competent authorities are satisfied that the relevant technical expertise is not available in the co-producers' countries at the time the audiovisual co-production is made.

5. Unless otherwise approved by the competent authorities, screenwriters involved in the making of audiovisual co-productions shall be nationals of either Party.

ARTICLE 11: FOOTAGE

At least 90 per cent of the footage included in an audiovisual co-production shall, subject to any departure from this rule which is approved by the competent authorities, be specially shot or otherwise created for that audiovisual work.

ARTICLE 12: MAKING UP TO FIRST-RELEASE PRINT

The competent authorities shall ensure that audiovisual co-productions are made and processed up to the creation of the first-release print or digital equivalent in the territory of the Parties or, where there is a third country co-producer, that co-producer's country.

ARTICLE 13: ACKNOWLEDGMENTS AND CREDITS

The competent authorities shall ensure that each audiovisual co-production includes either a separate credit title indicating that the audiovisual work is either an "Australian-Korean co-production" or a "Korean-Australian co-production", or where relevant, a credit which reflects the participation of the Parties and the country of the third country co-producer.

ARTICLE 14: TAXATION

Notwithstanding any other provision of this Annex other than Article 6, for the purposes of taxation the laws in force in each Party shall apply subject to the provisions of any tax treaty between the Parties.

ARTICLE 15: BALANCE

1. An overriding aim of the Annex, as monitored by the competent authorities, shall be to ensure that an overall balance is achieved between the Parties with respect to:

(a) the contribution to the production costs of all audiovisual co-productions;

(b) the use of studios and laboratories;

(c) the employment of all performing, craft and technical personnel, measured on a straight head count basis; and

(d) the participation in each of the major performing, craft and technical categories and in particular, that of the writer, director and lead cast, over each period of three years commencing on the date that this Annex enters into force.

2. Either competent authority may withhold approval of an audiovisual work as an audiovisual co-production on the basis that the overriding aim of overall balance referred to in paragraph 1 would be prejudiced by such approval.

Article 16: Institutional Mechanism

Each Party may request the establishment of an *ad hoc* Committee to discuss any matter related to the implementation of this Annex by delivering a written request to the competent authority of the other Party and the other Party shall give due consideration to the request. The *ad hoc* Committee shall comprise appropriate senior officials from appropriate ministries and agencies of each Party. The *ad hoc* Committee shall discuss the matter at a time and place agreed to by the Parties.

Article 17: Dispute Settlement

1. A Party may request consultations with the other Party regarding any matter arising under this Annex by delivering a written request to the competent authority of the other Party. Consultations shall commence promptly after a Party delivers a request for consultations to the competent authority of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

2. If the consultations under paragraph 1 fail to resolve the matter within 60 days after the date of receipt of a request for consultations, either Party may request good offices, conciliation, mediation or non-binding arbitration. The *ad hoc* Committee shall decide the processes for resolution of the matter.

3. Chapter 20 (Dispute Settlement) of the FTA between Australia and Korea shall not apply to any matter or dispute arising under this Annex.

Article 18: Implementing Arrangements

l. The Parties acknowledge the *Memorandum of Understanding Implementing the Annex on Audiovisual Co-Production* ("the Memorandum of Understanding")

2. The Parties recognise that the responsibilities and arrangements established under the Memorandum of Understanding will apply in order to assist the implementation of this Annex.

ARTICLE 19: REVIEW

1. The Parties recognise the evolving nature of the audiovisual sector, in particular the role of technology.

2. The competent authorities shall review the operation of this Annex as required and make any proposals considered necessary for any modification thereof.

ARTICLE 20: SCOPE AND INTERPRETATION OF THE ANNEX

1. To the extent of any inconsistency between this Annex and any other provision in the Agreement, this Annex shall prevail to the extent of the inconsistency.

2. Nothing in this Annex shall be used to construe any other provision in the Agreement. No provision elsewhere in the Agreement shall be used to construe any provision in this Annex.

3. For greater certainty, nothing in Section B of Chapter 1 (Initial Provisions and Definitions), Articles 7.2, 7.3, 7.4 and 7.13 of Chapter 7 (Cross-Border Trade in Services), Chapter 10 (Movement of Natural Persons), Chapter 11 (Investment), Chapter 19 (Transparency), Chapter 20 (Dispute Settlement), Chapter 21 (Institutional Provisions), and Chapter 22 (General Provisions and Exceptions) of this Agreement shall apply to this Annex.

ARTICLE 21: DURATION AND TERMINATION

1. Nothing in Article 23.4 (Termination) of this Agreement shall apply to this Annex.

2. This Annex shall remain in force initially for a period of up to three years from the date of entry into force of the Agreement. Either Party may terminate this Annex by providing written notice to terminate to the other Party 180 days before the end of that period. The Annex shall then terminate at the end of the three years.

3. If neither Party terminates this Annex under paragraph 2, it shall automatically remain in force for successive periods, each of three years, unless written notice to terminate is given by either Party at least 180 days before the end of any period of three years, in which case it shall terminate at the end of that period.

4. This Annex is separable, and its termination shall not affect the continued operation of the Agreement. Termination of this Annex shall be governed only by this Article.

ARTICLE 22: DEFINITIONS

For the purpose of this Annex:

audiovisual co-production means an audiovisual work including films, animations, broadcasting programmes and digital format productions made by one or more co-producers of one Party in cooperation with one or more co-producers of the other Party (or in the case of a third country co-production, with a third country co-producer) which is approved by the competent authorities of each Party, in consultation;

audiovisual work means any aggregate of images or of images and sounds, embodied in any material in accordance with each Party's laws and regulations;

benefits means all those financial and other incentives which may be offered to audiovisual co-productions by each Party from time to time under Article 5.1 of this Annex;

competent authority means the authority or authorities designated as such by each Party;

co-producer means one or more nationals or enterprises of a Party that are involved or seeking to be involved in the making of an audiovisual co-production, or in the case of a third country co-production under Article 4 of this Annex, any individual that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article;

days means calendar days;

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

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

measure includes any law, regulation, procedure, requirement, or practice;

national means:

(a) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* or a permanent resident as defined in accordance with the *Migration Regulations 1994*; and

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

protection and reproduction material means those materials derived from the original audiovisual work materials for the purpose of protecting the final version of the audiovisual work, and those materials used for making copies of the audiovisual work for the purpose of distribution and exhibition of the audiovisual work.

CHAPTER 8
FINANCIAL SERVICES

ARTICLE 8.1: SCOPE

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

   (a) financial institutions of the other Party;

   (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

   (c) cross-border trade in financial services.

2. Chapters 7 (Cross-Border Trade in Services) and 11 (Investment) shall apply to measures described in paragraph 1 only to the extent that these Chapters or Articles of these Chapters are incorporated into this Chapter:

   (a) Articles 7.11 (Denial of Benefits), 11.7 (Expropriation and Compensation), 11.8 (Transfers), 11.11 (Denial of Benefits), and 11.13 (Special Formalities and Information Requirements), are incorporated into and made part of this Chapter;

   (b) Section B (Investor-State Dispute Settlement) of Chapter 11 (Investment) is incorporated into and made part of this Chapter solely for claims that a Party has breached Article 11.7 (Expropriation and Compensation), 11.8 (Transfers), 11.11 (Denial of Benefits), or 11.13 (Special Formalities and Information Requirements) as incorporated into this Chapter; and

   (c) Article 7.10 (Payments and Transfers) is incorporated into and made part of this Chapter to the extent that cross-border trade in financial services is subject to obligations under Article 8.5.

3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:

   (a) activities or services forming part of a public retirement plan or statutory system of social security; or

   (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter shall not apply to laws, regulations, or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

Article 8.2: National Treatment

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

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

3. For the purposes of the national treatment obligations in Article 8.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 8.3: Most-Favoured-Nation Treatment

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party, in like circumstances.

ARTICLE 8.4: MARKET ACCESS FOR FINANCIAL INSTITUTIONS

A Party shall not adopt or maintain, with respect to financial institutions of the other Party or investors of the other Party seeking to establish such institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

ARTICLE 8.5: CROSS-BORDER TRADE

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 8-A.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for the purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of the other Party and of financial instruments.

Article 8.6: New Financial Services

Each Party shall permit a financial institution of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 8.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorisation and the authorisation may be refused only for prudential reasons.

Article 8.7: Treatment of Certain Information

Further to Article 22.4 (Disclosure of Information), nothing in this Chapter requires a Party to furnish or allow access to information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers.

Article 8.8: Senior Management and Boards of Directors

1. Neither Party shall require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. Neither Party shall require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

ARTICLE 8.9: NON-CONFORMING MEASURES

1. Articles 8.2 through 8.5 and Article 8.8 shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III;

(ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed:

(i) immediately before the amendment, with Article 8.2, 8.3, 8.4, or 8.8; or

(ii) on the date of entry into force of the Agreement, with Article 8.5.

2. Articles 8.2 through 8.5 and Article 8.8 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure set out in a Party's Schedule to Annex I or II, to which Article 7.2 (National Treatment), 7.3 (Most-Favoured-Nation Treatment), 11.3 (National Treatment), 11.4 (Most-Favoured-Nation Treatment), or 11.10 (Senior Management and Boards of Directors) shall not apply, shall be treated as a non-conforming measure to which Article 8.2, 8.3, 8.5.1, or 8.8.2 shall not apply, as the case may be, to the extent that the measure, sector, sub-sector, or activity set out in the entry is covered by this Chapter.

ARTICLE 8.10: EXCEPTIONS

1. Notwithstanding any other provision of this Chapter or Chapter 9 (Telecommunications), including specifically Article 9.2 (Relation to Other Chapters), Chapter 11 (Investment) or 15 (Electronic Commerce) and, in addition, Article 7.1.3, with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,

including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform to the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapter 9 (Telecommunications), including specifically Article 9.2 (Relation to Other Chapters), Chapter 11 (Investment), or 15 (Electronic Commerce), and, in addition, Article 7.1.3, with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 11.9 (Performance Requirements) with respect to measures covered by Chapter 11 (Investment) or under Article 7.10 (Payments and Transfers) or 11.8 (Transfers).

3. Notwithstanding Articles 7.10 (Payments and Transfers) and 11.8 (Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

ARTICLE 8.11: TRANSPARENCY

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating access to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter shall apply are administered in a reasonable, objective, and impartial manner.

3. In lieu of Article 19.1.2, each Party, to the extent possible:

(a) shall publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulation;

(b) shall provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and

(c) should at the time it adopts final regulations, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent possible, each Party shall allow reasonable time between publication of final regulations of general application and their effective date.

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.

8. On request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

10. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.

ARTICLE 8.12: SELF-REGULATORY ORGANISATIONS

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to provide a financial service in or into the territory of that Party, the Party shall ensure that the self-regulatory organisation observes the obligations of Articles 8.2 and 8.3.

ARTICLE 8.13: PAYMENT AND CLEARING SYSTEMS

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

ARTICLE 8.14: RECOGNITION

1. A Party may recognise prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded autonomously;

(b) achieved through harmonisation or other means; or

(c) based on an agreement or arrangement with the non-Party.

2. A Party according recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

3. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances described in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

ARTICLE 8.15: SPECIFIC COMMITMENTS

Annex 8-B sets out certain specific commitments by each Party.

ARTICLE 8.16: COMMITTEE ON FINANCIAL SERVICES

1. The Committee on Financial Services established in accordance with Article 21.4 (Committees and Working Groups) shall comprise officials of each Party from authorities responsible for financial services. The authorities responsible for financial services are:

(a) for Australia, the Department of the Treasury and the Department of Foreign Affairs and Trade; and

(b) for Korea, the Ministry of Strategy and Finance and the Financial Services Commission.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party, including ways for the Parties to cooperate more effectively in the financial services sector; and

(c) participate in investment disputes in accordance with Article 8.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services.

ARTICLE 8.17: CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities set out in Article 8.16.1.

ARTICLE 8.18: DISPUTE SETTLEMENT

1. Chapter 20 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. Where a Party claims that a dispute arises under this Chapter, Article 20.8 (Establishment of Panel) shall apply, except that:

(a) where the Parties so agree, the panel shall be composed entirely of panellists meeting the qualifications in paragraph 3; and

(b) in any other case:

(i) each Party may select panellists meeting the qualifications set out in paragraph 3 or Article 20.8.5; and

(ii) if the Party complained against invokes Article 8.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties otherwise agree.

3. Financial services panellists shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions; and

(b) meet the qualifications set out in Article 20.8.5.

4. Notwithstanding Article 20.14 (Non-Implementation), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

ARTICLE 8.19: INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 11 (Investment), and the respondent invokes Article 8.10 as a defence, the following provisions shall apply:

(a) the respondent shall, within 120 days of the date the claim is submitted to arbitration under Section B of Chapter 11 (Investment), submit a written request to the Committee on Financial Services for a joint determination on the issue of whether and to what extent Article 8.10 is a valid defence to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d);

(b) the Committee shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties and, if constituted, to the tribunal. The determination shall be binding on the tribunal;

(c) if the Committee, within 60 days of the date by which it has received the respondent's written request for a determination under subparagraph (a), has not made a determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the Committee. The provisions of Section B of Chapter 11 (Investment) shall apply, except as modified by this subparagraph:

(i) in the appointment of all arbitrators not yet appointed to the tribunal, each disputing party shall take appropriate steps to ensure that the tribunal has expertise or experience as described in Article 8.19.3(a). The expertise or experience of particular candidates with respect to financial services shall be taken into account to the greatest extent possible in the appointment of the presiding arbitrator;

(ii) if, prior to the submission of the request for a determination in accordance with subparagraph (a), the presiding arbitrator has been appointed in accordance with Section B of Chapter 11 (Investment), such arbitrator shall be replaced on request of either disputing party and the tribunal shall be reconstituted in accordance with subparagraph (c)(i). If, within 30 days of the date the arbitration proceedings are resumed under subparagraph (d), the disputing parties have not agreed on the appointment of a new presiding arbitrator, the Secretary-General, on request of a disputing party, shall appoint the presiding arbitrator consistent with subparagraph (c)(i); and

(iii) the Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 8.10 is a valid defence to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for the purposes of the arbitration, to take a position on Article 8.10 not inconsistent with that of the respondent; and

(d) the arbitration referred to in subparagraph (a) may proceed with respect to the claim:

(i) 10 days after the date the determination of the Committee has been received by the disputing parties and, if constituted, the tribunal; or

(ii) 10 days after the expiration of the 60-day period extended to the Committee in subparagraph (c).

2. The definitions of the following terms set out in Article 11.28 (Definitions) are incorporated into this Article, *mutatis mutandis*: claimant, disputing parties, disputing party, respondent, and Secretary-General.

ARTICLE 8.20: DEFINITIONS

For the purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) direct insurance (including co-insurance):

  (i) life; and

  (ii) non-life;

(b) reinsurance and retrocession;

(c) insurance intermediation, such as brokerage and agency;

(d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

(e) acceptance of deposits and other repayable funds from the public;

(f) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(g) financial leasing;

(h) all payment and money transmission services, including credit, charge and debit cards, traveller's cheques and bankers drafts;

(i) guarantees and commitments;

(j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(i) money market instruments (including cheques, bills, certificates of deposits);

(ii) foreign exchange;

(iii) derivative products including, but not limited to, futures and options;

(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(v) transferable securities; and

(vi) other negotiable instruments and financial assets, including bullion;

(k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l) money broking;

(m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(n) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

(o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means “investment” as defined in Article 11.28 (Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

For greater certainty, a loan granted by, or debt instrument owned by, a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 11 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 11.28 (Definitions);

investor of a Party means a Party, or a national or an enterprise of a Party, that seeks to make, is making, or has made an investment in the territory of the other Party, provided, however, that a national who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.4 (Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; a central bank or monetary authority of a Party, or any financial institution that performs a financial regulatory function and is owned or controlled by a Party, shall not be considered a state enterprise/state-owned enterprise for the purposes of Article 14.4 (Competitive Neutrality); and

self-regulatory organisation means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, by statute or delegation from central, regional, or local governments or authorities. A self-regulatory organisation shall not be considered a state enterprise/state-owned enterprise for the purposes of Article 14.4 (Competitive Neutrality).

ANNEX 8-A
CROSS-BORDER TRADE

Australia

Insurance and insurance-related services

1. Article 8.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 8.20 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance, such as consultancy, risk assessment, actuarial and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 8.20 of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 8.5.1 shall apply only with respect to:

(a) the provision and transfer of financial information;

(b) the provision and transfer of financial data processing and related software relating to banking and other financial services as referred to in subparagraph (o) of the definition of financial service in Article 8.20; and

(c) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 8.20.

Korea

Insurance and insurance-related services

3. Article 8.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 8.20 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance, such as consultancy, risk assessment, actuarial and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 8.20 of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

4. Article 8.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 8.20 with respect to services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

5. Article 8.5.1 shall apply only with respect to:

(a) the provision and transfer of financial information;

(b) the provision and transfer of financial data processing and related software relating to banking and other financial services as referred to in subparagraph (o) of the definition of financial service in Article 8.20, by no later than two years from the date of entry into force of this Agreement; and

(c) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 8.20. This commitment applies to the supply of credit rating, credit reference and investigation, general fund administration, indirect investment vehicle appraisal, and bond appraisal with regard to securities issued in Korea only to the extent that Korea allows the supply of these services with respect to such assets. This commitment does not apply to:

(i) credit rating of enterprises in Korea; or

(ii) credit reference and investigation undertaken for purposes of lending and other financial transactions in Korea with respect to individuals or companies in Korea.

ANNEX 8-B
SPECIFIC COMMITMENTS

Section A: Transfer of Information

1. Each Party shall allow a financial institution of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the institution's ordinary course of business. Korea shall give effect to this commitment no later than two years after the date of entry into force of this Agreement, and in no case later than the effective date of similar commitments stemming from other international trade agreements.

2. Nothing in paragraph 1 shall restrict the right of a Party to protect sensitive information of consumers and to prohibit unauthorised reuse of such information so long as such right is not used as a means of avoiding the Party's commitments or obligations under this Agreement. The Parties reserve the right of their financial regulators to have access to records of financial services suppliers relating to the handling of such information and to require for the location of technology facilities.

Section B: Performance of Functions

1. The Parties recognise the benefits of allowing a financial institution in a Party's territory to perform certain functions at its head office or affiliates located inside or outside the Party's territory. To the extent possible, each Party shall allow such an office or affiliate to perform these functions. These functions generally include, but are not limited to:

(a) trade and transaction processing functions, including confirmation and statement production;

(b) technology-related functions, such as data processing, programming, and system development;

(c) administrative services, including procurement, travel arrangements, mailing services, physical security, office space management, and secretarial services;

(d) human resource activities, including training and education;

(e) accounting functions, including bank reconciliation, budgeting, payroll, tax, account reconciliation, and customer and proprietary accounting; and

(f) legal functions, including the provision of advice and litigation strategy.

2. Nothing in paragraph 1 shall prevent a Party from requiring a financial institution located in its territory to retain certain functions.

Section C: Supervisory Cooperation

The Parties support the efforts of their respective financial regulators to provide assistance to the regulators of the other Party to enhance consumer protection and those regulators' ability to prevent, detect, and prosecute unfair and deceptive practices. Each Party confirms that its financial regulators have the legal authority to exchange information in support of those efforts. The Parties shall encourage financial regulators to continue their ongoing efforts to strengthen this cooperation through bilateral consultations or bilateral or multilateral international cooperative mechanisms, such as memoranda of understanding or *ad hoc* undertakings.

Section D: Certain Government Entities

The Parties confirm that the following entities shall not be considered financial institutions for the purposes of this Chapter: the Korea Deposit Insurance Corporation (KDIC); Export-Import Bank of Korea; Korea Trade Insurance Corporation; Korea Technology Credit Guarantee Fund; Credit Guarantee Fund; Korea Asset Management Corporation (KAMCO); Korea Finance Corporation (KoFC); and Korea Investment Corporation (KIC). The Parties further recognise that Korea Post is currently a government agency that is not regulated as a financial institution.

Section E: Cross-Border Trade

A Party may require a cross-border financial service supplier of the other Party to provide information, solely for informational or statistical purposes, on the financial services it has supplied within the territory of the Party. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the supplier.

Section F: Chief Executive Officer

For greater certainty, nothing in Article 8.8 shall limit a Party's ability to require the chief executive officer of a financial institution established under its laws to reside within its territory.

Section G: Portfolio Management

1. A Party shall allow a financial institution (other than a trust company), organised outside its territory, to provide investment advice and portfolio management services, excluding custodial services, trustee services, and execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Articles 8.1 and 8.5.3.

2. For the purposes of paragraph 1, with regard to Korean won-denominated assets, the supply of investment advice or portfolio management services applies only to the extent that Korea allows the supply of these services with respect to such assets.

3. For the purposes of paragraph 1, "collective investment scheme" means:

(a) for Australia:

(i) a managed investment scheme as defined under section 9 of the *Corporations Act 2001*, other than a managed investment scheme operated in contravention of subsection 601ED(5) of the *Corporations Act 2001*; or

(ii) an entity that:

(A) carries on a business of investment in securities, interests in land, or other investments; and

(B) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the *Corporations Act 2001*) made on terms that the funds subscribed would be invested; and

(b) for Korea, any of the schemes established for making collective investment as defined under articles 9.18.1 through 9.18.6 of the *Financial Investment Services and Capital Markets Act* (FSCMA).

Section H: Government Procurement

1. Notwithstanding Article 8.1.4, each Party shall apply Articles 8.2 and 8.3 with respect to the acquisition or procurement of the following services to the extent this Chapter shall apply to measures adopted or maintained by the Party relating to activities or services set out in Article 8.1.3(a) and (b):

(a) services related to the sale, redemption, and distribution of central government debt;

(b) services related to the holding of central government fiscal and depository accounts; and

(c) services related to the management of the following assets:

   (i) for Australia, assets of the Future Fund; and

   (ii) for Korea, assets of the Korea Investment Corporation.

CHAPTER 9
TELECOMMUNICATIONS

ARTICLE 9.1: SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in telecommunications services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks or services, this Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to require a Party to compel any enterprise to:

(a) establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or

(b) make available its broadcast or cable facilities as a public telecommunications network where the enterprise is exclusively engaged in the broadcast or cable distribution of radio or television programming.

ARTICLE 9.2: RELATION TO OTHER CHAPTERS

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

Section A: Access to and Use of Public Telecommunications Networks or Services

ARTICLE 9.3: ACCESS AND USE

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders on a timely basis, and on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over owned or leased circuits;

(c) connect owned or leased circuits with public telecommunications networks or services in the territory, or across the borders, of that Party, or with circuits leased or owned by another service supplier;

(d) perform switching, signalling, processing and conversion functions; and

(e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks or services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party or any non-Party which is a party to the WTO Agreement.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; and

(b) protect the privacy of personal data of end-users of public telecommunications networks or services,

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks or services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;

(b) requirements, where necessary, for the inter-operability of such networks or services; and

(c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks.

Section B: Suppliers of Public Telecommunications Networks or Services

ARTICLE 9.4: OBLIGATIONS RELATING TO SUPPLIERS OF PUBLIC TELECOMMUNICATIONS NETWORKS OR SERVICES

Interconnection

1. Each Party shall ensure that:

(a) suppliers of public telecommunications networks or services in its territory provide, directly or indirectly, interconnection with suppliers of public telecommunications networks or services of the other Party. The rates, terms and conditions of such interconnection will generally be determined through commercial negotiation between the service suppliers concerned, in accordance with the laws and regulations of the Party; and

(b) in carrying out subparagraph (a), suppliers of public telecommunications networks or services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications networks or services and only use such information for the purpose of providing these services.

Number Portability

2. Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide number portability to the extent technically feasible, on a timely basis, and on terms and conditions that are reasonable and non-discriminatory.

Dialling Parity

3. Each Party shall ensure that:

(a) its telecommunications regulatory body has the authority to require that suppliers of public telecommunications services in its territory provide dialling parity within the same category of service to suppliers of public telecommunications services of the other Party; and

(b) suppliers of public telecommunications services of the other Party are afforded non-discriminatory access to telephone numbers.

Section C: Additional Obligations Relating to Major Suppliers of Public Telecommunications Networks or Services

ARTICLE 9.5: TREATMENT BY MAJOR SUPPLIERS

Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications networks or services of the other Party treatment no less favourable than such major suppliers accord in like circumstances to its subsidiaries, its affiliates, or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications networks or services; and

(b) the availability of technical interfaces necessary for interconnection.

ARTICLE 9.6: COMPETITIVE SAFEGUARDS

1. Each Party shall maintain appropriate measures for the purposes of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier in its territory, from engaging in or continuing anticompetitive practices.

2. The anticompetitive practices referred to in paragraph 1 include, in particular:

(a) engaging in anticompetitive cross-subsidisation;

(b) using information obtained from competitors with anticompetitive results;

(c) not making available, on a timely basis, to suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services; and

(d) pricing services in a manner that is likely to unreasonably restrict competition, including predatory pricing.

ARTICLE 9.7: RESALE

1. Each Party shall ensure that major suppliers in its territory do not impose unreasonable or discriminatory conditions or limitations on the resale of their public telecommunications services by suppliers of public telecommunications services of the other Party, where such conditions or limitations would have anticompetitive results.

2. Where a Party requires a major supplier of public telecommunications services in its territory to offer for resale, to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end-users that are not suppliers of public telecommunications services, it shall ensure that such services are offered for resale at reasonable rates.

ARTICLE 9.8: UNBUNDLING OF NETWORK ELEMENTS

Each Party shall provide its telecommunications regulatory body with the authority to require major suppliers in its territory to provide suppliers of public telecommunications networks or services of the other Party, on a timely basis, access to network elements for the provision of public telecommunications networks or services on an unbundled basis, and on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent.

ARTICLE 9.9: INTERCONNECTION

1. Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;

(c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(d) in a timely fashion, and on terms and conditions (including technical standards and specifications) and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers seeking interconnection need not pay for network components or facilities that they do not require for the service to be provided; and

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory in accordance with at least one of the following options:

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services;

(b) the terms and conditions of an existing interconnection agreement; or

(c) through negotiation of a new interconnection agreement.

3. Each Party shall ensure that applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

4. Each Party shall ensure that major suppliers in its territory may be required to file interconnection agreements with the Party's telecommunications regulatory body.

5. Each Party shall ensure, where interconnection is provided under paragraph 2(a), that the rates, terms and conditions are made publicly available.

ARTICLE 9.10: PROVISIONING AND PRICING OF LEASED CIRCUIT SERVICES

1. Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications networks or services of the other Party leased circuit services that are public telecommunications services in a reasonable period of time, on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

2. In carrying out paragraph 1, each Party shall provide its telecommunications regulatory body with the authority to require major suppliers in its territory to offer leased circuit services that are public telecommunications services to suppliers of public telecommunications networks or services of the other Party at capacity-based, cost-oriented prices.

ARTICLE 9.11: CO-LOCATION

1. Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications networks or services of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements on a timely basis and on

terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent.

2. Notwithstanding paragraph 1, where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory provide an alternative solution on a timely basis and on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent.

3. Each Party may determine, in accordance with its laws and regulations, which premises in its territory are subject to paragraphs 1 and 2.

ARTICLE 9.12: ACCESS TO TELECOMMUNICATIONS FACILITIES

1. Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, rights of way and any other structures deemed necessary by the Party, owned or controlled by major suppliers to suppliers of public telecommunications networks or services of the other Party in the Party's territory on a timely basis and on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

2. Each Party may determine in accordance with its laws and regulations the poles, ducts, conduits, rights of way or other structures to which it requires major suppliers in its territory to provide access under paragraph 1.

Section D: Other Measures

ARTICLE 9.13: SUBMARINE CABLE SYSTEMS

Where a supplier of telecommunications networks or services operates a submarine cable system to provide public telecommunications networks or services, the Party in whose territory the supplier is located shall ensure that such supplier accords the suppliers of public telecommunication networks or services of the other Party reasonable and non-discriminatory treatment with respect to access to that submarine cable system (including landing facilities) in its territory.

ARTICLE 9.14: CONDITIONS FOR THE SUPPLY OF VALUE-ADDED SERVICES

1. Neither Party shall require a service supplier in its territory that it classifies as a supplier of value-added services and that supplies those services over facilities that the supplier does not own to:

(a) supply those services to the public generally;

(b) cost-justify its rates for those services;

(c) file a tariff for those services;

(d) connect its networks with any particular customer for the supply of those services; or

(e) conform with any particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anticompetitive in accordance with its laws and regulations, or to otherwise promote competition or safeguard the interests of consumers.

ARTICLE 9.15: INDEPENDENT REGULATORY BODIES

1. Each Party shall ensure that its telecommunications regulatory body is separate from and functionally independent of any supplier of public telecommunications networks or services. To this end, each Party shall ensure that its telecommunications regulatory body does not own equity or maintain an operating or management role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all market participants and shall be made and implemented on a timely basis.

ARTICLE 9.16: UNIVERSAL SERVICE

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

ARTICLE 9.17: LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications networks or services to have a licence, the Party shall make publicly available:

(a) all the licensing criteria and procedures it applies;

(b) the period it normally requires to reach a decision concerning an application for a licence; and

(c) the terms and conditions of all licences in effect.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of, revocation of, refusal to renew, or imposition of conditions on, a licence.

Article 9.18: Allocation and Use of Scarce Telecommunications Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights of way, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated or assigned for specific government uses.

3. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 7.4 (Market Access) either as it applies to Chapter 7 (Cross-Border Trade in Services) or through the operation of Article 7.1 (Scope) to Chapter 11 (Investment). Accordingly, each Party shall retain the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications networks or services, provided that it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs.

4. Each Party shall endeavour to allocate and assign spectrum for non-government telecommunications services in a transparent manner that considers the overall public interest, including the encouragement of the economically efficient use of the spectrum and competition among suppliers of telecommunications services, and recognising that a Party may encourage such activities through a variety of means, including through administrative incentive pricing, auctions, or unlicensed use.

Article 9.19: Enforcement

1. Each Party shall provide its telecommunications regulatory body with the authority to enforce the Party's measures relating to the obligations in Articles 9.3 through 9.13.

2. Such authority shall include the ability to impose, or seek from administrative or judicial bodies, effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), corrective orders, or the modification, suspension, or revocation of licences.

Article 9.20: Resolution of Telecommunications Disputes

Further to Articles 19.3 (Administrative Proceedings) and 19.4 (Review and Appeal), each Party shall ensure that:

Recourse

(a) suppliers of public telecommunications networks or services may have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes between suppliers of public telecommunications networks or services on a timely basis regarding measures relating to matters in Articles 9.3 through 9.13;

(b) suppliers of public telecommunications networks or services of the other Party that have requested interconnection with a major supplier in the Party's territory may have recourse, within a reasonable and publicly specified period after the supplier requests interconnection, to a telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier; and

Judicial Review

(c) any service supplier whose legally-protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the relevant judicial body otherwise determines.

ARTICLE 9.21: TRANSPARENCY

Further to Article 19.1 (Publication), each Party shall ensure that:

(a) regulatory decisions, including the basis for such decisions, of its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;

(b) its measures relating to public telecommunications networks or services are made publicly available, including:

  (i) tariffs and other terms and conditions of service;

  (ii) specifications of technical interfaces;

  (iii) conditions for attaching terminal or other equipment to public telecommunications networks;

(iv) notification, permit, registration, or licensing requirements, if any;

(v) the amendment and adoption of measures concerning technologies or standards affecting access and use; and

(vi) procedures relating to judicial or administrative review; and

(c) its telecommunications regulatory body or other relevant body provides, on request by a supplier of public telecommunications networks or services of the other Party, a written explanation of reasons for any decision that denies access of the kind specified in Articles 9.9, 9.11 and 9.12.

ARTICLE 9.22: MEASURES CONCERNING TECHNOLOGIES AND STANDARDS

1. Neither Party shall prevent suppliers of public telecommunications networks or services or value-added services from having the flexibility to choose the technologies that they use to supply their services.

2. Notwithstanding paragraph 1, a Party may apply a measure that limits the technologies or standards that a supplier of public telecommunications networks or services or value-added services may use to supply its services, provided that the measure is designed to satisfy a legitimate public policy objective and is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade.

ARTICLE 9.23: CONSULTATION WITH INDUSTRY

Each Party shall facilitate consultation with suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of telecommunications policy, regulations and standards in a manner that is open to any participant in the telecommunications industry in the territory of that Party.

ARTICLE 9.24: RELATION TO INTERNATIONAL ORGANISATIONS

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international organisations, including the International Telecommunication Union and the International Organization for Standardization.

ARTICLE 9.25: COMMITTEE ON TELECOMMUNICATIONS

1. For the purposes of the effective implementation and operation of this Chapter, the Committee on Telecommunications, established in accordance with Article 21.4 (Committees and Working Groups), shall comprise officials of each Party, including officials responsible for telecommunications.

2. The Committee shall:

(a) review and monitor the implementation and operation of this Chapter; and

(b) discuss any issues related to this Chapter, and other issues relevant to the telecommunications sectors of the Parties.

3. Further to Article 21.4 (Committees and Working Groups), the Committee shall, as appropriate, report its findings and the outcomes of its discussions to the Joint Committee.

4. The Committee shall meet as agreed by the Parties.

5. The Parties may invite, by mutual consent, representatives of relevant entities other than the governments of the Parties, including those from the private sector, with the necessary expertise relevant to the issues to be discussed, to attend meetings of the Committee.

Section E: Definitions

ARTICLE 9.26: DEFINITIONS

For the purposes of this Chapter:

co-location (physical) means physical access to space in order to install, maintain, or repair equipment at premises owned or controlled and used by a major supplier to provide public telecommunications networks or services;

commercial mobile services means public telecommunications services supplied through mobile wireless means;

cost-oriented means based on cost, and may include a reasonable profit and may involve different cost methodologies for different facilities or services;

dialling parity means the ability of an end-user to use an equal number of digits to access the same type of public telecommunications service, regardless of the supplier of public telecommunications services chosen by such end-user and in a way that involves no unreasonable dialling delays;

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user or users;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a public telecommunications service, including features, functions, and capabilities provided by means of that facility or equipment;

non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between suppliers of the same type of public telecommunications services;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services;

public telecommunications networks or services means public telecommunications networks, or public telecommunications services, or public telecommunications networks and services;

public telecommunications service means any telecommunications service that is offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

service supplier of the other Party means a person of the other Party that seeks to supply or supplies a service, including a supplier of public telecommunications networks or services;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications regulatory body means any body or bodies at the central level of government responsible for the regulation of telecommunications;

user means an end-user or a supplier of public telecommunications networks or services; and

value-added services means services that add value to telecommunications services through enhanced functionality. For Australia, these are telecommunications services for which suppliers add value to customer information by enhancing its form or content or by providing for its storage or retrieval. For Korea, these are services as defined in subparagraph 12 of Article 2 of the *Telecommunications Business Act*.

ANNEX 9-A
SUPPLIERS OF PUBLIC TELECOMMUNICATIONS SERVICES

Korea

Article 9.4.3 shall not apply to Korea with respect to suppliers of international public telecommunications services.

ANNEX 9-B
EXEMPTIONS FROM SECTION C: ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS OF PUBLIC TELECOMMUNICATIONS NETWORKS OR SERVICES

Korea

1. Major suppliers shall be exempt from the application of the obligations specified in Articles 9.8, 9.9.1(a), 9.9.1(e), 9.11 and 9.12 to the extent that the supplier of public telecommunications networks or services of the other Party is a non-facilities based supplier.

2. Notwithstanding Articles 9.9.1(b), 9.9.1(d) and 9.10, Korea may permit major suppliers to offer rates, terms, and conditions to non-facilities based suppliers of public telecommunications services that are discriminatory compared to the rates, terms and conditions offered to facilities-based suppliers of public telecommunications services. For greater certainty, this provision does not derogate from Article 9.20, and non-facilities based suppliers of public telecommunications services may have recourse to the telecommunications regulatory body or other relevant body regarding disputes over such rates, terms, and conditions.

3. Consistent with Article 5.3 of the *Telecommunications Business Act*, a “non-facilities based supplier” is a licensed supplier of public telecommunications services that does not own wire or wireless lines or other transmission facilities, but may own a switch, router, or multiplexer, and supplies its public telecommunications services through transmission facilities of a licensed facilities-based supplier.

4. Major suppliers shall be exempt from the application of the obligations specified in Articles 9.5, 9.7, 9.8 and Articles 9.10, 9.11 and 9.12 to the extent that they are supplying commercial mobile services.

CHAPTER 10
MOVEMENT OF NATURAL PERSONS

ARTICLE 10.1: SCOPE

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party into the territory of the other Party under any of the categories referred to in Annex 10-A.

2. This Chapter reflects the mutually beneficial trading relationship between the Parties, the Parties' mutual desire to facilitate temporary entry for business persons on a reciprocal basis and to establish transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

3. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding citizenship, or residence or employment on a permanent basis.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.

5. The sole fact of requiring persons to meet eligibility requirements prior to entry into the territory of a Party shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter.

ARTICLE 10.2: RELATION TO OTHER CHAPTERS

Except for this Chapter, Chapters 1 (Initial Provisions and Definitions), 20 (Dispute Settlement) to the extent permitted by Article 10.6, 21 (Institutional Provisions), 22 (General Provisions and Exceptions) and 23 (Final Provisions) and Articles 19.1 (Publication), 19.2 (Provision of Information) and 19.3 (Administrative Proceedings), nothing in this Agreement shall impose any obligation on a Party regarding its immigration measures within the scope of this Chapter.

ARTICLE 10.3: GRANT OF TEMPORARY ENTRY

1. Each Party shall set out in Annex 10-A the specific commitments it undertakes for each of the categories of natural persons specified therein.

2. Each Party shall grant temporary entry to natural persons of the other Party in accordance with this Chapter, including the terms of the categories in Annex 10-A, provided that the natural persons comply with the relevant laws and regulations of the granting Party applicable to temporary entry, and any measures taken in accordance with them.

3. Neither Party shall impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party under this Chapter, unless otherwise specified in Annex 10-A.

ARTICLE 10.4: REQUIREMENTS AND PROCEDURES RELATING TO THE MOVEMENT OF NATURAL PERSONS

1. Each Party shall endeavour to establish or maintain immigration formalities, which can be granted prior to arrival in its territory, to allow natural persons covered by this Chapter entry into and temporary stay in its territory.

2. Each Party shall expeditiously process complete applications for immigration formalities received from natural persons of the other Party covered by this Chapter, including further immigration formality requests or extensions thereof.

3. Each Party shall, on request and within a reasonable period after a complete application by a natural person of the other Party covered by this Chapter requesting temporary entry is lodged, notify the applicant of:

(a) receipt of the application;

(b) the status of the application; and

(c) the decision concerning the application, including:

(i) if approved, the period of stay and other conditions; or

(ii) if refused, the reasons for refusal and any avenues for review.

4. Each Party shall ensure that fees charged by its competent authorities on applications for immigration formalities do not in themselves represent an unjustifiable impediment to the movement of natural persons of the other Party under this Chapter.

5. Each Party shall endeavour to simplify the procedures and requirements relating to the movement of natural persons of the other Party, within the framework of its laws and regulations.

ARTICLE 10.5: ONLINE LODGEMENT AND PROCESSING

Each Party shall endeavour, to the extent possible, to provide facilities for online lodgement and processing of immigration formalities.

ARTICLE 10.6: DISPUTE SETTLEMENT

1. The Parties shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of this Chapter.

2. The dispute settlement procedures provided in Chapter 20 (Dispute Settlement) shall not apply to this Chapter unless:

(a) the matter involves a pattern of practice; and

(b) the natural persons of a Party concerned have exhausted administrative remedies, where available, regarding the particular matter.

3. The remedies referred to in paragraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued within one year after the date of the institution of proceedings (not including any review or appeal) for such remedy, and the failure to issue such a determination is not attributable to delays caused by the natural persons concerned.

ARTICLE 10.7: TRANSPARENCY

Further to Articles 19.1 (Publication) and 19.2 (Provision of Information), each Party shall:

(a) publish or otherwise make publicly available no later than six months after the date of entry into force of this Agreement, explanatory material regarding the requirements for temporary entry under this Chapter, in such a manner as will enable natural persons of the other Party to become acquainted with them; and

(b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to the temporary entry of natural persons covered by this Chapter.

ARTICLE 10.8: DEFINITIONS

For the purposes of this Chapter:

immigration formalities means a visa, permit or any other document or electronic authority granting a natural person of a Party temporary entry to the other Party;

natural person of a Party means a natural person who under the law of the Party:

(a) for Australia, is a citizen or a permanent resident of Australia; and

(b) for Korea, is a national or a permanent resident of Korea; and

temporary entry means entry by a natural person covered by this Chapter, without the intent to establish permanent residence.

ANNEX 10-A
SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS

Section A: Australia's Specific Commitments

1. Australia requires a natural person of Korea seeking temporary entry to its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry. Grant of temporary entry in accordance with this Annex is contingent on meeting eligibility requirements contained within Australia's migration law and regulations, as applicable at the time of an application for grant of temporary entry. Eligibility requirements for grant of temporary entry in accordance with paragraphs 5 through 11 include, but are not limited to, employer nomination and occupation requirements.

Business Visitors of Korea

2. Entry and temporary stay shall be granted to business visitors of Korea referred to in paragraph 4(a) for a period of up to 90 days.

3. Entry and temporary stay shall be granted to business visitors of Korea referred to in paragraph 4(b) for a period of up to six months, with the possibility of further stay.

4. A business visitor of Korea means a natural person of Korea who is:

(a) a natural person seeking to travel to Australia for business purposes, including for investment purposes, whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who must not engage in making direct sales to the general public or in supplying goods or services themselves; or

(b) a service seller, who is a natural person not based in Australia whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who is a sales representative of a service supplying enterprise, seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplying enterprise.

Intra-Corporate Transferees of Korea

5. Entry and temporary stay shall be granted to intra-corporate transferees of Korea referred to in paragraph 7(a) for a period of up to four years, with the possibility of further stay.

6. Entry and temporary stay shall be granted to intra-corporate transferees of Korea referred to in paragraph 7(b) for a period of up to two years, with the possibility of further stay.

7. An intra-corporate transferee of Korea means an employee of an enterprise of Korea established in Australia through a branch, subsidiary or affiliate which is lawfully and actively operating in Australia, who is transferred to fill a position in the branch, subsidiary or affiliate of the enterprise in Australia, and who is:

(a) an executive or a senior manager, who is a natural person responsible for the entire or a substantial part of the operations of the enterprise in Australia, receiving general supervision or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; or

(b) a specialist, who is a natural person with advanced trade, technical or professional skills and experience who must be assessed as having the necessary qualifications, or alternative credentials accepted as meeting Australia's standards, for that occupation, and who must have been employed by the employer for not less than two years immediately preceding the date of the application for temporary entry.

Independent Executives of Korea

8. Entry and temporary stay shall be granted to independent executives of Korea for a period of up to two years.

9. An independent executive of Korea means an executive of an enterprise headquartered in Korea who is establishing a branch or subsidiary of that enterprise in Australia, and who is a natural person that will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.

Contractual Service Suppliers of Korea

10. Entry and temporary stay shall be granted to contractual service suppliers of Korea for a period of up to one year, with the possibility of further stay.

11. A contractual service supplier of Korea means a natural person of Korea who has trade, technical or professional skills and experience and who is assessed as having the necessary qualifications, skills and work experience accepted as meeting Australia's standards for their nominated occupation and is:

(a) an employee of an enterprise of Korea that has concluded a contract for the supply of a service within Australia and which does not have a commercial presence within Australia; or

(b) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.

Accompanying Spouses and Dependents

12. For a natural person of Korea who has been granted the right of entry and temporary stay under this Chapter for a period of longer than 12 months and who has a spouse or dependent, Australia shall, upon application, grant the accompanying spouse or dependent the right of entry and temporary stay, movement and work for an equal period to that of the natural person.

Section B: Korea's Specific Commitments

1. Korea requires a business person of Australia seeking temporary entry into its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry.

2. Korea may refuse to grant temporary entry to a natural person who is likely to be involved in any labour dispute that is in progress and adversely affect the settlement of such labour dispute.

Business Visitors of Australia

3. Entry and temporary stay shall be granted to a business visitor of Australia for a period of not more than 90 days without requiring that person to obtain an employment authorisation, provided that the business visitor otherwise complies with immigration measures applicable to temporary entry.

4. A business visitor of Australia means a natural person of Australia:

(a) who is:

(i) a service seller who enters the territory of Korea for the purpose of negotiating the sale of services or entering into agreements for such sale;

(ii) seeking temporary entry for negotiating sale of goods, where such negotiations do not involve direct sales to the general public; or

(iii) an investor or an employee of an investor, who is a manager, executive or specialist as defined in paragraph 6, seeking temporary entry to establish an investment; and

(b) whose primary source of remuneration for the proposed business activity, principal place of business and the actual place of accrual of profits, at least predominantly, remain outside Korea.

Intra-Corporate Transferees of Australia

5. Entry and temporary stay shall be granted for a period of up to three years, which may be extended for subsequent periods provided the conditions on which it is based remain in effect, to an intra-corporate transferee of Australia, provided that such person otherwise complies with immigration measures applicable to temporary entry.

6. Intra-corporate transferee means an employee of enterprises that supply services through subsidiaries, branches, or designated affiliates established in the territory of Korea and who has been so employed for a period not less than one year immediately preceding the date of the application for temporary entry, and who is an executive, manager, or specialist as defined below:

(a) executive means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual supply of a service or services of the organisation;

(b) manager means a natural person within an organisation who primarily directs the organisation or a department of the organisation; supervises and controls the work of other supervisory, professional or managerial employees; has the authority to hire and fire or recommend hiring, firing, or other personnel actions;

and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the supply of the service; and

(c) specialist means a natural person within an organisation who possesses knowledge at an advanced level of continued expertise and proprietary knowledge on the services, research, equipment, techniques, or management of the organisation.

Traders and Investors of Australia

7. Entry and temporary stay shall be granted for a period of up to two years, which may be extended for subsequent periods provided that the conditions on which it is based remain in effect, to a business person of Australia seeking to:

(a) carry on substantial trade in goods or services principally between Australia and Korea; or

(b) establish, develop or administer an investment or provide advice or key technical services to the operation of an investment to which that person or that person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory or executive, or involves essential skills, provided that such a person otherwise complies with immigration measures applicable to temporary entry.

Contractual Service Suppliers of Australia

8. Entry and temporary stay shall be granted for a period up to one year or the period of the contract, whichever is less, to a natural person of Australia who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 10-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.

9. A contractual service supplier, means a natural person of Australia who:

(a) is employed or engaged in a specialised occupation that requires theoretical and practical application of specialised knowledge;

(b) possesses the necessary academic and professional qualifications and professionally-qualified competency-based experience to perform an activity in

the sector relevant to the service to be provided in accordance with the laws, regulations or requirements of Korea;

(c) is engaged in the supply of a contracted service as an employee of an enterprise that has no commercial presence in Korea, where the enterprise obtains a service contract, for a period not exceeding one year, from an enterprise of Korea, who is final consumer of the services supplied. The contract shall comply with the laws and regulations of Korea;

(d) has been an employee of the enterprise for a period of not less than one year immediately preceding the date of application for admission; and

(e) is required to receive no remuneration from an enterprise located in Korea.

10. Labour market testing may be required as a condition for temporary entry of, or numerical restriction may be imposed relating to, temporary entry for professionals.

Accompanying Spouses and Dependents

11. Entry and temporary stay shall be granted for an equal period to a spouse or dependent of an intra-corporate transferee, trader, investor or contractual service supplier of Australia qualifying for temporary entry under this Chapter, provided that the spouse or dependent otherwise complies with immigration measures applicable to temporary entry. A work permit may be granted within the allowed scope in accordance with relevant laws, regulations or requirements of Korea.

APPENDIX 10-A-1
LIST OF CONTRACTUAL SERVICE SUPPLIERS

1. Services related to the installation, management or repair of industrial equipment or machinery, excluding construction and power generation equipment, for an enterprise in Korea which purchases the equipment or the machinery from an enterprise employing the natural person located in Australia;

2. Consultancy services related to technical knowledge or skill concerning the natural sciences applied to information technology, e-business, biotechnology, nanotechnology, digital electronics, or the environmental industry;

3. Consultancy services for foreign accounting standards and auditing, training of CPAs, transfer of auditing technology and exchange of information related to accounting, auditing and bookkeeping services, to a Korean accounting firm or office through a membership contract;

4. Architectural services subject to collaboration with architects registered under Korean law in the form of joint contracts;

5. Management consulting services; and

6. The following professional engineering services:

   (a) consultancy services related to the installation of computer hardware;

   (b) software R&D-based implementation services;

   (c) data management services;

   (d) data system services; and

   (e) specialty engineering design services for automobiles.

CHAPTER 11
INVESTMENT

Section A: Investment

ARTICLE 11.1: SCOPE

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

   (a) investors of the other Party;

   (b) covered investments; and

   (c) with respect to Article 11.9, all investments in the territory of the Party.

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

ARTICLE 11.2: RELATION TO OTHER CHAPTERS

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

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

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Financial Services).

ARTICLE 11.3: NATIONAL TREATMENT

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

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

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

ARTICLE 11.4: MOST-FAVOURED-NATION TREATMENT

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

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

ARTICLE 11.5: MINIMUM STANDARD OF TREATMENT

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

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

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

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

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

ARTICLE 11.6: LOSSES AND COMPENSATION

1. Notwithstanding Article 11.12.5(b), each Party shall accord to investors of the other Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife, treatment no less favourable than that it accords, in like circumstances, to:

(a) its own investors and their investments; or

(b) investors of any non-Party and their investments.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

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

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

the latter Party shall provide the investor with restitution, compensation, or both as appropriate, for such loss. In the event of providing both restitution and compensation, their combined value shall not exceed the loss suffered. Any compensation shall be prompt, adequate, and effective, in accordance with Articles 11.7.2, 11.7.3 and 11.7.4, *mutatis mutandis*.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 11.3 but for Article 11.12.5(b).

ARTICLE 11.7: EXPROPRIATION AND COMPENSATION

1. Neither Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

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

(d) in accordance with the principle of due process of law as embodied in the principal legal systems of the world.

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

(a) be paid without delay;

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

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

(d) be fully realisable and freely transferable.

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

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

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

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

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation,

limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter 13 (Intellectual Property Rights).

ARTICLE 11.8: TRANSFERS

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

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

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

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

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

(e) payments made in accordance with Articles 11.6 and 11.7; and

(f) payments arising out of a dispute.

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

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

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer or a return in kind through the equitable, non-discriminatory and good faith application of its laws and regulations relating to:

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

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

(c) criminal or penal offences;

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

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

ARTICLE 11.9: PERFORMANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Paragraph 1(f) shall not apply:

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

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

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

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

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

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

6. Paragraphs 1(a), 1(b) and 1(c), and 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

7. Paragraphs 1(b), 1(c), 1(f) and 1(g), and 2(a) and 2(b) shall not apply to government procurement.

8. Paragraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

9. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

10. This Article shall not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement. For the purposes of this Article, private parties include designated

monopolies or state enterprises, where such entities are not exercising delegated government authority.

ARTICLE 11.10: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party shall require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority or less than a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

ARTICLE 11.11: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantive business operations in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantive business operations in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party on request of the other Party.

ARTICLE 11.12: NON-CONFORMING MEASURES

1. Articles 11.3, 11.4, 11.9 and 11.10 shall not apply to:

   (a) any existing non-conforming measure that is maintained by a Party at:

      (i) the central level of government, as set out by that Party in its Schedule to Annex I;

      (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.3, 11.4, 11.9 and 11.10.

2. Articles 11.3, 11.4, 11.9 and 11.10 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 11.3 and 11.4 shall not apply to any measure that is an exception to, or derogation from, the obligations under Article 13.1.6 as specifically provided in that Article.

5. Articles 11.3, 11.4 and 11.10 shall not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

ARTICLE 11.13: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 11.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments in accordance with this Chapter.

2. Notwithstanding Articles 11.3 and 11.4, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

ARTICLE 11.14: SUBROGATION

1. Where a Party or an agency authorised by a Party has granted an indemnity, a guarantee or a contract of insurance against non-commercial risks with regard to an investment by one of its investors in the territory of the other Party and when payment has been made under this indemnity, guarantee or contract of insurance by the former Party or the agency authorised by it, the latter Party shall recognise the rights of the former Party or the agency authorised by the former Party by virtue of the principle of subrogation to the rights of the investor.

2. Where a Party or an agency authorised by a Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or agency authorised by the Party making the payment, pursue those rights and claims against the other Party.

Section B: Investor-State Dispute Settlement

ARTICLE 11.15: CONSULTATION AND NEGOTIATION

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures.

ARTICLE 11.16: SUBMISSION OF A CLAIM TO ARBITRATION

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached:

(A) an obligation under Section A;

(B) an investment authorisation; or

(C) an investment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

(i) that the respondent has breached:

(A) an obligation under Section A;

(B) an investment authorisation; or

(C) an investment agreement; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (notice of intent). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorisation or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of, or request for, arbitration (notice of arbitration):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

6. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

ARTICLE 11.17: CONSENT OF EACH PARTY TO ARBITRATION

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an “agreement in writing.”

ARTICLE 11.18: CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 11.16.1 and knowledge that the claimant (for claims brought under Article 11.16.1(a)) or the enterprise (for claims brought under Article 11.16.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 11.16.1(a), by the claimant's written waiver; and

(ii) for claims submitted to arbitration under Article 11.16.1(b), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 11.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 11.16.1(a)) and the claimant or the enterprise (for claims brought under Article 11.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

ARTICLE 11.19: SELECTION OF ARBITRATORS

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 75 days of the date a claim is submitted to arbitration under this Section, the Secretary-General, on request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall

not appoint a national of either Party as the presiding arbitrator unless the disputing parties otherwise agree.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 11.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 11.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

ARTICLE 11.20: CONDUCT OF THE ARBITRATION

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 11.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. At the request of a disputing party, and unless the disputing parties otherwise agree, the tribunal may determine the place of meetings, including consultations and hearings, taking into consideration appropriate factors, including the convenience of the parties and the arbitrators, the location of the subject matter, and the proximity of evidence. The preceding sentence is without prejudice to any appropriate factors a tribunal may consider under paragraph 1.

3. Unless the disputing parties otherwise agree, English and Korean shall be the official languages to be used in the entire arbitration proceedings, including all hearings, submissions, decisions, and awards.

4. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement. On request of a disputing party, the non-disputing Party should resubmit its oral submission in writing.

5. After consulting the disputing parties, the tribunal may allow a party or entity that is not a disputing party to file a written *amicus curiae* submission with the tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

(a) the *amicus curiae* submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;

(b) the *amicus curiae* submission would address a matter within the scope of the dispute; and

(c) the *amicus curiae* has a significant interest in the proceeding.

The tribunal shall ensure that the *amicus curiae* submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the *amicus curiae* submission.

6. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 11.26:

(a) such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment;

(b) on receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor;

(c) in deciding an objection under this paragraph, the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute;

(d) the respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 7.

7. In the event that the respondent so requests within 45 days of the date the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 6 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds

therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

8. When it decides a respondent's objection under paragraph 6 or 7, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

9. A respondent may not assert as a defence, counterclaim, or right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract, except with respect to any subrogation as provided for in Article 11.14.

10. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 11.16. For the purposes of this paragraph, an order includes a recommendation.

11. In any arbitration conducted under this Section, on request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Party. Within 60 days after the date the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the date the 60 day comment period expires.

12. Paragraph 11 shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 13 or Annex 11-E.

13. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for the purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 11.26 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

ARTICLE 11.21: TRANSPARENCY OF ARBITRAL PROCEEDINGS

1. Subject to paragraphs 2, 3 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 11.20.4 and 11.20.5 and Article 11.25;

(d) minutes or transcripts of hearings of the tribunal, where available; and

(e) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Without prejudice to Article 22.2 (Essential Security) and Article 22.4 (Disclosure of Information), nothing in this Section requires a Party to furnish or allow access to information, the disclosure of which:

(a) would impede law enforcement;

(b) would be contrary to its law regarding treatment of official information or matters relating to personal privacy; or

(c) it considers to be contrary to its essential security interests.

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;

(c) a disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1;

(d) the tribunal shall decide any objection by a disputing party regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing such information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c),

in either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information; and

(e) on request of a disputing Party, the Joint Committee shall consider issuing a decision in writing regarding a determination by the tribunal that information claimed to be protected was not properly designated. If the Joint Committee issues a decision within 60 days of such a request, it shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee does not issue a decision within 60 days, the tribunal's determination shall remain in effect only if the non-disputing Party submits a written statement to the Joint Committee within that period that it agrees with the tribunal's determination.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

ARTICLE 11.22: GOVERNING LAW

1. Subject to paragraph 3, when a claim is submitted under Article 11.16.1(a)(i)(A) or Article 11.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 11.16.1(a)(i)(B) or 11.16.1(a)(i)(C), or Article 11.16.1(b)(i)(B) or 11.16.1(a)(i)(C), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment authorisation or investment agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed:

(i) the law of the respondent, including its rules on the conflict of laws; and

(ii) such rules of international law as may be applicable.

3. A decision of the Joint Committee declaring its interpretation of a provision of this Agreement under Article 21.3.3(c) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

ARTICLE 11.23: INTERPRETATION OF ANNEXES

1. Where a respondent asserts as a defence that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue. The Joint Committee shall submit in writing any decision declaring its interpretation under Article 21.3.3(c) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Joint Committee under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue.

ARTICLE 11.24: EXPERT REPORTS

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, on request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

ARTICLE 11.25: CONSOLIDATION

1. Where two or more claims have been submitted separately to arbitration under Article 11.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 11.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 11.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, on request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 11.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 11.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 11.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

ARTICLE 11.26: AWARDS

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. A tribunal may also award costs and attorney’s fees in accordance with this Section and the applicable arbitration rules.

3. Subject to paragraph 1, where a claim is submitted to arbitration under Article 11.16.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A tribunal may not award punitive damages.

5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

6. Subject to paragraph 7 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

7. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 11.16.3(d):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

8. Each Party shall provide for the enforcement of an award in its territory.

9. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 20.8 (Establishment of Panel). The requesting Party may seek in such proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 20.11 (Panel Report), a recommendation that the respondent abide by or comply with the final award.

10. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 9.

11. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

ARTICLE 11.27: SERVICE OF DOCUMENTS

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 11-H.

Section C: Definitions

ARTICLE 11.28: DEFINITIONS

For the purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with the other Party;

disputing parties means the claimant and the respondent;

disputing Party means a Party against which a claim is made under Section B (Investor-State Dispute Settlement);

enterprise means an enterprise as defined in Article 1.4 (Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the law of a Party, and a branch of an enterprise of a Party located in the territory of a Party and carrying out business activities there;

ICSID Additional Facility Rules means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965*;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments and loans;

(d) futures, options and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

(f) intellectual property rights;

(g) licences, authorisations, permits and similar rights conferred pursuant to domestic law;, and

(h) other tangible or intangible, movable or immovable property and related property rights, such as leases, mortgages, liens and pledges.

For the purposes of this Agreement, a claim to payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment;

investment agreement means a written agreement between a national authority of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investment authorisation means an authorisation that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party;

investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making or has made an investment in the territory of the other Party, provided, however, that a national who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

New York Convention means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York, 10 June 1958;

non-disputing Party means the Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

ANNEX 11-A
CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 11.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 11.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

ANNEX 11-B
EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.

2. Article 11.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 11.7.1 is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

4. The determination of whether an action or a series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:

(a) the economic impact of the government action, although the fact that an action or a series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(b) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(c) the character of the government action, including its objectives and context.

5. Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.″

ANNEX 11-C
TRANSFERS

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures in accordance with the laws and regulations of the Party with regard to payments and capital movements:

(a) in the event of serious balance-of-payments or external financial difficulties or threat thereof; or

(b) where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in the Party concerned.

2. The measures referred to in paragraph 1:

(a) shall not exceed a period of one year, however, if extremely exceptional circumstances arise such that a Party seeks to extend such measures, the Party will coordinate in advance with the other Party concerning the implementation of any proposed extension;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(e) shall be temporary and phased out progressively as the situation described in paragraph 1 improves;

(f) shall not be confiscatory;

(g) shall promptly be notified to the other Party;

(h) shall be applied on a national treatment basis;

(i) shall ensure that the other Party is treated as favourably as any non-Party;

(j) shall not constitute a dual or multiple exchange rate practice;

(k) shall not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the Articles of Agreement of the International Monetary Fund; and

(l) shall not restrict payments or transfers associated with foreign direct investment.

ANNEX 11-D
ILLUSTRATIVE LIST OF AUSTRALIAN RESIDENCY REQUIREMENTS

Sector	Requirement
All	At least two of the directors of a public company must be ordinarily resident in Australia.
Professional services: Accounting, auditing and book-keeping services	At least one equity partner in a firm must be a permanent resident.
Research and development services: R&D services on social sciences and humanities	Permanent residency requirement for psychologists (Western Australia).
Maritime transport services: International transport (freight and passengers)	Part X of the *Competition and Consumer Law 2010* requires that every ocean carrier who provides international liner cargo shipping services to or from Australia shall, at all times be represented by a person who is an individual resident in Australia (but not necessarily an Australian citizen) and has been appointed by the ocean carrier as the ocean carrier's agent for the purposes of Part X.

ANNEX 11-E
POSSIBILITY OF A BILATERAL APPELLATE MECHANISM

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 11.26 in arbitrations commenced after they establish the appellate body or similar mechanism.

ANNEX 11-F
SUBMISSION OF A CLAIM TO ARBITRATION

Korea

1. Notwithstanding Article 11.18.2, an investor of Australia may not submit to arbitration under Section B a claim that Korea has breached an obligation under Section A either:

(a) on its own behalf, under Article 11.16.1(a); or

(b) on behalf of an enterprise of Korea that is a juridical person that the investor owns or controls directly or indirectly, under Article 11.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in any proceedings before a court or administrative tribunal of Korea.

2. For greater certainty, where an investor of Australia or an enterprise of Korea that is a juridical person that the investor owns or controls directly or indirectly makes an allegation that Korea has breached an obligation under Section A before a court or administrative tribunal of Korea, that election shall be final, and the investor may not thereafter allege that breach, on its own behalf or on behalf of the enterprise, in an arbitration under Section B.

ANNEX 11-G
FOREIGN INVESTMENT POLICY

A decision by Australia with respect to whether or not to refuse, or impose orders or conditions on, an investment that is subject to review under Australia's foreign investment policy shall not be subject to the dispute settlement provisions of Section B.

ANNEX 11-H
SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B

Australia

Notices and other documents in disputes under Section B shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton ACT 0221 Australia

Korea

Notices and other documents in disputes under Section B shall be served on Korea by delivery to:

Office of International Legal Affairs
Ministry of Justice of the Republic of Korea
Government Complex, Gwacheon
Korea

ANNEX 11-I
TAXATION AND EXPROPRIATION

The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 11-B and the following considerations:

(a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure, or the imposition of a taxation measure by more than one jurisdiction within a Party in respect of an investment, generally does not in and of itself constitute an expropriation;

(b) a taxation measure that is consistent with internationally recognised tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;

(c) a taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and

(d) a taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

CHAPTER 12
GOVERNMENT PROCUREMENT

ARTICLE 12.1: SCOPE

Application of Chapter

1. This Chapter shall apply to any measure regarding covered procurement.

2. For the purposes of this Chapter, "covered procurement" means a government procurement of goods, services or both:

(a) by any contractual means, including purchase, rental, hire purchase, or lease, with or without an option to buy, build-operate-transfer contracts and public works concessions contracts;

(b) for which the value, as estimated in accordance with this Article, equals or exceeds the relevant threshold specified in Annex 12-A;

(c) that is conducted by a procuring entity;

(d) that is not excluded from coverage by this Chapter; and

(e) subject to the conditions specified in Annex 12-A.

3. This Chapter shall not apply to:

(a) procurement of goods and services by a procuring entity of a Party from another entity of that Party, or between a procuring entity of a Party and a regional or local government of that Party;

(b) non-contractual agreements or any form of assistance that a Party provides, including grants, loans, equity infusions, fiscal incentives, subsidies, guarantees, and cooperative agreements;

(c) procurement for the direct purpose of providing foreign assistance;

(d) procurement of research and development services;

(e) procurement of goods and services outside the territory of the procuring Party, for consumption outside the territory of the procuring Party;

(f) public employment contracts;

(g) procurement conducted under the particular procedures or conditions of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project, or under the particular procedures or conditions of an international organisation, or funded by international grants, loans, or other assistance to the extent that the provision of such assistance is subject to conditions inconsistent with this Chapter;

(h) procurement funded by grants or sponsorship payments received from a person other than a procuring entity of a Party;

(i) the acquisition or rental of land, buildings, or other immovable property or rights thereon where not part of an arrangement for procurement of construction services;

(j) procurement of financial advisory and asset management services pertaining to reserves held by each Party, including for the purposes of funding retirement benefits; or

(k) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes, derivatives and other securities.

Valuation of Contracts

4. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) take into account all forms of remuneration, including any premiums, fees, commissions, interest, other revenue streams that may be provided for in the procurement and, where the procurement provides for the possibility of option clauses, the maximum total value of the procurement, inclusive of optional purchases; and

(b) without prejudice to paragraph 6, where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation on the total maximum value of the procurement over its entire duration.

5. The selection of the valuation method by a procuring entity shall not be used, nor shall any procurement requirement be divided, for the purposes of avoiding the application of this Chapter.

6. In the case of procurement by lease, rental, or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

7. Where the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be a covered procurement, unless otherwise excluded under this Chapter.

8. The Parties acknowledge and affirm the *Memorandum of Understanding on Defence Industry Cooperation between the Ministry of National Defense of the Republic of Korea and the Department of Defence of Australia*, dated 8 August 2001 (the "MOU"), including any amendment to or extension thereto. The Parties recognise that the benefits and responsibilities established under the MOU will continue to apply.

ARTICLE 12.2: EXCEPTIONS

1. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of handicapped persons, of philanthropic or not-for-profit institutions, or of prison labour.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal or plant life or health.

3. Further to Article 22.2 (Essential Security), nothing in this Chapter shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests relating to government procurement indispensable for national security or for national defence purposes.

ARTICLE 12.3: GENERAL PRINCIPLES

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party and its procuring entities shall accord to the goods, services and suppliers of the other Party treatment no less favourable than the most favourable treatment the Party and its procuring entities accord to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, neither a Party nor its procuring entities shall:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Measures Not Specific to Procurement

3. Paragraphs 1 and 2 shall not apply to measures regarding customs duties and other charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, or other import regulations including restrictions and formalities, and measures affecting trade in services other than measures regarding covered procurement.

Prohibition of Offsets

4. Neither a Party nor its procuring entities shall seek, take account of, impose or enforce offsets at any stage of a covered procurement.

Rules of Origin

5. Each Party shall apply to covered procurements of goods or services the rules of origin that it applies in the normal course of trade to those goods or services.

Conduct of Procurement and Tendering Procedures

6. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

7. A procuring entity may use open, selective or limited tendering procedures.

8. No procuring entity shall prepare, design, or otherwise structure or divide any procurement, in any stage of the procurement, for the purposes of avoiding the application of this Chapter.

9. Further to Article 22.4 (Disclosure of Information), nothing in this Chapter shall be construed as requiring a Party or its procuring entities to disclose, furnish or allow access to confidential information furnished by a person where such disclosure might prejudice fair competition between suppliers, without the authorisation of the person that furnished that information.

ARTICLE 12.4: PUBLICATION OF NOTICES

Notice of Procurement

1. In an open tendering procedure, a procuring entity shall publish a notice inviting interested suppliers to submit tenders (hereinafter referred to as "notice of procurement") in electronic or paper media that are widely disseminated and remain readily accessible to any interested supplier of the other Party for the entire period established for tendering.

2. Where, in a selective tendering procedure, a procuring entity publishes a notice inviting applications for participation or requesting suppliers to express their interest in a covered procurement, that notice shall be published in electronic or paper media that are widely disseminated and readily accessible to any interested supplier of the other Party.

3. Unless otherwise provided in this Chapter, each notice of procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement;

(b) a description of the procurement and any conditions for participation;

(c) where appropriate, the time-frame for delivery of goods or services; and

(d) the address and time limit for the submission of tenders.

Notice of Planned Procurement

4. Each Party shall encourage its procuring entities to publish prior to, or as early as possible in, each fiscal year, a notice regarding their procurement plans for that fiscal year. The notice should, at a minimum, include a description of each planned procurement and indicate the expected time of commencement of the related tender procedure.

ARTICLE 12.5: TIME LIMITS

1. A procuring entity shall prescribe time limits for tendering that allow suppliers adequate time to submit applications or requests to participate in a covered procurement and to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

2. A procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline. For greater certainty, this requirement shall also apply where:

(a) as a result of a need to amend information provided to suppliers during the procurement process, the procuring entity extends the time limit for qualification or tendering procedures; or

(b) negotiations are terminated and suppliers may submit new tenders.

3. Unless provided for in paragraph 4, the final date for the receipt of tenders shall not be less than 25 days from the date on which a notice of procurement is published or, in the case of selective tendering, from the date on which the procuring entity invites suppliers to submit tenders.

4. A procuring entity may reduce the time limit for the receipt of tenders to not less than 10 days:

(a) where the procuring entity has published a separate notice, including a notice of planned procurement under Article 12.4.4, at least 30 days and not more than 12 months in advance, and such separate notice contains a description of the procurement, the time limits for the submission of tenders or, where appropriate, applications for participation in a procurement, and the address from which documents relating to the procurement may be obtained;

(b) in the case of the second or subsequent publication of notices for procurement of a recurring nature;

(c) where a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable; or

(d) where the procuring entity procures commercial goods or services that are sold or offered for sale to, and customarily purchased and used by, non-governmental buyers for non-governmental purposes, including goods and services with modifications customary in the commercial marketplace, as well as minor modifications not customarily available in the commercial marketplace.

ARTICLE 12.6: CONDITIONS FOR PARTICIPATION

1. A Party and its procuring entities shall limit any conditions for participation in a covered procurement to those that ensure the potential supplier's capability to fulfil the contract in question.

2. In assessing whether a supplier satisfies the conditions for participation, a Party and its procuring entities:

(a) shall evaluate the capabilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;

(b) shall base its determination solely on the conditions that a procuring entity has specified in advance in notices or tender documentation;

(c) shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party; and

(d) may require prior experience where relevant to meet the requirements of the procurement.

3. Nothing in this Article shall preclude the exclusion of any supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct, or acts or omissions, that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article 12.7: Registration and Qualification of Suppliers

1. Where a Party or a procuring entity requires suppliers to register or pre-qualify before being permitted to participate in a covered procurement, that Party or procuring entity shall ensure that a notice inviting suppliers to apply for registration or pre-qualification is published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration or qualification procedures.

2. A Party or procuring entity may establish a multi-use list, provided that the Party or procuring entity annually publishes or otherwise makes available continuously in electronic form a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of the conditions;

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the entity and obtain all relevant documents relating to the list; and

(d) any deadlines for submission of applications for inclusion on that list.

3. A Party or procuring entity that maintains a multi-use list shall include on the list all suppliers that satisfy the conditions for participation within a reasonably short time.

4. Where a supplier applies for participation in a covered procurement, or for inclusion on a list referred to in paragraph 2, a procuring entity shall promptly advise such supplier of its decision with respect to its application.

Article 12.8: Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such standards exist, otherwise on national technical regulations, recognised national standards or building codes.

3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the procuring entity includes words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific covered procurement from a person that may have a commercial interest in the procurement.

5. Notwithstanding paragraph 4, a procuring entity may:

(a) conduct market research in developing technical specifications for a specific covered procurement; or

(b) allow a supplier that has been engaged to provide design or consulting services to participate in procurements related to such services, provided it would not give the supplier an unfair advantage over other suppliers.

6. For greater certainty, a procuring entity may prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

ARTICLE 12.9: TENDER DOCUMENTATION

1. A procuring entity shall promptly provide, on request, to any supplier participating in a covered procurement, tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders.

2. Unless already provided in the notice of procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature, scope and, where known, the quantity of the goods or services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;

(b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;

(c) all criteria to be considered in the awarding of the contract;

(d) where there will be a public opening of tenders, the date, time, and place for the opening of tenders; and

(e) any other terms or conditions relevant to the evaluation of tenders.

3. Neither a Party nor its procuring entities shall provide information with regard to a specific covered procurement in a manner which would have the effect of giving a potential supplier or group of potential suppliers an advantage over competitors.

4. A procuring entity shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure.

5. Where, during the course of a covered procurement, a procuring entity modifies the criteria or technical requirements set out in notices or tender documentation provided to participating suppliers, or amends or reissues notices or tender documentation, it shall transmit in writing all such modifications or all such amended or reissued notices or tender documentation:

(a) to all the suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information was provided; and

(b) in adequate time to allow such suppliers to modify and resubmit their tenders, as appropriate.

ARTICLE 12.10: SELECTIVE TENDERING PROCEDURES

To ensure optimum effective competition under selective tendering procedures, procuring entities shall invite tenders from the maximum number of domestic suppliers and suppliers of the other Party that is consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

ARTICLE 12.11: LIMITED TENDERING

1. Provided that it does not use this Article for the purpose of avoiding competition, to protect domestic suppliers or in a manner that discriminates against suppliers of the other Party, and subject to paragraph 2, a procuring entity may use limited tendering procedures. When a procuring entity applies limited tendering, it may choose, according to the nature of the procurement, not to apply Articles 12.4 through 12.10, 12.12.1, and 12.12.3 through 12.12.8.

2. A procuring entity may use limited tendering only under the following circumstances:

(a) where, in response to a prior notice, invitation to participate, or invitation to tender:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive,

and the procuring entity does not substantially modify the essential requirements of the procurement;

(b) where, for works of art, or for reasons connected with the protection of exclusive rights, such as patents or copyrights, or proprietary information, or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) for additional deliveries by the original supplier or its authorised agent that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a change of supplier would compel the procuring entity to procure goods or services not meeting

requirements of interchangeability with existing equipment, software, services, or installations;

(d) for goods purchased on a commodity market;

(e) where a procuring entity procures a prototype or a first good or service that is intended for limited trial or developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards;

(f) for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following use of open tendering or selective tendering in accordance with this Chapter, and for which the procuring entity has indicated in the notice of procurement concerning the initial construction service that limited tendering procedures might be used in awarding contracts for such new construction services;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership and not for routine purchases from regular suppliers;

(h) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the goods or services could not be obtained in time by means of an open or selective tendering procedure; or

(i) where a contract is awarded to the winner of a design contest, provided that:

(i) the contest has been organised in a manner that is consistent with this Chapter; and

(ii) the contest is judged by an independent jury with a view to a design contract being awarded to the winner.

3. For each contract awarded under paragraphs 1 and 2, a procuring entity shall prepare a written report that includes:

(a) the name of the procuring entity;

(b) the value and kind of goods or services procured; and

(c) a statement indicating the circumstances and conditions described in paragraphs 1 and 2 that justify the use of a procedure other than open or selective tendering procedures.

Article 12.12: Receipt and Opening of Tenders and Awarding of Contracts

1. A procuring entity shall receive and open all tenders under procedures that guarantee the fairness and impartiality of the procurement process.

2. A procuring entity shall treat all tenders in confidence subject to the laws of the Party of the procuring entity. In particular, it shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

4. Where a procuring entity provides suppliers with opportunities to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunities to all participating suppliers.

5. A procuring entity shall require that, in order to be considered for award, a tender be submitted in writing and, at the time of opening, conform to the essential requirements of the tender documentation.

6. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to satisfy the conditions for participation and whose tender is determined to be the most advantageous or best value for money, in accordance with the requirements and evaluation criteria specified in the notices and tender documentation.

7. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it can comply with the conditions for participation and is capable of fulfilling the terms of the contract.

8. A procuring entity shall not cancel a covered procurement, nor terminate or modify awarded contracts, so as to circumvent the requirements of this Chapter.

ARTICLE 12.13: POST-AWARD INFORMATION

1. No later than 60 days after award of a contract, a procuring entity shall publish a notice in an officially designated publication that includes at least the following information about the award:

(a) the name and address of the procuring entity;

(b) a description of the goods or services procured;

(c) the date of award or the contract date;

(d) the contract value;

(e) the name and address of the successful supplier; and

(f) the procurement method used.

2. A procuring entity shall promptly inform suppliers that have submitted tenders of the contract award decision. A procuring entity shall, on request, provide an unsuccessful supplier with the reasons that the procuring entity did not select its tender.

3. A procuring entity shall maintain records and reports relating to the conduct of procurements covered by this Chapter, including reports required by Article 12.11.3, for a period of at least three years after the date it awards a contract.

ARTICLE 12.14: ENSURING INTEGRITY IN PROCUREMENT PROCESSES

Each Party shall ensure that criminal or administrative penalties exist to sanction:

(a) a procurement official of that Party who solicits or accepts, directly or indirectly, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions;

(b) any person who offers or grants, directly or indirectly, to a procurement official of that Party, any article of monetary value or other benefit, for that procurement official or for another person, in exchange for any act or omission in the performance of that procurement official's procurement functions; and

(c) any person intentionally offering, promising or giving any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign procurement official, for that foreign procurement official or a third party, in order

that the foreign procurement official act or refrain from acting in relation to the performance of procurement duties, in order to obtain or retain business or other improper advantage.

ARTICLE 12.15: DOMESTIC REVIEW PROCEDURES

1. In the event of a complaint by a supplier of a Party that there has been a failure to apply the other Party's measures implementing this Chapter in the context of a covered procurement in which the supplier has or had an interest, the Party of the procuring entity shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord timely and impartial consideration to any such complaint and ensure that the making of any such complaint is not prejudicial to the supplier's participation in ongoing or future procurement or right to seek corrective measures under administrative or judicial review procedures.

2. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a non-discriminatory, timely, transparent and effective manner, complaints that a supplier of the other Party submits, in accordance with the laws and regulations of the Party of the procuring entity, relating to a covered procurement.

3. Each Party shall make information on complaint mechanisms generally available.

ARTICLE 12.16: RECTIFICATIONS AND MODIFICATIONS TO COVERAGE

1. A Party may modify its coverage under this Chapter, provided that:

(a) it notifies the other Party in writing and simultaneously offers acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, except as provided in paragraphs 2 and 3; and

(b) the other Party does not object in writing within 30 days of the notification.

2. Each Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Government Procurement Schedules referred to in Annex 12-A, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has

effectively eliminated its control or influence. Where the Parties do not agree that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

ARTICLE 12.17: DEFINITIONS

For the purposes of this Chapter:

build-operate-transfer contract and **public works concession contract** means any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

conditions for participation means registration, qualification, and other pre-requisites for participation in a procurement;

in writing or **written** means any worded or numbered expression that can be read, reproduced, and later communicated. This may include electronically transmitted and stored information;

limited tendering procedures means those tendering procedures covered by Article 12.11;

multi-use list means a list of suppliers that a Party or procuring entity has determined satisfy the conditions for participation in that list, and that the Party or procuring entity intends to use more than once;

offset means any condition or undertaking that encourages local development or improves a Party's balance of payments accounts such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements;

open tendering procedures means a procurement method where all interested suppliers may submit a tender;

procuring entity means an entity listed in Sections A, B or C of Annex 12-A;

selective tendering procedures means a procurement method where only suppliers qualified to tender or satisfying the conditions for participation are invited by the procuring entity to submit a tender;

services includes construction services unless otherwise specified;

supplier means a person that provides or could provide goods or services; and

technical specification means a tendering requirement that:

(a) sets out the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or

(b) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

ANNEX 12-A
GOVERNMENT PROCUREMENT

Section A: Central Government Entities

This Chapter applies to central government entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Articles 12.1.4 through 12.1.7, to equal or exceed:

(a) for procurement of goods and services:
130,000 SDR

(b) for procurement of construction services:
5,000,000 SDR

Schedule of Australia (Notes 1 and 2)

Administrative Appeals Tribunal
Attorney-General's Department
Australian Bureau of Statistics
Australian Centre for International Agricultural Research
Australian Crime Commission
Australian Customs and Border Protection Service
Australian Electoral Commission
Australian Federal Police
Australian Institute of Criminology
Australian Law Reform Commission
Australian National Audit Office
Australian Office of Financial Management (AOFM)
Australian Public Service Commission
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)
Australian Research Council
Australian Taxation Office
Australian Trade Commission
Australian Transaction Reports and Analysis Centre (AUSTRAC)
Australian Transport Safety Bureau
Bureau of Meteorology
Commonwealth Grants Commission
ComSuper
CrimTrac Agency
Defence Materiel Organisation (Note 3)

Department of Agriculture
Department of Communications
Department of Defence (Note 3)
Department of Education
Department of Employment
Department of Environment
Department of Finance
Department of Foreign Affairs and Trade
Department of Health
Department of the House of Representatives
Department of Human Services
Department of Immigration and Border Protection
Department of Industry
Department of Infrastructure and Regional Development
Department of Parliamentary Services
Department of the Prime Minister and Cabinet
Department of the Senate
Department of Social Services
Department of the Treasury
Department of Veterans' Affairs
Fair Work Commission
Family Court and Federal Circuit Court
Federal Court of Australia
Geoscience Australia
Inspector-General of Taxation
IP Australia
Migration Review Tribunal and Refugee Review Tribunal
National Archives of Australia
National Blood Authority
National Capital Authority
National Competition Council
Office of the Australian Information Commissioner
Office of the Australian Accounting Standards Board
Office of the Commonwealth Ombudsman
Office of the Director of Public Prosecutions
Office of the Fair Work Ombudsman
Office of the Inspector-General of Intelligence and Security
Office of the Official Secretary to the Governor-General
Office of Parliamentary Counsel
Old Parliament House
Productivity Commission
Professional Services Review Scheme
Royal Australian Mint
Safe Work Australia

Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)
Workplace Gender Equality Agency

Notes to the Schedule of Australia

1. This Chapter covers only those entities which are listed in this Schedule.

2. This Chapter does not cover the procurement of motor vehicles by any entity listed in this Section.

3. Department of Defence and Defence Materiel Organisation

(a) this Chapter does not cover Department of Defence and Defence Materiel Organisation procurement of the following goods due to Article 12.2 (Exceptions):

	Approximately equivalent to:
Weapons	FSC 10
Fire Control Equipment	FSC 12
Ammunition and Explosives	FSC 13
Guided Missiles	FSC 14
Aircraft and Airframe Structural Components	FSC 15
Aircraft Components and Accessories	FSC 16
Aircraft Launching, Landing and Ground Handling Equipment	FSC 17
Space Vehicles	FSC 18
Ships, Small Craft, Pontoons and Floating Docks	FSC 19
Ship and Marine Equipment	FSC 20
Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles	FSC 23
Engines, Turbines, and Components	FSC 28
Engines Accessories	FSC 29
Bearings	FSC 31
Water Purification and Sewage Treatment Equipment	FSC 46
Valves	FSC 48
Maintenance and Repair Shop Equipment	FSC 49
Prefabricated Structures and Scaffolding	FSC 54
Communication, Detection, and Coherent Radiation Equipment	FSC 58
Electrical and Electronic Equipment Components	FSC 59
Fiber Optics Materials, Components, Assemblies, and Accessories	FSC 60
Electric Wire, and Power and Distribution Equipment	FSC 61
Alarm, Signal and Security Detection Systems	FSC 63
Instruments and Laboratory Equipment	FSC 66
Specialty Metals	No Code

Note: Whether a good is included within the scope of this Note shall be determined solely according to the descriptions provided in the left column above. U.S. Federal Supply Codes are provided for reference purposes only *(for a complete listing of the United States Federal Supply Codes, to which the Australian categories are approximately equivalent, see http://www.fbo.gov)*.

(b) for Australia, this Chapter does not cover the following services, as elaborated in the Common Classification System and the WTO system of classification – MTN.GNS/W/120, due to Article 12.2 *(for a complete listing of the Common Classification System, see: http://www.sice.oas.org/trade/nafta/chap-105.asp)*:

(i) design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding and installation of military systems and equipment (approximately equivalent to relevant parts of U.S. Product Service Codes A & J)

(ii) operation of Government-owned Facilities (approximately equivalent to U.S. Product Service Code M)

(iii) space services (AR, B4 & V3)

(iv) services in support of military forces overseas

(c) this Chapter does not cover the procurement of goods and services by, or on behalf of, the Defence Intelligence Organisation, the Defence Signals Directorate, or the Defence Imagery and Geospatial Organisation

(d) in respect of Article 12.3, the Australian Government reserves the right, pursuant to Article 12.2, to maintain the Australian industry capability program and its successor programs and policies.

Schedule of Korea

Anti-corruption and Civil Rights Commission of Korea
Board of Audit and Inspection
Cultural Heritage Administration
Defense Acquisition Program Administration (Note 3)
Fair Trade Commission
Financial Services Commission
Korea Coast Guard (Note 5)
Korea Communications Commission
Korea Customs Service

Korea Forest Service
Korea Intellectual Property Office
Korea Meteorological Administration
Military Manpower Administration
Ministry of Agriculture, Food and Rural Affairs
Ministry of Culture, Sports and Tourism
Ministry of Education
Ministry of Employment and Labor
Ministry of Environment
Ministry of Food and Drug Safety
Ministry of Foreign Affairs
Ministry of Gender Equality and Family
Ministry of Government Legislation
Ministry for Health and Welfare
Ministry of Justice
Ministry of Land, Infrastructure and Transport
Ministry of National Defense (Note 3)
Ministry of Oceans and Fisheries
Ministry of Patriots and Veterans Affairs
Ministry of Science, ICT and Future Planning
Ministry of Security and Public Administration
Ministry of Strategy and Finance
Ministry of Trade, Industry and Energy
Ministry of Unification
Multifunctional Administrative City Construction Agency
National Emergency Management Agency
National Human Rights Commission of Korea
National Police Agency (Note 5)
National Tax Service
Office for Government Policy Coordination
Prime Minister's Secretariat
Public Procurement Service (Note 4)
Rural Development Administration
Small and Medium Business Administration
Statistics Korea
Supreme Prosecutors' Office

Notes to the Schedule of Korea

1. The above central government entities cover their "subordinate linear organizations", "special local administrative agencies", and "attached organs", as prescribed in the relevant provisions of the Government Organization Act of the Republic of Korea.

2. This Chapter does not apply to any set-asides for small- and medium-sized businesses in accordance with the *Act Relating to Contracts to Which the State is a Party* and its Presidential Decree, and the procurement of agricultural, fishery and livestock products in accordance with the *Grain Management Act*, the *Act on Distribution and Price Stabilization of Agricultural and Fishery Products*, and the *Livestock Industry Act*.

3. Ministry of National Defense and Defense Acquisition Program Administration: Subject to the decision of the Korean Government under the provisions of Article 22.2 (Essential Security), for the purchases of the Ministry of National Defense and the Defense Acquisition Program Administration, this Chapter will generally apply to the following FSC categories only, and for services and construction services listed in Section E and Section F, it will apply only to those areas which are not related to national security and defence:

FSC 2510 Vehicular cab, body, and frame structural components
FSC 2520 Vehicular power transmission components
FSC 2540 Vehicular furniture and accessories
FSC 2590 Miscellaneous vehicular components
FSC 2610 Tires and tubes, pneumatic, non-aircraft
FSC 2910 Engine fuel system components, non-aircraft
FSC 2920 Engine electrical system components, non-aircraft
FSC 2930 Engine cooling system components, non-aircraft
FSC 2940 Engine air and oil filters, strainers and cleaners, non-aircraft
FSC 2990 Miscellaneous engine accessories, non-aircraft
FSC 3020 Gears, pulleys, sprockets and transmission chain
FSC 3416 Lathes
FSC 3417 Milling machines
FSC 3510 Laundry and dry cleaning equipment
FSC 4110 Refrigeration equipment
FSC 4230 Decontaminating and impregnating equipment
FSC 4520 Space heating equipment and domestic water heaters
FSC 4940 Miscellaneous maintenance and repair shop specialized equipment
FSC 5120 Hand tools, non-edged, non-powered
FSC 5410 Prefabricated and portable buildings
FSC 5530 Plywood and veneer
FSC 5660 Fencing, fences and gates
FSC 5945 Relays and solenoids
FSC 5965 Headsets, handsets, microphones and speakers
FSC 5985 Antennae, waveguide, and related equipment
FSC 5995 Cable, cord, and wire assemblies: communication equipment
FSC 6220 Electric vehicular lights and fixtures
FSC 6505 Drugs and biologicals
FSC 6840 Pest control agents and disinfectants
FSC 6850 Miscellaneous chemical, specialties
FSC 7310 Food cooking, baking, and serving equipment

FSC 7320 Kitchen equipment and appliances
FSC 7330 Kitchen hand tools and utensils
FSC 7350 Tableware
FSC 7360 Sets, kits, outfits, and modules food preparation and serving
FSC 7530 Stationery and record forms
FSC 7920 Brooms, brushes, mops, and sponges
FSC 7930 Cleaning and polishing compounds and preparations
FSC 8110 Drums and cans
FSC 9150 Oils and greases: cutting, lubricating, and hydraulic
FSC 9310 Paper and paperboard

4. Public Procurement Service: this Chapter covers only those procurements carried out by the Public Procurement Service for the entities listed in this Section. Regarding procurement for entities listed in Sections B and C, the coverage and thresholds for such entities thereunder shall be applied.

5. National Police Agency and Korea Coast Guard: this Chapter does not cover procurement for the purpose of maintaining public order, as provided in Article 12.2.

Section B: Sub-Central Government Entities

1. This Chapter applies to sub-central government entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Articles 12.1.4 through 12.1.7, to equal or exceed:

(a) for procurement of goods and services:
for Australia: 355,000 SDR; and
for Korea: 200,000 SDR

(b) for procurement of construction services:
for Australia: 5,000,000 SDR; and
for Korea: 15,000,000 SDR.

2. This Chapter covers only those entities specifically listed in this Schedule.

Schedule of Australia

Australian Capital Territory (ACT) (Note 1)

ACT Gambling and Racing Commission
ACT Insurance Authority

ACTION
ACT Auditor-General
Chief Minister and Treasury Directorate
Commerce and Works Directorate
Community Services Directorate
Cultural Facilities Corporation
Economic Development Directorate
Education and Training Directorate
Environment and Sustainable Development Directorate
Health Directorate
Housing ACT
Independent Competition and Regulatory Commission
Justice and Community Safety Directorate
Legal Aid Commission
Ombudsman of the ACT
Territory and Municipal Services Directorate

1. For the entities listed for the Australian Capital Territory, the Government Procurement chapter does not cover the procurement of health and welfare services, education services, utility services, or motor vehicles.

New South Wales (NSW) (Notes 1 and 2)

The Audit Office of New South Wales
Commission for Children and Young People
Community Relations Commission
Department of Attorney General and Justice
Department of Education and Communities
Department of Family and Community Services
Department of Finance and Services
Department of Planning and Infrastructure
Department of Premier and Cabinet
Department of Trade and Investment, Regional Infrastructure and Services
Fire and Rescue NSW
Health Care Complaints Commission
Information and Privacy Commission (for the Information and Privacy Commission, this Chapter does not cover procurement related to the functions of the Privacy Commission)
Legal Aid NSW
Ministry for Police and Emergency Services
Ministry of Health
Motor Accidents Authority of NSW
New South Wales Crime Commission
New South Wales Electoral Commission
New South Wales Ombudsman

New South Wales Rural Fire Service
NSW Food Authority
NSW Rural Assistance Authority
Office of the Board of Studies
Office of the Director of Public Prosecutions NSW
Office of the Environment Protection Authority
Police Integrity Commission
Public Service Commission
State Emergency Service
Sydney Harbour Foreshore Authority
Sydney Olympic Park Authority
Transport for NSW (for Transport for NSW, this Chapter does not cover procurement related to the functions of The Transport Construction Authority and The Country Rail Infrastructure Authority)
The Treasury
WorkCover NSW

1. For the entities listed for New South Wales, this Chapter does not cover the procurement of health and welfare services, education services, or motor vehicles.

2. For the entities listed for New South Wales, this Chapter does not apply to the procurements undertaken by a covered entity on behalf of a non-covered entity.

Northern Territory (NT) (Note 1)

Aboriginal Areas Protection Authority
Auditor-General's Office
Central Australian Hospital Network
Department of Arts and Museums
Department of the Attorney-General and Justice
Department of Business
Department of the Chief Minister
Department of Correctional Services
Department of Health
Department of Housing
Department of Land Resource Management
Department of Lands, Planning and the Environment
Department of the Legislative Assembly
Department of Local Government
Department of Mines and Energy
Department of Primary Industry and Fisheries
Department of Regional Development and Women's Policy
Department of Sport and Recreation
Department of Treasury and Finance

Health and Community Services Complaints Commission
Land Development Corporation
Museum and Art Galleries Board
Northern Territory Electoral Commission
Northern Territory Emergency Service
Northern Territory Employment and Training Authority
Northern Territory Fire and Rescue Service
Northern Territory Licensing Commission
Office of the Commissioner for Public Employment
Ombudsman's Office
Parks and Wildlife Commission of the Northern Territory
Police Force of the Northern Territory
Racing Commission
Remuneration Tribunal
Strehlow Research Centre Board
Top End Hospital Network
Tourism NT
Utilities Commission of the Northern Territory
Work Health Authority

1. For the entities listed for the Northern Territory, this Chapter does not cover set-asides on behalf of the Charles Darwin University pursuant to Partnership Agreements between the Northern Territory Government and Charles Darwin University.

Queensland (Notes 1 and 2)

Entities declared to be departments pursuant to section 14 of the *Public Service Act 2008*
Public Service Commission
Public Trust Office

1. For the entities listed for Queensland, this Chapter does not apply to procurement:

   (a) by covered entities on behalf of non-covered entities;

   (b) undertaken by departments, or parts of departments, which deliver health, education, training and/or arts services; and

   (c) of health services, education services, training services, arts services, welfare services, government advertising and motor vehicles.

South Australia (SA) (Note 1)

Aboriginal Affairs and Reconciliation Division
Arts SA

Attorney-General's Department
Auditor-General's Department
Country Fire Service
Courts Administration Authority
Defence SA
Department for Communities and Social Inclusion
Department for Correctional Services
Department of Education and Child Development
Department of Environment, Water and Natural Resources
Department of Further Education, Employment, Science and Technology
Department of Health and Ageing
Department for Manufacturing, Innovation, Trade, Resources and Energy
Department of Planning, Transport and Infrastructure
Department of the Premier and Cabinet
Department of Primary Industries and Regions of South Australia
Department of Treasury and Finance
Electoral Commission SA
Environment Protection Authority
Independent Gambling Authority
Legal Services Commission
Office for State / Local Government Relations
Parliament of South Australia
South Australian Fire and Emergency Services Commission
South Australian Metropolitan Fire Services
South Australia Police
South Australian Tourism Commission
State Emergency Services
State Procurement Board
TAFE SA

1. For the entities listed for South Australia, this Chapter does not cover the procurement of health and welfare services, education services, advertising services or motor vehicles.

Tasmania (Note 1)

Department of Economic Development, Tourism and the Arts
Department of Education
Department of Health and Human Services
Department of Infrastructure, Energy and Resources
Department of Justice
Department of Police and Emergency Management
Department of Premier and Cabinet
Department of Primary Industries, Parks, Water and Environment
Department of Treasury and Finance

House of Assembly
Legislative Council
Legislature-General
Office of the Director of Public Prosecutions
Office of the Governor
Office of the Ombudsman
Tasmanian Audit Office
Tasmanian Health Organisation – North
Tasmanian Health Organisation – North West
Tasmanian Health Organisation – South

1. For the entities listed for Tasmania, this Chapter does not cover the procurement of health and welfare services, education services, or advertising services.

Victoria (Notes 1 and 2)

Commissioner for Environmental Sustainability
Department of Education, Early Childhood and Development
Department of Environment and Primary Industries
Department of Health
Department of Human Services
Department of Justice
Department of Premier and Cabinet
Department of State Development, Business and Innovation
Department of Transport, Planning and Local Infrastructure
Department of Treasury and Finance
Independent Broad-based Anti-corruption Commission
Office of the Chief Commissioner of Police (Victoria Police)
Office of the Commission for Children and Young People
Office of the Essential Services Commission
Office of the Fire Services Levy Monitor
Office of the Legal Services Commissioner
Office of the Ombudsman
Office of the Privacy Commissioner
Office of Public Prosecutions
Office of the Road Safety Camera Commissioner
Office of the Taxi Services Commission
Office of the Victorian Commission for Gambling and Liquor Regulation
Office of the Victorian Responsible Gambling Foundation
State Services Authority
Victorian Auditor-General's Office
Victorian Electoral Commission
Victorian Equal Opportunity and Human Rights Commission
Victorian Inspectorate

1. For the entities listed for Victoria, this Chapter does not cover the procurement of motor vehicles.

2. For the entities listed for Victoria, this Chapter does not apply to procurements by covered entities on behalf of non-covered entities.

Western Australia

Botanic Gardens and Parks Authority
Corruption and Crime Commission (Western Australia)
Country High Schools Hostels Authority
Department of the Attorney General
Department for Child Protection
Department for Communities
Department of Agriculture and Food
Department of Commerce
Department of Corrective Services
Department of Culture and the Arts
Department of Education
Department of Training and Workforce Development
Department of Education Services
Department of Environment and Conservation
Department of Finance
Department of Fire and Emergency Services
Department of Fisheries
Department of Health
Department of Housing
Department of Indigenous Affairs
Department of Local Government
Department of Mines and Petroleum
Department of Planning
Department of the Premier and Cabinet
Department of Racing, Gaming and Liquor
Department of Regional Development and Lands
Department of the Registrar Western Australian Industrial Relations Commission
Department of State Development
Department of Sport and Recreation
Department of Training and Workforce Development
Department of Treasury
Department of Water
Disability Services Commission
Equal Opportunity Commission
Gascoyne Development Commission

Goldfields Esperance Development Commission
Governor's Establishment
Great Southern Development Commission
Heritage Council of Western Australia
Kimberley Development Commission
Law Reform Commission of Western Australia
Legislative Assembly
Legislative Council
Main Roads Western Australia
Mid West Development Commission
Minerals and Energy Research Institute of Western Australia
National Trust of Australia (WA)
Office of the Auditor General
Office of the Director of Public Prosecutions
Office of the Information Commissioner
Office of the Inspector of Custodial Services
Office of the Parliamentary Commissioner for Administrative Investigations
Parliamentary Services Department
Peel Development Commission
Pilbara Development Commission
Public Sector Commission
Public Transport Authority
Rottnest Island Authority
Rural Business Development Corporation
Salaries and Allowances Tribunal
School Curriculum and Standards Authority
Small Business Development Corporation
South West Development Commission
State Library of Western Australia
Swan River Trust
Western Australia Police
Western Australian Electoral Commission
Western Australian Land Information Authority (Landgate)
Western Australian Planning Commission
Western Australian Sports Centre Trust (trading as VenuesWest)
Western Australian Tourism Commission
Wheatbelt Development Commission
Zoological Parks Authority

Schedule of Korea

Busan Metropolitan City
Chungcheongbuk-do

Chungcheongnam-do
Daegu Metropolitan City
Daejeon Metropolitan City
Gangwon-do
Gwangju Metropolitan City
Gyeonggi-do
Gyeongsangbuk-do
Gyeongsangnam-do
Incheon Metropolitan City
Jeju Special Self-Governing Province
Jeollabuk-do
Jeollanam-do
Seoul Metropolitan Government
Ulsan Metropolitan City

Notes to the Schedule of Korea

1. The above sub-central administrative government entities cover their "subordinate organizations under direct control", "offices" and "branch offices", as prescribed in the relevant provisions of the *Local Autonomy Act* of the Republic of Korea. Any entity with a separate legal personality that is not listed in this Annex is not covered.

2. This Chapter does not apply to any set-asides for small- and medium-sized businesses according to the *Act Relating to Contracts to Which the Local Government is a Party* and its Presidential Decree.

Section C: Other Covered Entities

This Chapter applies to other covered entities listed in each Party's Schedule to this Section where the value of the procurement is estimated, in accordance with Articles 12.1.4 through 12.1.7, to equal or exceed:

(a) for procurement of goods:
450,000 SDR

(b) for procurement of construction services:
15,000,000 SDR

Schedule of Australia (Notes 1, 2 and 3)

Australian Communications and Media Authority
Australian Competition and Consumer Commission
Australian Financial Security Authority
Australian Fisheries Management Authority
Australian Human Rights Commission
Australian Institute of Marine Science
Australian Maritime Safety Authority
Australian Pesticides and Veterinary Medicines Authority
Australian Prudential Regulation Authority
Australian Securities and Investments Commission
Comcare
Commonwealth Scientific and Industrial Research Organisation
Corporations and Markets Advisory Committee
The Director of National Parks
Great Barrier Reef Marine Park Authority
Safe Work Australia

Sydney Harbour Federation Trust
Tourism Australia

Notes to the Schedule of Australia

1. This Chapter covers only those entities specifically listed in this Schedule.

2. For the entities listed in this Section, this Chapter covers only the procurement of goods and construction services as specified in Australia's schedules in Sections D and F of this Annex.

3. For the entities listed in this Section, this Chapter does not cover the procurement of motor vehicles.

<u>Schedule of Korea</u>

Industrial Bank of Korea
Korea Agro-Fisheries Trade Corporation
Korea Coal Corporation
Korea Development Bank
Korea Electric Power Corporation (except purchases of products in the categories of HS Nos. 8504, 8535, 8537 and 8544)
Korea Expressway Corporation
Korea Gas Corporation
Korea Land and Housing Corporation
Korea Minting and Security Printing Corporation
Korea National Oil Corporation
Korea Resources Corporation
Korea Railroad Corporation
Korea Rural Community Corporation
Korea Tourism Organization
Korea Trade-Investment Promotion Agency
Korea Water Resources Corporation
Korea Workers' Compensation and Welfare Service

Notes to the Schedule of Korea

1. This Chapter does not apply to any set-asides for small- and medium-sized businesses according to the *Act on the Management of Public Institutions* and the *Rule on Contract Business of Public Institutions and Quasi-Governmental Institutions*, the *Local Public Enterprises Act* and the *Enforcement Regulations of the Local Public Enterprise Act*.

Section D: Goods

1. This Chapter applies to all goods procured by the entities listed in Sections A, B and C, unless otherwise specified in this Chapter, including this Annex.

2. This Chapter does not cover the procurement of blood and blood products, including plasma-derived products.

Section E: Services

This Chapter applies to all services procured by the entities listed in Sections A and B, unless otherwise specified in this Chapter, including this Annex.

Schedule of Australia

This Chapter does not cover the procurement of:

(a) plasma fractionation services;

(b) government advertising services;

(c) legal services;

(d) telecommunications;

(e) educational services;

(f) financial services;

(g) transport services; or

(h) health and welfare services.

Schedule of Korea

Of the WTO Universal List of Services as contained in document WTO/MTN.GNS/W/120, the following services are included (all others being excluded):

GNS/W/120	CPC	Description
1.A.b.	862	Accounting, auditing and bookkeeping services
1.A.c.	863	Taxation services
1.A.d.	8671	Architectural services
1.A.e.	8672	Engineering services
1.A.f.	8673	Integrated engineering services
1.A.g.	8674	Urban planning and landscape architectural services
1.B.a.	841	Consultancy services related to the installation of computer hardware
1.B.b.	842	Software implementation services
1.B.c.	843	Data processing services
1.B.d.	844	Data base services
1.B.e.	845	Maintenance and repair services of office machinery and equipment (including computers)
1.E.a.	83103	Rental/leasing services without operators relating to ships
1.E.b.	83104	Rental/leasing services without operators relating to aircraft
1.E.c.	83101, 83105*	Rental/leasing services without operators relating to other transport equipment (only passenger vehicles for less than fifteen passengers)
1.E.d.	83106, 83108, 83109	Rental/leasing services without operators relating to other machinery and equipment
	83107	Rental/leasing services without operator relating to construction machinery and equipment
1.F.a.	8711, 8719	Advertising agency services
1.F.b.	864	Market research and public opinion polling services
1.F.c.	865	Management consulting services
1.F.d.	86601	Project management services
1.F.e.	86761*	Composition and purity testing and analysis services (only inspection, testing and analysis services of air, water, noise level and vibration level)
	86764	Technical inspection services
1.F.f.	8811*, 8812*	Consulting services relating to agriculture and animal husbandry
	8814*	Services incidental to forestry (excluding aerial fire fighting and disinfection)
1.F.g.	882*	Consulting services relating to fishing

1.F.h.	883*	Consulting services relating to mining
1.F.m.	86751, 86752	Related scientific and technical consulting services
1.F.n.	633, 8861 8862, 8863 8864, 8865 8866	Maintenance and repair of equipment
1.F.p.	875	Photographic services
1.F.q.	876	Packaging services
1.F.r.	88442*	Printing (screen printing, gravure printing, and services relating to printing)
1.F.s.	87909*	Stenography services Convention agency services
1.F.t.	87905	Translation and interpretation services
2.C.j.	7523*	On-line information and data-base retrieval
2.C.k.	7523*	Electronic data interchange
2.C.l.	7523*	Enhanced/value-added facsimile services including store and forward, store and retrieve
2.C.m.	-	Code and protocol conversion
2.C.n.	843*	On-line information and/or data processing (including transaction processing)
2.D.a.	96112*, 96113*	Motion picture and video tape production and distribution services (excluding those services for cable TV broadcasting)
2.D.e.	-	Record production and distribution services (sound recording)
6.A.	9401*	Refuse water disposal services (only collection and treatment services of industrial waste water)
6.B.	9402*	Industrial refuse disposal services (only collection, transport, and disposal services of industrial refuse)
6.D.	9404*, 9405*	Cleaning services of exhaust gases and noise abatement services (services other than construction work services)
	9406*, 9409*	Environmental testing and assessment services (only environmental impact assessment services)
11.A.b.	7212*	International transport, excluding cabotage
11.A.d.	8868*	Maintenance and repair of vessels
11.F.b.	71233*	Transportation of containerized freight, excluding cabotage
11.H.c	748*	Freight transport agency services - Maritime agency services - Maritime freight forwarding services - Shipping brokerage services - Air cargo transport agency services

		- Customs clearance services
11.I.	-	Freight forwarding for rail transport

Notes to the Schedule of Korea

Asterisks (*) designate "part of" as described in detail in the Revised Conditional Offer of the Republic of Korea Concerning Initial Commitments on Trade in Services.

Section F: Construction Services

This Chapter applies to all construction services procured by the entities listed in Sections A, B and C, unless otherwise specified in this Chapter, including in this Annex.

Schedule of Australia

For the purposes of Articles 12.6.1 and 12.6.2 Australia requires, as a condition for participation in procurement of building and construction services, compliance with the National Code of Practice for the Construction Industry and related implementation guidelines at the central and sub-central government levels, and their successor policies and guidelines. In this respect Australia shall accord to the goods, services and suppliers of Korea, treatment no less favourable than the most favourable treatment it accords to its own goods, services and suppliers.

Schedule of Korea

1. This Chapter applies to the procurement of all construction services under Division 51 of the United Nations Provisional Central Product Classification (CPC) procured by the entities listed in Sections A through C, unless otherwise specified in this Chapter.

2. This Chapter does not apply to any set-asides for small- and medium-sized businesses according to the *Act on Private Participation in Infrastructure*.

Section G: General Notes

Unless otherwise specified herein, the following General Notes in each Party's Schedule apply without exception to this Chapter, including to all sections of this Annex.

Schedule of Australia

This Chapter does not apply to:

(a) any form of preference to benefit small and medium enterprises;

(b) measures to protect national treasures of artistic, historic, or archaeological value;

(c) measures for the health and welfare of indigenous people; and

(d) measures for the economic and social advancement of indigenous people.

Schedule of Korea

1. This Chapter does not apply to procurement in furtherance of human feeding programs.

2. For greater clarity, procurement for airports is not covered under this Agreement.

Section H: Value of Thresholds

General

1. The value of the thresholds set out in Sections A, B and C shall be adjusted at two-year intervals with each adjustment taking effect in January.

2. Each Party shall calculate and convert for itself the value of the thresholds into its own national currency using the conversion rates published by the IMF in its monthly "International Financial Statistics". Except where paragraph 3 applies, the conversion rates will be the average of the daily values of the respective national currency in terms of the SDR over the two-year period preceding 1 October or 1 November of the year before the adjusted thresholds are to take effect.

3. In respect of thresholds for sub-central entities Australia may apply the methodology for conversion of SDR amounts into Australian dollars set out in Section 8, Annex 15-A of the Australia-United States Free Trade Agreement as of the date of entry into force of this Agreement to the relevant SDR value set out in paragraph 2.

4. A Party may round its calculations for adjusted thresholds covered by this section according to the following:

(a) for Australia, to the nearest one thousand Australian dollars; and

(b) for Korea, to the nearest one million Korean won for goods and services and the nearest 10 million Korean won for construction services.

5. Each Party shall notify the other Party of the current thresholds in their respective currencies immediately after this Agreement enters into force, and the adjusted thresholds in their respective currencies thereafter in a timely manner.

6. The Parties shall consult if a major change in a national currency relative to the SDR or to the national currency of the other Party were to create a significant problem with regard to the application of this Chapter.

CHAPTER 13
INTELLECTUAL PROPERTY RIGHTS

ARTICLE 13.1: GENERAL PROVISIONS

Nature and Scope of Obligation

1. Each Party recognises the importance of adequate and effective protection of intellectual property rights, while ensuring that measures to enforce those rights do not themselves become barriers to legitimate trade.

2. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within their own legal system and practice.

Observance of International Obligations

3. Each Party affirms its rights and obligations under the TRIPS Agreement, the agreements administered by the WIPO and any other multilateral agreement related to intellectual property to which the Parties are party.

4. Each Party shall undertake reasonable efforts to ratify or accede to the *Patent Law Treaty*, done at Geneva on 1 June 2000 and the *Singapore Treaty on the Law of Trademarks*, done at Singapore on 27 March 2006, in a manner consistent with its law and subject to the fulfilment of its necessary internal requirements.

More Extensive Protection and Enforcement

5. A Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

National Treatment

6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection and enjoyment of such intellectual property rights and any benefits derived from such rights, subject to the exceptions provided in multilateral intellectual property agreements to which either Party is, or becomes, a contracting party.

7. A Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

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

(b) not applied in a manner that would constitute a disguised restriction on trade.

8. Paragraph 6 shall not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

Application of Agreement to Existing Subject Matter and Prior Acts

9. Unless otherwise provided in this Chapter, including in Article 13.5.7, this Chapter shall give rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

10. Unless otherwise provided in this Chapter, including in Article 13.5.7, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in the territory of the Party where the protection is claimed.

11. This Chapter shall not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Transparency

12. Further to Article 19.1 (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published, or where publication is not practicable, made publicly available in its national language and in such a manner as to enable governments and right holders to become acquainted with them.

ARTICLE 13.2: TRADEMARKS

Trademark Protection

1. Neither Party shall require, as a condition of registration, that trademarks be visually perceptible, nor deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent.

2. Each Party shall provide that trademarks shall include collective marks and certification marks. Each Party shall also provide that geographical indications are eligible for protection as trademarks.

3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, for identical goods or services, a likelihood of confusion shall be presumed.

Exceptions to Trademark Rights

4. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Well-Known Trademarks

5. Neither Party shall require, as a condition for determining that a trademark is a well-known mark, that the trademark has been registered in the territory of that Party or in another jurisdiction.

6. Article 6*bis* of the *Paris Convention for the Protection of Industrial Property*, done at Paris on 20 March 1883, shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

7. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion or is likely to deceive.

Trademark Applications and Registrations

8. Each Party shall provide:

(a) a system for the registration of trademarks, in which the reasons for a refusal to register a trademark shall be communicated in writing and may be provided electronically to the applicant, who will have the opportunity to contest such refusal and to appeal a final refusal judicially. Each Party shall

provide a publicly available electronic database of trademark applications and registrations;

(b) an opportunity for interested parties to oppose trademark applications; and

(c) a system that permits owners of registered trademarks to assert their rights in trademarks, and interested parties to challenge rights in trademarks, through administrative or judicial means, or both.

9. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than 10 years.

Recordation of Trademark Licences

10. Neither Party shall require recordation of trademark licences to establish the validity of the licence, to assert any rights in a trademark, or for any other purpose.

ARTICLE 13.3: COOPERATION

1. The Parties shall cooperate and collaborate with a view to ensuring protection of intellectual property rights and that such protection is consistent with promoting trade in goods and services between the Parties, subject to their respective laws, regulations and policies. Such cooperation may include:

(a) exchange of information concerning infringement of intellectual property rights between relevant agencies responsible for the enforcement of intellectual property rights;

(b) promotion of contacts and cooperation among their respective agencies, including enforcement agencies, educational institutions and other organisations with an interest in the field of intellectual property rights; and

(c) sharing information and experiences on relations of the Parties with non-Parties on matters concerning intellectual property rights.

2. A Party shall, on request of the other Party, give proper consideration to any specific cooperation proposal made by the other Party relating to the protection and enforcement of intellectual property rights.

ARTICLE 13.4: DOMAIN NAMES ON THE INTERNET

1. Each Party shall require that the management of its country-code top-level domain (hereinafter referred to as "ccTLD") provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy.

2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of domain-name registrations in accordance with its law regarding protection of personal data.

ARTICLE 13.5: COPYRIGHT AND RELATED RIGHTS

1. Each Party shall provide that authors, performers, producers of phonograms and broadcasting organisation have the right to authorise or prohibit all reproductions of their works, performances, phonograms and broadcasts in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. Each Party shall provide authors, performers and producers of phonograms with the right to authorise or prohibit the making available to the public of the original and copies of their works, performances and phonograms through sale or other transfer of ownership.

3. Neither Party shall subject the enjoyment and exercise of the rights of authors, performers, producers of phonograms and broadcasting organisations provided in this Chapter to any formality.

Hierarchy of Rights

4. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers, producers of phonograms and broadcasting organisations, on the other hand, each Party shall provide that in cases where authorisation is needed from both the author of a work embodied in a phonogram or a broadcast and a performer, producer or broadcasting organisation owning rights in the phonogram or broadcast, the need for the authorisation of the author shall not cease to exist because the authorisation of the performer, producer or broadcasting organisation is also required. Likewise, each Party shall provide that in cases where authorisation is needed from both the author of a work embodied in a phonogram or broadcast and a performer, producer or broadcasting organisation owning rights in the phonogram or broadcast, the need for the authorisation of the performer, producer or broadcasting organisation shall not cease to exist because the authorisation of the author is also required.

Term of Protection

5. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance or phonogram is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 70 years from the end of the calendar year of the first authorised publication of the work, performance or phonogram; or

(ii) failing such authorised publication within 50 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.

6. Each Party shall provide that the term of protection of a broadcast shall not be less than 50 years after the first broadcast took place.

7. Article 18 of the *Berne Convention for the Protection of Literary and Artistic Works*, done at Berne on 9 September 1886 (hereinafter referred to as the "Berne Convention"), and Article 14.6 of the TRIPS Agreement, shall apply, *mutatis mutandis*, to the subject matter, rights, and obligations in this Article and Articles 13.6 and 13.7.

8. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, phonogram or broadcast:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, phonograms and broadcasts, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.

Protection of Effective Technological Measures

9. Each Party shall provide for adequate legal protection and effective legal remedies against:

(a) the circumvention of any effective technological measures that control access to a protected work, performance, phonogram, broadcast or other subject matter, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that such person is pursuing that objective;

(b) the manufacture, import, distribution, offering to the public, provision, or otherwise trafficking of devices, products, or components, or the offering to the public, or provision of services, that:

(i) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;

(ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(iii) are primarily designed, produced, or performed for the purposes of enabling or facilitating the circumvention of any effective technological measure.

Protection of Rights Management Information

10. Each Party shall provide for adequate legal protection and effective legal remedies against any person knowingly performing any of the following acts:

(a) the removal or alteration of any electronic rights management information without authority; or

(b) the distribution, importation for distribution, broadcasting, communication or making available to the public, without authority, of works or copies of the works or other subject matter protected under this Chapter knowing that electronic rights management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by doing so it is inducing, enabling, facilitating or concealing an infringement of any copyright or related rights as provided by the law of the Party.

Application of Criminal Procedures and Penalties

11. Each Party shall also provide for criminal procedures and penalties to be applied when any person, other than a non-profit library, archive, educational institution, or public non-commercial broadcasting entity, is found to have engaged wilfully and for the purposes of commercial advantage or financial gain in any of the activities prescribed in paragraphs 9 and 10.

Exceptions and Limitations

12. Each Party may provide for exceptions and limitations to measures implementing paragraphs 9 and 10 in accordance with its law and the relevant international agreements referred to in Article 13.1.3, provided that they do not significantly impair the adequacy of legal protection of those measures and the effectiveness of legal remedies against the acts prescribed in paragraphs 9 and 10.

Exceptions to Copyright and Related Rights

13. With respect to this Article and Articles 13.6 and 13.7, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, phonogram or broadcast, and do not unreasonably prejudice the legitimate interests of the right holder.

14. Notwithstanding paragraph 13, neither Party shall permit the retransmission of television signals (whether terrestrial, cable or satellite) on the Internet without the authorisation of the right holder or right holders of the content of the signal and, if any, of the signal.

ARTICLE 13.6: COPYRIGHT

Without prejudice to Articles 11(1)(ii), 11*bis*(1)(i) and 11*bis*(1)(ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis* of the Berne Convention, each Party shall provide authors with the exclusive right to authorise or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a

time individually chosen by them.

ARTICLE 13.7: RELATED RIGHTS

1. With respect to the rights accorded under this Chapter:

(a) to performers and producers of phonograms, each Party shall accord those rights to the performers and producers of phonograms who are nationals of the other Party, and accord those rights with respect to performances and phonograms that are first published or first fixed in the territory of the other Party; and

(b) to broadcasting organisations, each Party shall accord those rights to the broadcasting organisations if the headquarters of the broadcasting organisations are situated in the other Party or the broadcast was transmitted from a transmitter situated in the other Party.

Rights of Performers

2. Each Party shall provide performers with the right to authorise or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

Rights of Performers and Producers of Phonograms

3. Each Party shall provide performers and producers of phonograms with the right to authorise or prohibit:

(a) with respect to performers, the commercial rental to the public of the original and copies of their performances fixed in phonograms, even after distribution of them by, or pursuant to, authorisation by the performer, and with respect to producers of phonograms, the commercial rental to the public of the original and copies of their phonograms, even after distribution of them by, or pursuant to, authorisation by the producer of phonogram; and

(b) the making available to the public of their performances fixed in phonograms, with respect to performers, or their phonograms, with respect to producers of phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

4. Each Party shall provide performers and producers of phonograms with the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes in accordance with its law.

Rights of Broadcasting Organisations

5. Each Party shall provide that broadcasting organisations shall have the exclusive right to authorise or prohibit:

(a) the rebroadcasting of their broadcasts;

(b) the fixation of their broadcasts; and

(c) the reproduction of fixations.

ARTICLE 13.8: PATENTS

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. In addition, each Party confirms that patents shall be available for any new uses or methods of using a known product.

Exclusion from Patentability

2. Each Party may only exclude from patentability:

(a) inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law; and

(b) diagnostic, therapeutic and surgical methods for the treatment of humans or animals.

Limited Exceptions to Patent Rights

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Revocation of Patent

4. Each Party shall provide that a patent may be revoked on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation or inequitable conduct may be the basis for revoking a patent or holding a patent unenforceable.

Grace Period for Patents

5. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure:

(a) was made or authorised by, or derived from, the patent applicant; and

(b) occurred within 12 months prior to the date of filing in the territory of the Party of the application.

6. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections and observations in connection with their applications.

Disclosure of Claimed Invention

7. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date.

8. Each Party shall provide that a claimed invention:

(a) is sufficiently supported by its disclosure if the disclosure reasonably conveys to a person skilled in the art that the applicant was in possession of the claimed invention, as of the filing date; and

(b) is capable of industrial application if it has a specific, substantial and credible utility.

9. The Parties shall endeavour to establish a framework for cooperation between their respective patent offices as a basis for progress towards the mutual exploitation of search and examination work.

ARTICLE 13.9: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

General Obligations

1. For greater certainty, the obligations specified in this Article are limited to the enforcement of intellectual property rights, or, if mentioned, a particular intellectual property right.

2. Each Party shall provide that final judicial decisions or administrative rulings of general application for the enforcement of intellectual property rights be in writing and state any

relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based. Each Party shall also provide that those decisions or rulings be published or, where publication is not practicable, otherwise made available to the public, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

3. Each Party shall publicise information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, including any statistical information that the Party may collect for such purposes.

4. In civil, criminal, and if applicable, administrative procedures involving copyright or related rights, each Party shall provide for a presumption that the person whose name is indicated as the author, producer, performer, broadcasting organisation or publisher of the work, performance, phonogram or broadcast in the usual manner is the designated right holder in such work, performance, phonogram or broadcast. Each Party shall also provide for a presumption that in the absence of proof to the contrary, the copyright or related right subsists in such subject matter in accordance with its law. In civil, administrative and criminal proceedings involving trademarks, each Party shall provide for a rebuttable presumption that a registered trademark is valid. In civil and administrative proceedings involving patents, each Party shall provide for a rebuttable presumption that a patent is valid, and shall provide that each claim of a patent is presumed valid independently of the validity of the other claims.

Civil and Administrative Procedures and Remedies

5. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right.

6. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or

(ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in subparagraph (a)(i); and

(b) in determining damages for infringement of intellectual property rights, its judicial authorities may consider, inter alia, the value of the infringed good or service, measured by the market price, the suggested retail price, or other legitimate measure of value submitted by the right holder.

7. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement, patent infringement, or trademark infringement, that the prevailing party shall be awarded payment by the losing party of court costs or fees and, at least in proceedings concerning copyright or related rights infringement or wilful trademark counterfeiting, reasonable attorney's fees. Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party shall be awarded payment by the losing party of reasonable attorney's fees.

8. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of allegedly infringing goods, materials and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

9. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances;

(b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

10. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide, for the purposes of collecting evidence, any information that the infringer possesses or controls regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of the infringing goods or services and to provide this information to the right holder or the judicial authorities in the proceedings.

11. Each Party shall provide that its judicial authorities have the authority to:

(a) impose sanctions, in appropriate cases, on a party to a civil judicial proceeding who fails to abide by valid orders issued by such authorities; and

(b) impose sanctions on parties to a civil judicial proceeding, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding.

12. In civil judicial proceedings concerning the acts described in Articles 13.5.9 and 13.5.10, each Party shall provide that its judicial authorities shall have the authority to order or award at least:

(a) provisional measures, including seizure of devices and products suspected of being involved in the proscribed activity;

(b) payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney's fees, by the party engaged in the proscribed conduct; and

(c) the destruction of devices and products found to be involved in the proscribed activity.

13. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its judicial authorities shall have the authority to order a party to desist from an infringement, for the purposes of, *inter alia*, preventing infringing imports from entering the channels of commerce and preventing their exportation. Each Party may also provide that its judicial authorities shall

have the authority to order a party to a civil judicial proceeding to desist from the exportation of goods that are alleged to infringe an intellectual property right.

14. In the event that a Party's judicial or other competent authorities appoint technical or other experts in civil judicial proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, the Party should seek to ensure that such costs are closely related, *inter alia*, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

Alternative Dispute Resolution

15. Each Party may permit use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.

Provisional Measures

16. Each Party's judicial authorities shall act on requests for provisional measures *inaudita altera parte* expeditiously.

17. Each Party shall provide that its judicial authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

Special Requirements Related to Border Measures

18. Each Party shall provide that any right holder initiating procedures for its customs authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the law of the importing Party, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognisable by its customs authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall apply to all points of entry to its territory and remain applicable for a period of not less than one year from the date of application, or the period that the good is protected by copyright or that the relevant trademark registration is valid, whichever is shorter.

19. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter

recourse to these procedures. Each Party may provide that the security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

20. Where its competent authorities have seized goods that have been determined to be counterfeit or pirated, in accordance with its laws pertaining to the protection of personal information a Party shall provide that its competent authorities have the authority to inform the right holder of the names and addresses of the exporter, consignor, importer or consignee, and provide to the right holder a description of the merchandise, the quantity of the merchandise and, if known, the country of origin of the merchandise.

21. Each Party shall provide that its customs authorities may initiate border measures *ex officio* with respect to imported merchandise that is suspected of being counterfeit or confusingly similar trademark goods, or pirated copyright goods.

22. Each Party shall provide that goods that have been suspended from release by its customs authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional circumstances. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorised, except in exceptional circumstances, to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures.

23. Where an application fee or merchandise storage fee is assessed in connection with border measures to enforce a trademark or copyright, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse to these measures.

24. Each Party shall provide the other Party, on mutually agreed terms, with technical advice on the enforcement of border measures concerning intellectual property rights, and the Parties shall promote bilateral and regional cooperation on these matters.

Criminal Procedures and Remedies

25. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Each Party shall treat wilful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties.

26. Further to paragraph 25, each Party shall provide:

(a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer's monetary incentive. Each Party shall further encourage judicial authorities to impose those penalties at levels sufficient to provide a deterrent to future infringements;

(b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements used in the commission of the offense, any documentary evidence relevant to the offense, and any assets traceable to the infringing activity. Each Party shall provide that such orders need not individually identify the items that are subject to seizure, so long as they fall within general categories specified in the order;

(c) that its judicial authorities shall have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity; and

(d) that its judicial authorities shall have the authority to order:

(i) the forfeiture and destruction of all counterfeit or pirated goods; and

(ii) at least with respect to wilful copyright and related rights piracy and counterfeiting on a commercial scale, the forfeiture and/or destruction of materials and implements that have been predominantly used in the creation of pirated or counterfeit goods.

Each Party shall further provide that forfeiture and destruction under subparagraphs (c) and (d) shall occur without compensation of any kind to the defendant.

27. Each Party shall provide for criminal procedures and penalties to be applied against any person who, without authorisation of the holder of copyright or related rights in a cinematographic work, knowingly makes a copy of or transmits to the public the cinematographic work, from a performance of the cinematographic work, in an exhibition facility open to the public.

Special Measures against Repetitive Copyright Infringers on the Internet

28. Each Party shall provide measures to curtail repeated copyright and related right infringement on the Internet.

Limitations on Liability for Online Service Providers

29. In accordance with Article 41 of the TRIPS Agreement, for the purpose of providing enforcement procedures that permit effective action against any act of copyright infringement covered by this Chapter, each Party shall provide:

(a) legal incentives for online service providers to cooperate with copyright owners in deterring the unauthorised storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against online service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.

ARTICLE 13.10: UNDERSTANDINGS REGARDING CERTAIN PUBLIC HEALTH MEASURES

1. The Parties recognise the importance of the *Declaration on the TRIPS Agreement and Public Health*, adopted on 14 November 2001 (hereinafter referred to as the "Doha Declaration") by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under Article 13.8, the Parties are entitled to rely upon the Doha Declaration.

2. Each Party shall contribute to the implementation of and shall respect the *Decision of the WTO General Council of 30 August 2003* on paragraph 6 of the Doha Declaration, as well as the *Protocol amending the TRIPS Agreement*, done at Geneva on 6 December 2005.

ARTICLE 13.11: TRANSITIONAL PROVISIONS

1. Each Party shall give effect to this Chapter on the date of entry into force of this Agreement.

2. Notwithstanding paragraph 1, Korea shall fully implement the obligations of Article 13.5.5 within two years of the date of entry into force of this Agreement.

ARTICLE 13.12: COMMITTEE ON INTELLECTUAL PROPERTY

1. The Committee on Intellectual Property established in accordance with Article 21.4 (Committees and Working Groups) shall comprise officials of each Party.

2. The Committee shall:

(a) review, monitor and assess the implementation of this Chapter;

(b) discuss and make recommendations in relation to cooperative activities under this Chapter;

(c) exchange information on legal and policy developments on intellectual property rights, including geographical indications and common names;

(d) discuss and seek resolution of any matter arising under this Chapter; and

(e) carry out any other functions as may be agreed by the Parties in order to ensure the implementation of this Chapter.

3. The Committee shall meet every year, in principle, or as otherwise agreed. The date, location and agenda of each meeting will be jointly decided through consultations between the contact points.

4. For the purposes of this Article, the contact point shall be, unless otherwise notified:

(a) for Australia, the Department of Foreign Affairs and Trade, or its successor; and

(b) for Korea, the Ministry of Trade, Industry and Energy, or its successor.

ARTICLE 13.13: DEFINITIONS

For the purposes of Articles 13.5 and 13.7, the following definitions shall apply with respect to performers, producers of phonograms and broadcasting organisations:

broadcasting means the transmission to the public by wire or wireless means of sounds or sounds and images, or representations thereof, including wire or wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organisation or with its consent, but does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

effective technological measure means any technology, device or component that, in the normal course of its operation, controls access to a protected work or other subject matter, or protects any copyright or related rights covered by this Chapter;

fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

geographical indications means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin;

performers means actors, singers, musicians, dancers, and other natural persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

producer of a phonogram means the person who takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

publication of a performance or a phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;

rights management information means any information provided by right holders which identifies the protected work or other subject matter covered by this Chapter, the author or any other right holder, or information about the terms and conditions of use of the protected work or other subject matter covered by this Chapter, and any numbers or codes that represent such information. It applies when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of a protected work or other subject matter covered by this Chapter; and

WIPO means World Intellectual Property Organization.

CHAPTER 14
COMPETITION POLICY

ARTICLE 14.1: OBJECTIVES

The Parties recognise the importance of implementing policies that promote competition, economic efficiency and consumer welfare, cooperating on matters covered by this Chapter, and curtailing anticompetitive practices which have the potential to restrict bilateral trade and investment.

ARTICLE 14.2: PROMOTION OF COMPETITION

1. Each Party shall promote competition by addressing anticompetitive practices in its territory, including by maintaining competition laws, and adopting and enforcing such measures as it deems appropriate and effective to counter such practices.

2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws. The enforcement policy of each competition authority shall include treating persons of the other Party no less favourably than persons of the Party in like circumstances.

ARTICLE 14.3: APPLICATION OF COMPETITION LAWS

1. Any measures taken by a Party to proscribe anticompetitive practices and the enforcement actions taken pursuant to those measures shall be consistent with the principles of transparency, timeliness, non-discrimination, comprehensiveness and procedural fairness.

2. Each Party shall ensure that all businesses are subject to competition laws in force in its respective territory.

3. Notwithstanding paragraph 2, a Party may exempt specific businesses or sectors from the application of competition laws, provided that such exemptions are transparent and are undertaken on the grounds of public policy or public interest.

ARTICLE 14.4: COMPETITIVE NEUTRALITY

The Parties recognise the importance of ensuring that governments at all levels in their territories do not provide any competitive advantage to any state enterprise in its business activities as a result of it being a state enterprise. This Article shall apply to the business activities of state enterprises and not to their non-business, non-commercial activities. The application of this Article shall not obstruct the performance of the particular public tasks assigned to them.

ARTICLE 14.5: COOPERATION

1. The Parties recognise the importance of cooperation and coordination to further the promotion of competition and the curtailment of anticompetitive practices.

2. The Parties may cooperate and coordinate, as appropriate, in developing and enforcing competition laws and policies, including through the exchange of information, notification, technical cooperation and coordination on cross-border enforcement matters, utilising their existing mechanisms for cooperation including the Cooperation Arrangement between the Australian Competition and Consumer Commission and the Fair Trade Commission of the Republic of Korea Regarding the Application of Their Competition and Consumer Protection Laws.

ARTICLE 14.6: NOTIFICATIONS

1. Each Party shall, through its competition authority, notify the competition authority of the other Party of an enforcement activity if it considers that such enforcement activity may substantially affect important interests of the other Party.

2. The notification shall take place at an early stage of the enforcement activity, provided that it is not contrary to the laws of the Parties and does not affect any investigation being carried out.

ARTICLE 14.7: CONSULTATIONS

1. On request of a Party, the Parties shall consult with a view to curtailing particular anticompetitive practices that affect trade or investment between the Parties.

2. Nothing in this Article shall limit the discretion of the competition authority of a Party to decide whether to take action following consultations.

ARTICLE 14.8: CROSS-BORDER CONSUMER PROTECTION

The Parties shall promote cooperation and coordination on matters related to consumer protection, including in the enforcement of their consumer protection laws.

ARTICLE 14.9: DISPUTE SETTLEMENT

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

ARTICLE 14.10: DEFINITIONS

For the purposes of this Chapter:

anticompetitive practices means business conduct or transactions that adversely affect competition, such as:

(a) anticompetitive agreements or arrangements between enterprises;

(b) abuse of dominance; and

(c) anticompetitive mergers and acquisitions or other anticompetitive structural combinations of enterprises;

competition laws means:

(a) for Australia, the *Competition and Consumer Act 2010*, and any regulations relating to Parts IV and XI A; and provisions of other Parts in so far as they relate to Part IV, but not including Part X, including their amendments and replacements; and

(b) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations, including their amendments and replacements; and

consumer protection laws means:

(a) for Australia, the Australian Consumer Law, and any regulations relating to the Australian Consumer Law, in the *Competition and Consumer Act 2010*, including their amendments and replacements; and

(b) for Korea, the *Framework Act on Consumers*, the *Fair Labelling and Advertising Act* and their implementing regulations, including their amendments and replacements.

CHAPTER 15
ELECTRONIC COMMERCE

ARTICLE 15.1: OBJECTIVES

The Parties recognise the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development and the applicability of the WTO Agreement to measures affecting electronic commerce.

ARTICLE 15.2: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters 7 (Cross-Border Trade in Services), 8 (Financial Services) and 11 (Investment), subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

ARTICLE 15.3: CUSTOMS DUTIES

Neither Party shall impose customs duties on electronic transmissions between the Parties.

ARTICLE 15.4: DOMESTIC REGULATION

1. Each Party shall adopt or maintain measures regulating electronic commerce taking into account the *UNCITRAL Model Law on Electronic Commerce* and, as appropriate, other international standards, guidelines and recommendations.

2. Each Party shall endeavour to:

(a) minimise the regulatory burden on electronic commerce; and

(b) ensure that its measures regulating electronic commerce support industry-led development of electronic commerce.

ARTICLE 15.5: ELECTRONIC AUTHENTICATION AND ELECTRONIC SIGNATURES

1. Each Party shall adopt or maintain measures regulating electronic authentication that permit parties to an electronic transaction:

(a) to determine the appropriate authentication methods for that transaction; and

(b) to have the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with legal requirements with respect to authentication.

2. Notwithstanding paragraph 1, where prescribed by a Party's laws and regulations, a Party may require that, for transactions where a high degree of reliability and security is required, such as electronic financial transactions, the method of authentication meet certain security standards or be certified by an authority accredited in accordance with the Party's laws or policies.

3. The Parties shall work towards the mutual recognition of electronic signatures issued by either Party, based on internationally accepted standards.

4. The Parties shall work towards interoperability of electronic signatures issued by either Party.

ARTICLE 15.6: ONLINE CONSUMER PROTECTION

1. Each Party shall adopt or maintain measures to protect consumers engaged in electronic commerce, which are at least equivalent to those provided for consumers engaged in other forms of commerce.

2. The Parties recognise the importance of cooperation between their respective national consumer agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

ARTICLE 15.7: PAPERLESS TRADING

1. Each Party shall endeavour to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavour to accept electronic trade administration documents as the legal equivalent of the paper version of those documents.

3. In developing initiatives which provide for the use of paperless trading, each Party shall take into account the methods agreed by international organisations.

ARTICLE 15.8: ONLINE PERSONAL DATA PROTECTION

Each Party shall adopt or maintain measures which ensure the protection of the personal data of the users of electronic commerce. In the development of personal data protection standards, each Party shall take into account the international standards, guidelines and recommendations of relevant international organisations.

ARTICLE 15.9: UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

1. Each Party shall endeavour to adopt or maintain measures to regulate unsolicited commercial electronic messages to minimise unsolicited spam and telemarketing.

2. The Parties shall, subject to their respective laws and regulations, cooperate bilaterally and in international fora regarding the regulation of unsolicited commercial electronic messages. Areas of cooperation may include, but should not be limited to, the exchange of information on technical, educational and policy approaches to spam and telemarketing.

ARTICLE 15.10: DEFINITIONS

For the purposes of this Chapter:

electronic authentication means the process or act of establishing the identity of a party to an electronic communication or transaction;

electronic signature means information in the form of electronic data attached to, or logically combined with, an electronic record for the purpose of utilising it to identify the signer and to prove that the signer has signed the electronic record;

electronic transmissions means transmissions made using any electromagnetic or photonic means;

personal data means any information about an identified or identifiable individual;

trade administration documents means forms that a Party issues or controls and that must be completed by or for an importer or exporter in connection with the importation or exportation of goods; and

unsolicited commercial electronic message means an electronic message (including a voice service) which is sent for commercial purposes to an electronic address without the consent of the recipient or against the explicit rejection of the recipient, using an Internet carriage service or other telecommunications service.

CHAPTER 16
COOPERATION

Section A: Agriculture, Fisheries and Forestry

ARTICLE 16.1: OBJECTIVE

The objective of this Section is to facilitate bilateral cooperation and explore new cooperative activities between the Parties in the fields of agriculture, fisheries and forestry, building on existing cooperative relationships at the bilateral, regional and multilateral level, in support of mutual economic growth and development.

ARTICLE 16.2: SCOPE

The Parties shall cooperate in areas which may include:

(a) innovation, research and development;

(b) agriculture, including primary and processed commodities;

(c) fisheries and aquaculture;

(d) forestry;

(e) sanitary and phytosanitary matters;

(f) security of food supply; and

(g) any other areas of cooperation as may be identified and agreed by the Parties.

ARTICLE 16.3: COOPERATIVE ACTIVITIES

The Parties shall promote cooperative activities by the public and private sectors in the fields of agriculture, fisheries and forestry. Cooperative activities may include:

(a) information exchanges, including exchanging views on relevant policies;

(b) technical cooperation;

(c) joint research programs and projects;

(d) exchanges of experts, researchers, students and relevant professionals;

(e) conferences, seminars and workshops;

(f) exchanging views on matters in relation to relevant regional and international bodies;

(g) collaborative training exercises, in particular for students and graduates from educational institutions in the fields of agriculture, fisheries and forestry;

(h) promotion of private sector cooperation;

(i) promotion and facilitation of mutual investment opportunities;

(j) study visits to farms and related production centres; and

(k) cooperating in any other fields as may be identified and agreed by the Parties.

ARTICLE 16.4: INNOVATION, RESEARCH AND DEVELOPMENT

1. The Parties, recognising the importance of innovation, research and development to agriculture, fisheries and forestry, shall endeavour, as appropriate, to promote cooperative activities in relevant fields. These activities may include scientific and technological developments in:

(a) sustainable resource management;

(b) water management and water use efficiency;

(c) climate change adaptation and mitigation;

(d) mitigation of climate-related extremes;

(e) animal husbandry practices including reproductive technologies, nutrition, and livestock identification and traceability systems;

(f) productivity enhancements in agriculture, fisheries, forestry and food;

(g) biosecurity, including farm biosecurity;

(h) animal and plant disease research;

(i) biotechnology;

(j) food safety; and

(k) any other fields of innovation, research and development as may be identified and agreed by the Parties.

2. The Parties shall endeavour to enhance cooperative partnerships between their research organisations.

ARTICLE 16.5: AGRICULTURE

The Parties, recognising the importance of promoting cooperative relationships between Korean and Australian farmers and agribusinesses, shall undertake cooperative activities on any agricultural matter the Parties agree to be appropriate, including in relation to:

(a) agricultural industries, including livestock production and processing industries, cropping, horticulture, irrigated agriculture and natural fibre production;

(b) agricultural reforms and policies;

(c) agricultural economics;

(d) generational change and farm succession planning;

(e) rural development;

(f) peri-urban and urban agriculture;

(g) environmental and natural resource economics and management;

(h) nutrition, including the agronomic and genetic enhancement of plant, animal and human nutrition;

(i) sustainable and conservation farming techniques; and

(j) any other agricultural matter as may be identified and agreed by the Parties.

ARTICLE 16.6: FISHERIES AND AQUACULTURE

1. The Parties shall endeavour to cooperate, as appropriate, in the field of fisheries and aquaculture. Areas of cooperation may include exchange of information regarding fisheries, aquaculture and fish resources, including in relation to:

(a) bycatch and the minimisation of adverse impacts of fishing on the marine environment;

(b) marine pests;

(c) recreational fishing;

(d) illegal, unreported and unregulated fishing;

(e) the impact of climate change on marine ecosystems; and

(f) fisheries economics and resource management.

2. Other areas of cooperation may be identified and agreed by the Parties. To this end, the Parties shall make their best efforts to establish a fisheries cooperation arrangement within three years after the date of entry into force of this Agreement.

ARTICLE 16.7: FORESTRY

The Parties, recognising the current high level of bilateral cooperation in the field of forestry, shall endeavour to explore opportunities for further cooperation. Areas of cooperation may include:

(a) promotion of trade in timber resources including logs and woodchips;

(b) development, utilisation and sustainable management of forest resources;

(c) the impact of climate change on forestry resources;

(d) forest fire management and control;

(e) forest thinning;

(f) forestry pest control;

(g) farm forestry;

(h) combating illegal logging and the associated trade; and

(i) any other areas of cooperation as may be identified and agreed by the Parties.

ARTICLE 16.8: SANITARY AND PHYTOSANITARY MATTERS

The Parties shall endeavour to cooperate in the areas of human, animal or plant health and food safety. Areas of cooperation may include:

(a) regional animal and plant disease surveillance;

(b) animal disease, plant pest and disease prevention and control;

(c) detection methods for pathogenic micro-organisms in food;

(d) regulation and control of agri-chemical and veterinary medicine residues and other food safety issues; and

(e) any other human, animal or plant health and safety issues of mutual interest.

ARTICLE 16.9: SECURITY OF FOOD SUPPLY

1. The Parties recognise the importance of domestic agricultural production and bilateral trade for the maintenance of a stable and reliable food supply and the fulfilment of food security objectives.

2. The Parties shall explore opportunities to cooperate in the area of global food security, including through relevant regional and international fora.

3. Recognising the important role that two-way trade and investment play in achieving long-term food security, the Parties shall, as appropriate, endeavour to promote and facilitate productive and mutually beneficial trade and investment in agriculture and food.

4. In the event of a severe and sustained disruption to supply of staple foods and feed grain, the Parties shall enter into consultations, on request of a Party, through appropriate cooperative mechanisms, which may include the Committee on Agricultural Cooperation, to exchange information on, and to examine the factors relevant to, the situation. The Parties shall endeavour to take any appropriate actions available to them that would contribute to the resolution of the situation through such consultations.

5. In the case of any introduction of a prohibition or restriction on the exportation or sale for export of any agricultural goods produced on a farm established in its territory by a person of the other Party, the Parties shall enter into consultations with a view to giving due consideration at the Committee on Agricultural Cooperation to the effects of such prohibition or restriction and relevant remedies, prior to the actual implementation of any export prohibition or restriction. When an export prohibition or restriction is taken, the Parties shall enter into consultation, on request of a Party, with a view to early recovery of the open market and uninterrupted supply chains.

6. Each Party affirms its commitment to high levels of safety in agricultural exports and recognises consumer demand for high quality food.

ARTICLE 16.10: CONTACT POINTS

1. Each Party shall designate a contact point relating to the operation of this Section. For the purposes of this Section, the contact point shall be:

(a) for Australia, the Department of Agriculture, or its successor; and

(b) for Korea, the Ministry of Agriculture, Food and Rural Affairs, or its successor.

2. The contact points shall:

(a) facilitate the exchange of information relating to this Section;

(b) coordinate the Committee on Agricultural Cooperation referred to in Article 16.11; and

(c) facilitate any other communications between the Parties on any matter covered by this Section.

ARTICLE 16.11: COMMITTEE ON AGRICULTURAL COOPERATION

1. The Committee on Agricultural Cooperation established in accordance with Article 21.4 (Committees and Working Groups) shall comprise officials of each Party, including those responsible for agriculture, fisheries and forestry.

2. The functions of the Committee may include:

(a) reviewing, monitoring and assessing the implementation of this Section;

(b) making recommendations regarding cooperative activities under this Section, in accordance with the strategic priorities of the Parties;

(c) discussing, considering and, as appropriate, resolving any matter arising under this Section; and

(d) any other functions as may be agreed by the Parties.

3. The Committee shall, in principle, meet every year or as otherwise agreed. The date, location, and agenda of each meeting shall be jointly decided through consultations between the contact points.

ARTICLE 16.12: RESOURCES

1. With the aim of contributing to the fulfilment of the objective of this Section, and recognising that cooperative activities as envisaged in the Section will be able to be implemented effectively only when

financed with adequate resources, the Parties shall provide, within the limits of their own capacities and through their own channels, adequate resources to support such cooperative activities.

2. Additional details regarding the provision of resources for the specific cooperative activities that the Committee on Agricultural Cooperation identifies and develops as part of its annual work program shall be arranged by the Committee on Agricultural Cooperation.

3. Recognising the importance of maintaining access to stable available resources, the Committee on Agricultural Cooperation shall consider options for securing joint regular funding that could be utilised in implementing its cooperative activities.

Section B: Energy and Mineral Resources

ARTICLE 16.13: OBJECTIVE

The objective of this Section is to affirm and enhance the stable and mutually beneficial cooperative relationship between the Parties in the energy and mineral resources sector.

ARTICLE 16.14: COOPERATIVE ACTIVITIES

1. The Parties shall promote, subject to their respective laws and regulations, cooperative activities by the public and private sectors in the field of energy and mineral resources.

2. Cooperative activities may include:

(a) joint activities in areas such as research and development in the exploration, extraction, processing, transportation and use of energy and mineral resources, including energy efficiency measures and measures relating to climate change;

(b) exchanging views on policies relevant to the exploration, extraction, processing, transportation and use of energy and mineral resources, including energy efficiency measures and measures relating to climate change;

(c) enhanced academic and scientific exchanges relating to the exploration, extraction, processing, transportation and use of energy and mineral resources, including energy efficiency measures and measures relating to climate change; and

(d) visits and exchanges between the Parties, such as by relevant experts, technicians and leaders in the public, academic and private sectors.

ARTICLE 16.15: PROMOTION AND FACILITATION OF TRADE AND INVESTMENT

1. The Parties shall endeavour to promote, as appropriate, mutually beneficial trade and investment activities in the energy and mineral resources sector.

2. Regarding the energy and mineral resources sector, the Parties may discuss effective ways to:

(a) encourage investment relating to the exploration, extraction, processing, transportation and use of energy and mineral resources, including in emerging technologies and renewable energy;

(b) promote the provision and exchange of investment information including information on their respective laws, regulations and policies;

(c) encourage and support investment promotion activities of each Party; and

(d) maintain and foster stable, equitable, favourable and transparent conditions for investors.

3. Notwithstanding Article 11.2 (Relation to Other Chapters), in the event of any inconsistency between this Chapter and Chapter 11 (Investment), Chapter 11 shall prevail to the extent of the inconsistency.

ARTICLE 16.16: EXCHANGE OF INFORMATION

The Parties shall exchange information relevant to energy and mineral resources. This exchange of information may include:

(a) geological data or information about distributions, deposits and development plans of energy and mineral resources;

(b) information on investment related to the exploration, extraction, processing, transportation and use of energy and mineral resources;

(c) information on investment opportunities such as tenders, infrastructure development and mining projects;

(d) information on respective laws, regulations and policies relating to the exploration, extraction, processing, transportation and use of energy and mineral resources, including information related to investment;

(e) information on mine reclamation technology, environmental management, and other resource management regulations or practices;

(f) information on current and future trends in the coal, oil, gas, electricity and renewable energy industries;

(g) information on current and planned infrastructure development related to the exploration, extraction, processing, transportation and use of energy and mineral resources; and

(h) any other relevant information as agreed by the Parties.

ARTICLE 16.17: SECURITY IN ENERGY AND MINERAL RESOURCES

1. The Parties recognise the importance of energy and mineral resources security and the role that trade, investment and cooperation play in achieving long-term security.

2. In the event of a severe and sustained disruption to supply of a major energy and mineral resource, the Parties shall enter into consultations, on request of a Party, through appropriate cooperative mechanisms, which may include the Committee on Energy and Mineral Resources Cooperation, to exchange information and to explore any appropriate actions available to them that would contribute to the resolution of the situation.

ARTICLE 16.18: CONTACT POINTS

1. Each Party shall designate a contact point relating to the operation of this Section. For the purposes of this Section, the contact point shall be:

(a) for Australia, the Department of Industry, or its successor; and

(b) for Korea, the Ministry of Trade, Industry and Energy, or its successor.

2. The contact points shall:

(a) facilitate the exchange of information relating to this Section;

(b) coordinate the Committee on Energy and Mineral Resources Cooperation referred to in Article 16.19; and

(c) facilitate any other communications between the Parties on any matter covered by this Section.

ARTICLE 16.19: COMMITTEE ON ENERGY AND MINERAL RESOURCES COOPERATION

1. The Committee on Energy and Mineral Resources Cooperation established in accordance with Article 21.4 (Committees and Working Groups) shall comprise officials of each Party, including those responsible for energy and mineral resources.

2. The functions of the Committee may include:

(a) reviewing, monitoring and assessing the implementation of this Section;

(b) making recommendations regarding cooperative activities under this Section, in accordance with the strategic priorities of each Party;

(c) discussing any matter arising under this Section; and

(d) any other functions as agreed by the Parties.

3. The Parties may, by mutual consent, invite representatives of entities with the necessary expertise relevant to the issues to be discussed to participate in the Committee.

4. The Committee shall, in principle, meet every year or as otherwise agreed. The date, location, and agenda of each meeting shall be jointly decided through consultations between the contact points.

ARTICLE 16.20: RESOURCES

1. With the aim of contributing to the fulfilment of the objective of this Section, and recognising that cooperative activities as envisaged in the Section will be able to be implemented effectively only when financed with adequate resources, the Parties shall provide, within the limits of their own capacities and through their own channels, adequate resources to support such cooperative activities.

2. Additional details regarding the provision of resources for the specific cooperative activities that the Committee on Energy and Mineral Resources identifies and develops as part of its annual work program shall be arranged by the Committee on Energy and Mineral Resources.

3. Recognising the importance of maintaining access to stable available resources, the Committee on Energy and Mineral Resources shall consider options for securing joint regular funding that could be utilised in implementing its cooperative activities.

CHAPTER 17
LABOUR

ARTICLE 17.1: GENERAL PRINCIPLES

1. Each Party affirms its obligations as a member of the International Labour Organization (hereinafter referred to as the "ILO") and its commitments under the *Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)* (hereinafter referred to as the "ILO Declaration"). Each Party shall endeavour to adopt or maintain in its laws, regulations, policies and practices the following fundamental principles and rights as stated in the ILO Declaration:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

2. Each Party shall respect the other Party's right to establish its own policies and national priorities and to adopt and administer its own labour laws, regulations and practices in accordance with those policies and priorities.

3. Neither Party shall fail to enforce its labour laws and regulations, including:

(a) those it adopts or maintains in accordance with paragraph 1; and

(b) those adopted to implement ILO instruments that it has ratified,

through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties. Each Party retains the right to exercise reasonable discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters in the enforcement of its labour laws and to make bona fide decisions regarding the allocation of resources to enforcement.

4. Each Party shall endeavour to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from its labour laws, regulations, policies and practices in a manner that weakens or reduces adherence to the fundamental principles and rights referred to in paragraph 1 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

5. Each Party recognises that it is inappropriate to use its labour laws, regulations, practices or policies for trade protectionist purposes.

ARTICLE 17.2: PROCEDURAL GUARANTEES

Any matter relating to this Chapter which arises under Chapter 19 (Transparency) shall be subject to Article 17.4.

ARTICLE 17.3: INSTITUTIONAL MECHANISM

Contact Point

1. Each Party shall designate a contact point for labour matters to facilitate communication between the Parties. For the purposes of this paragraph, the contact point shall be, unless otherwise notified:

(a) for Australia, the Department of Employment, or its successor;

(b) for Korea, the Ministry of Employment and Labor, or its successor.

Ad hoc Committee

2. A Party may request the establishment of an *ad hoc* Committee to discuss any matter related to this Chapter by delivering a written request to the contact point of the other Party and the other Party shall give due consideration to the request. The *ad hoc* Committee shall comprise appropriate senior officials from the labour ministry and/or other appropriate agencies and ministries of each Party. The *ad hoc* Committee shall discuss the matter at a time and place agreed to by the Parties.

ARTICLE 17.4: CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. Consultations shall commence promptly after a Party delivers a request for consultations to the contact point of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

2. If consultations under paragraph 1 fail to resolve the matter, and a Party deems that the matter needs further discussion, that Party may request the establishment of an *ad hoc* Committee under Article 17.3.2 to consider the matter. Where the establishment of such an *ad hoc* Committee is requested under this paragraph, that *ad hoc* Committee shall be established without undue delay and shall endeavour to agree on a resolution of the matter.

ARTICLE 17.5: COOPERATION

1. Recognising the importance of cooperating on trade-related aspects of labour policies in order to achieve the objectives of this Agreement, the Parties commit to enhancing close cooperation through cooperative activities in areas of mutual interest as set out in paragraphs 2 and 3.

2. Areas of cooperation may include, but should not be limited to, labour-management relations, working conditions, occupational safety and health, vocational training and human resources development, and labour statistics.

3. Cooperative activities may include, but should not be limited to, exchanges of people and information, cooperation in relevant regional and international fora, conferences and seminars, development of joint research or collaborative projects, and funding of technical cooperation within the ILO with the aim of raising labour standards in the Asia-Pacific region, taking into account each Party's available resources.

ARTICLE 17.6: DISPUTE SETTLEMENT

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Chapter, including such matters as referred to in Article 17.2.

CHAPTER 18
ENVIRONMENT

ARTICLE 18.1: LEVELS OF PROTECTION

1. Recognising the right of each Party to establish its own levels of environmental protection and its own environmental development priorities, and to adopt or modify accordingly its environmental laws, regulations and policies, each Party shall endeavour to ensure that its laws, regulations and policies provide for and encourage high levels of environmental protection and shall endeavour to continue to improve its respective levels of environmental protection, including through such environmental laws, regulations and policies.

2. Each Party recognises that it is inappropriate to use environmental laws, regulations or policies for trade protectionist purposes.

ARTICLE 18.2: MULTILATERAL ENVIRONMENTAL AGREEMENTS

1. The Parties recognise that multilateral environmental agreements to which both Parties are party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements and international trade agreements to which both Parties are party.

2. To this end, the Parties shall consult, as appropriate, with respect to negotiations on trade-related environmental issues of mutual interest.

ARTICLE 18.3: APPLICATION AND ENFORCEMENT OF ENVIRONMENTAL LAWS

1. Neither Party shall fail to enforce its environmental laws, regulations and policies, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties. Each Party retains the right to exercise reasonable discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters in the enforcement of its environmental laws, regulations and policies and to make bona fide decisions regarding the allocation of resources to enforcement.

2. Each Party recognises that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in its environmental laws, regulations and policies. Accordingly, each Party shall endeavour to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws, regulations and policies in a manner that weakens or reduces the protections afforded in those laws, regulations and policies as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

ARTICLE 18.4: TRADE FAVOURING ENVIRONMENT

Each Party shall endeavour to facilitate and promote trade and investment in environmental goods and services, including environmental technologies, sustainable renewable energy, and energy efficient goods and services, including through addressing related non-tariff barriers.

ARTICLE 18.5: PROCEDURAL GUARANTEES

Any matter relating to this Chapter which arises under Chapter 19 (Transparency) shall be subject to Article 18.7.

ARTICLE 18.6: INSTITUTIONAL MECHANISM

Contact Point

1. Each Party shall designate a contact point for environmental matters to facilitate communication between the Parties.

Ad hoc Committee

2. A Party may request the establishment of an *ad hoc* Committee to discuss any matter related to the implementation of this Chapter by delivering a written request to the contact point of the other Party and the other Party shall give due consideration to the request. The *ad hoc* Committee shall comprise appropriate senior officials from the environmental ministry and/or other appropriate agencies and ministries of each Party. The *ad hoc* Committee shall discuss the matter at a time and place agreed to by the Parties.

ARTICLE 18.7: CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. Consultations shall commence promptly after a Party delivers a request for consultations to the contact point of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

2. If consultations under paragraph 1 fail to resolve the matter, and a Party deems that the matter needs further discussion, that Party may request the establishment of an *ad hoc* Committee under Article 18.6.2 to consider the matter. Where the establishment of such an *ad hoc* Committee is requested under this paragraph, that *ad hoc* Committee shall be established without undue delay and shall endeavour to agree on a resolution of the matter.

ARTICLE 18.8: COOPERATION

1. Recognising the importance of cooperating on trade-related aspects of environmental policies in order to achieve the objectives of this Agreement, the Parties commit to enhancing close cooperation through cooperative activities in areas of mutual interest as set out in paragraphs 2 and 3.

2. Areas of cooperation may include, but should not be limited to, trade impact of environmental laws and regulations, trade-related aspects of international climate change regimes, trade-related environment issues and trade-related aspects of biodiversity.

3. Cooperative activities may include, but should not be limited to, exchanges of people and information, sharing information on the environmental effects of trade agreements, cooperation in relevant regional and international fora, conferences and seminars, and development of joint research or collaborative projects.

ARTICLE 18.9: DISPUTE SETTLEMENT

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Chapter, including such matters as referred to in Article 18.5.

CHAPTER 19
TRANSPARENCY

ARTICLE 19.1: PUBLICATION

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published, including on the Internet where feasible, or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such laws, regulations, procedures and administrative rulings of general application that it proposes to adopt; and

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

ARTICLE 19.2: PROVISION OF INFORMATION

On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might affect the operation of this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

ARTICLE 19.3: ADMINISTRATIVE PROCEEDINGS

1. Each Party shall ensure that all laws, regulations, procedures, and administrative rulings of general application to which this Agreement applies are administered in a consistent, impartial, objective and reasonable manner.

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

(a) provides wherever possible, persons of the other Party that are directly affected by a proceeding reasonable notice, in accordance with its procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) affords such persons 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) follows its procedures in accordance with its law.

ARTICLE 19.4: 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 final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by the law of the Party, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

ARTICLE 19.5: DEFINITIONS

For the 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.

CHAPTER 20
DISPUTE SETTLEMENT

ARTICLE 20.1: COOPERATION

The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 20.2: SCOPE

Unless otherwise provided in this Agreement or otherwise agreed by the Parties, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or wherever a Party considers that:

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

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

(c) a benefit the Party could reasonably have expected to accrue to it under Chapter 2 (Trade in Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Administration and Trade Facilitation), 7 (Cross-Border Trade in Services), or 12 (Government Procurement), is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

ARTICLE 20.3: CONTACT POINTS

1. Each Party shall designate a contact point to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.

2. Any request, notification, written submission or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

ARTICLE 20.4: CHOICE OF FORUM

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.

2. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding, either under this Agreement or under the WTO Agreement, it shall not initiate a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded or terminated by the complaining Party. In addition, where a Party has initiated a dispute settlement proceeding either under this Agreement or under the WTO Agreement to seek redress of an obligation which is identical

or substantially identical under the two Agreements, it shall not initiate a dispute settlement proceeding to seek redress of the identical or substantially identical obligation in the other forum until the first proceeding has been concluded or terminated by the complaining Party.

3. Notwithstanding paragraph 2, a Party may initiate a dispute settlement proceeding in the other forum if the first forum selected fails for procedural or jurisdictional reasons to make findings on the claim.

4. For the purposes of paragraphs 2 and 3:

(a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, in Annex 2 of the WTO Agreement (hereinafter referred to as the "DSU") and are deemed to be concluded when the WTO Dispute Settlement Body (hereinafter referred to as the "DSB") adopts the Panel's report, and the Appellate Body's report, as the case may be, under Articles 16 and 17.14 of the DSU; and

(b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of a dispute settlement panel under Article 20.8 and are deemed to be concluded when the panel present a final report to the Parties under Article 20.11.

ARTICLE 20.5: RULES OF INTERPRETATION

Any panel shall interpret this Agreement in accordance with customary rules of interpretation of public international law, including as reflected in the *Vienna Convention on the Law of Treaties*. Where an obligation under this Agreement is identical or substantially identical to an obligation under the WTO Agreement, the panel shall adopt an interpretation which is consistent with any relevant interpretation established in rulings of the DSB. The rulings of the panel cannot add to or diminish the rights and obligations provided for in this Agreement.

ARTICLE 20.6: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter described in Article 20.2 by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, and any other issue of concern. The other Party shall reply promptly to the request and enter into consultations.

2. Each Party shall:

(a) provide sufficient information in the consultations to enable a full examination of the matter subject to consultations, including how the measure at issue might affect the operation of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

ARTICLE 20.7: REFERRAL TO THE JOINT COMMITTEE

1. If the Parties fail to resolve a matter within 60 days of the delivery of a request for consultations under Article 20.6, either Party may refer the matter to the Joint Committee by delivering written notification to the other Party.

2. The Joint Committee shall promptly convene and endeavour to resolve the matter.

ARTICLE 20.8: ESTABLISHMENT OF PANEL

1. If the matter has not been resolved within 60 days of the delivery of a notification described in Article 20.7, or within such other period as the Parties may agree, the complaining Party may request the establishment of a panel to consider the matter by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the specific measure at issue and a brief summary of the factual and legal basis for the complaint sufficient to present the problem clearly.

2. Within five days of the date of delivery of the written notification requesting the establishment of a panel as provided in paragraph 1, the Parties shall enter into consultations with a view to reaching agreement on the procedures for selecting a panel. If the Parties are unable to reach agreement on the procedures for selecting the panel within 15 days of the date of delivery of the written notification referring a matter to a panel as provided in paragraph 1, either Party may at any time thereafter notify the other Party that it wishes to use the procedures set forth in subparagraphs (a) and (b). Where such a notification is made, the panel shall be composed in accordance with subparagraphs (a) and (b):

(a) the panel shall have three panellists. Within 30 days of the date of delivery of the written notification requesting the establishment of a panel as provided in paragraph 1, each Party

shall appoint one panellist, who may be its national, and provide to the other Party a list of up to three nominees for appointment as the third panellist who shall be the chair of the panel. The Parties shall then consult with each other with the objective of appointing the third panellist, taking into account the lists of nominees; and

(b) if all of the panellists have not been appointed within 45 days of the date of delivery of the written notification requesting the establishment of a panel as provided in paragraph 1, any of the remaining panellists shall be appointed on request of either Party by random drawing from the lists of nominees for appointment as chair or as a regular panellist.

3. If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist and shall have all the powers and duties of the original panellist. The work of the panel shall be suspended during the appointment of the successor panellist.

4. The date of establishment of the panel shall be the date the last panellist is appointed in accordance with paragraph 2.

5. Individuals appointed to a panel in accordance with this Article shall:

(a) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(b) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;

(c) be independent of, and not be affiliated with or take instructions from, either Party;

(d) not have dealt with the matter in any capacity;

(e) disclose to the Parties information which may give rise to justifiable doubts as to their independence or impartiality; and

(f) comply with the code of conduct set out in Annex 20-A.

6. Unless the Parties otherwise agree, the chair shall not be a national of either Party.

7. Where a panel is reconvened under Article 20.13.4, 20.14.5, 20.14.6 or 20.15.1 the reconvened panel shall, where possible, have the same panellists as in the original panel. If the panel cannot be reconvened with all of its original panellists, the procedures for selection of the panellists set out in paragraphs 2 through 6 shall apply.

ARTICLE 20.9: FUNCTIONS OF PANELS

1. A panel shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the facts of the case;

(b) the applicability of the relevant provisions of this Agreement cited by the Parties; and

(c) whether:

  (i) the measure at issue is inconsistent with the obligations of this Agreement;

  (ii) a Party has otherwise failed to carry out its obligations under this Agreement; or

  (iii) the measure at issue is causing nullification or impairment in the sense of Article 20.2(c).

2. Unless the Parties otherwise agree within 20 days of the date of the delivery of the request for the establishment of the panel, the panel's terms of reference shall be:

> "To examine, in the light of the relevant provisions of this Agreement cited by the Parties, the matter referenced in the request for the establishment of the panel, to make findings, determinations, and, if applicable, recommendations as provided in Articles 20.11.1 and 20.11.2 and to present the written reports referred to in Articles 20.11.1 and 20.11.4."

3. This Article shall not apply to a panel reconvened under Article 20.13.4, 20.14.5, 20.14.6 or 20.15.1.

ARTICLE 20.10: RULES OF PROCEDURE

1. Unless the Parties otherwise agree and subject to paragraph 3, the panel shall follow the model rules of procedure set out in Annex 20-B.

2. The panel may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules.

3. A panel reconvened under Article 20.13.4, 20.14.5, 20.14.6 or 20.15.1 may establish its own procedures, in consultation with the Parties, which do not conflict with this Chapter or the model rules of procedure.

ARTICLE 20.11: PANEL REPORT

1. Unless the Parties otherwise agree, the panel shall, within 180 days of the date the chair is appointed, present to the Parties an initial report containing its findings on the facts of the case and on the applicability of the provisions of this Agreement, and its determination as to:

(a) whether

(i) the measure at issue is inconsistent with the obligations of this Agreement;

(ii) a Party has otherwise failed to carry out its obligations under this Agreement; or

(iii) the measure at issue is causing nullification or impairment in the sense of Article 20.2(c); and

(b) any other issue of concern that the Parties have jointly requested that the panel address, as well as the reasons for its findings and determinations.

2. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties and any information or technical advice it has obtained in accordance with its rules of procedure. The panel may, on the joint request of the Parties, make recommendations for the resolution of the dispute.

3. Each Party may submit written comments to the panel on its initial report within 14 days of the presentation of the report. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

4. The panel shall present a final report to the Parties within 45 days of presentation of the initial report, unless the Parties otherwise agree. The Parties shall make the final report available to the public within 15 days thereafter, subject to the protection of confidential information.

5. Paragraphs 1, 3 and 4 shall not apply to a panel reconvened under Article 20.13.4, 20.14.5, 20.14.6 or 20.15.1.

ARTICLE 20.12: SUSPENSION AND TERMINATION OF PROCEEDINGS

1. The Parties may agree that the panel suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel shall be resumed upon the request of either Party. If the work of the panel has been continuously suspended for more than 12 months, the authority for establishment of the panel shall lapse unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of a panel in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the panel presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

ARTICLE 20.13: IMPLEMENTATION OF THE FINAL REPORT

1. Where the final report of a panel contains:

   (a) a determination that the measure at issue is inconsistent with the obligations of this Agreement, or that the Party complained against has otherwise failed to carry out its obligations under this Agreement, the Party complained against has an obligation to bring the measure into conformity with this Agreement; or

   (b) a determination of non-violation nullification or impairment in the sense of Article 20.2(c), the Party complained against has an obligation to eliminate the nullification or impairment or reach a mutually satisfactory solution with the complaining Party.

2. Within 20 days of the issuance of the final report of the panel, the Party complained against shall notify the complaining Party:

   (a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with paragraph 1;

   (b) whether such implementation can take place immediately; and

   (c) if such implementation cannot take place immediately, the reasonable period of time the Party complained against would need to implement.

3. If a reasonable period of time is required, it shall, whenever possible, be mutually determined by the Parties. Where the Parties are unable to agree on the reasonable period of time within 30 days of the issuance of the final report, either Party may request the panel to determine the reasonable period of time. Unless the Parties otherwise agree, such requests shall be made within 120 days of the issuance of the final report.

4. Where a request is made in accordance with paragraph 3, the panel shall present to the Parties a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request. Prior to making this determination, the panel shall seek written submissions from the Parties, and if requested by either Party, hold a meeting with the Parties where each Party will be given an opportunity to present its submission. As a guideline, the reasonable period of time determined by the panel should not exceed 15 months from the date of the issuance of the panel's final report. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances. Unless the Parties otherwise agree, the principles applied in arbitrations under Article 21.3(c) of the DSU shall apply *mutatis mutandis*.

ARTICLE 20.14: NON-IMPLEMENTATION

1. The Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation where:

(a) the reasonable period of time referred to in Article 20.13 has elapsed; or

(b) the Party complained against has notified the complaining Party that it does not intend to comply with the obligation in Article 20.13.1.

2. If the Parties:

(a) are unable to agree on compensation within 30 days of the date the period for developing such compensation has begun; or

(b) have agreed on compensation and the complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notification to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect to the level of non-conformity, or nullification or impairment that the panel has found. The notification shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspending benefits 30 days after the later of the date it provides notification to the other Party under this paragraph or the panel issues its determination under paragraph 5, as the case may be.

3. A right to suspend benefits which arises under paragraph 2 shall not be exercised while a compliance review proceeding is being undertaken under Article 20.15.

4. In considering what benefits to suspend in accordance with paragraph 2:

(a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with the obligations of this Agreement or in the same sector or sectors where nullification or impairment in the sense of Article 20.2(c) has been found to exist; and

(b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

5. If the Party complained against considers that:

(a) the level of benefits that the complaining Party has proposed to be suspended is not equivalent to the level of non-conformity, or nullification or impairment that the panel has found; or

(b) it has eliminated the non-conformity, or the nullification or impairment that the panel has found,

it may, within 30 days of the date the complaining Party provides notification under paragraph 2, request that the panel be reconvened to consider the matter. The Party complained against shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days of the date it reconvenes to review a request under either subparagraph (a) or (b), or within 120 days of a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is not equivalent to the level of non-conformity, or nullification or impairment that the panel has found, it shall determine the level of benefits it considers to be equivalent to the level of non-conformity, or nullification or impairment.

6. Where the right to suspend benefits has been exercised under this Article, if the Party complained against considers that the level of benefits suspended by the complaining Party is not equivalent to the level of non-conformity, or the nullification or impairment that the panel has found, it may request that the panel be reconvened to consider the matter. Where the panel reconvenes in accordance with this paragraph, the timeframes in paragraph 5 shall apply. If the panel determines that the level of benefits suspended by the complaining Party is not equivalent to the level of non-conformity, or nullification or impairment that the panel has found, it shall determine the level of benefits it considers to be equivalent to the level of non-conformity, or nullification or impairment.

7. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or 6 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity, or the nullification or impairment.

ARTICLE 20.15: COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 20.14.5, if the Party complained against considers that it has eliminated the non-conformity, or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notification to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall issue its report on the matter within 90 days of the date of delivery of the written notification.

2. If the panel decides that the Party complained against has eliminated the non-conformity, or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 20.14.

3. A panel reconvened in accordance with this Article or in relation to Article 20.14.5(b) shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the facts of any measure taken by the Party complained against to comply with the obligation in Article 20.13.1; and

(b) whether the Party complained against has complied with the obligation in Article 20.13.1.

4. A panel reconvened in accordance with this Article or in relation to Article 20.14.5(b) shall set out in its report its findings on:

(a) the facts of the case; and

(b) whether the Party complained against has complied with the obligation in Article 20.13.1.

Article 20.16: Private Rights

Neither Party shall provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

Article 20.17: Expenses

Unless the Parties otherwise agree, the expenses of a panel, including the remuneration of the panellists, shall be borne by the Parties in equal share.

Article 20.18: Time Periods

Unless otherwise specified, any time periods provided for in this Chapter may be modified by mutual agreement of the Parties.

ANNEX 20-A
CODE OF CONDUCT

Responsibilities to the Process

1. Every panellist 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 process are preserved. Former panellists shall comply with the obligations established in paragraphs 16 through 19.

Disclosure Obligations

2. Prior to confirmation of his or her selection as a panellist under this Agreement, a candidate shall disclose 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.

3. Once selected, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 2 and shall disclose them by communicating them in writing to the Joint Committee for consideration by the Parties. The obligation to disclose is a continuing duty, which requires a panellist to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

Performance of Duties by Panellists

4. A panellist shall comply with the provisions of this Chapter and the applicable rules of procedure.

5. On selection, a panellist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. A panellist shall not deny other panellists the opportunity to participate in all aspects of the proceeding.

7. A panellist shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

8. A panellist shall take all appropriate steps to ensure that the panellist's assistant and staff are aware of, and comply with paragraphs 1, 2, 3, 18, 19 and 20.

9. A panellist shall not engage in *ex parte* contacts concerning the proceeding.

10. A panellist shall not communicate matters concerning actual or potential violations of this Annex unless the communication is to both Parties or is necessary to ascertain whether that panellist has violated or may violate this Annex.

Independence and Impartiality of Panellists

11. A panellist shall be independent and impartial. A panellist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

12. A panellist shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

13. A panellist 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 panellist's duties.

14. A panellist shall not use his or her position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence the panellist. A panellist shall make every effort to prevent or discourage others from representing themselves as being in such a position.

15. A panellist shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the panellist's conduct or judgment.

16. A panellist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panellist's impartiality or that might reasonably create an appearance of impropriety or bias.

Duties in Certain Situations

17. A panellist or former panellist shall avoid actions that may create the appearance that the panellist was biased in carrying out the panellist's duties or would benefit from the decision or ruling of the panel.

Maintenance of Confidentiality

18. A panellist or former panellist shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.

19. A panellist shall not disclose a panel ruling or parts thereof prior to its publication.

20. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view except as required by law.

Definitions

21. For the purposes of this Annex:

assistant means a person who, under the terms of appointment of a panellist, conducts research or provides support for the panellist;

panellist means a member of a panel established under Article 20.8;

proceeding, unless otherwise specified, means a panel proceeding under this Chapter; and

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

ANNEX 20-B
MODEL RULES OF PROCEDURE

1. Any reference made in these Rules to an Article is a reference to the appropriate Article in this Chapter.

Timetable

2. After consulting the Parties, a panel shall, as soon as practicable and whenever possible within 10 days after the establishment of the panel, fix the timetable for the panel process. The indicative timetable attached to these Rules should be used as a guide. The panel process, from the date of establishment until the date of the final report shall, as a general rule, not exceed 270 days, unless the Parties otherwise agree.

3. In determining the timetable for the panel process, the panel shall provide sufficient time for the Parties to prepare their respective submissions. The panel shall set precise deadlines for written submissions by the Parties.

4. Any time period applicable to the panel proceeding shall be suspended for a period that begins on the date on which any panellist resigns or becomes unable to act and ends on the date on which the successor panellist is appointed.

Operation of Panels

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

6. Except as otherwise provided in these Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission and any other means of electronic communication.

7. Only panellists may take part in the deliberations of the panel. The panel may, in consultation with the Parties, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during its deliberations. Any such arrangements established by the panel may be modified by the agreement of the Parties.

8. The panel's deliberations shall be confidential. The panellists and the persons retained by the panel shall maintain the confidentiality of panel proceedings and deliberations.

9. Where a procedural question arises that is not addressed by these Rules, a panel may, after consulting the Parties, adopt an appropriate procedure that is consistent with this Agreement.

10. There shall be no *ex parte* communications with the panel concerning matters under consideration by it.

Written Submissions and Other Documents

11. Each Party shall transmit to the panel and the other Party a first submission in writing setting out the facts of its case and its arguments. Unless the Parties otherwise agree, a complaining Party shall deliver its first submission to each panellist and to the Party complained against within 14 days after the date of the establishment of the panel. The Party complained against shall deliver its first submission to each panellist and to the complaining Party within 21 days after the date of receipt of the first submission of the complaining Party. Each Party shall have an opportunity to submit written rebuttal submissions after both Parties have submitted first submissions.

12. A Party shall submit all factual evidence to the panel in its first written submission, except with respect to evidence necessary for the purposes of rebuttals or answers to questions. Exceptions to this rule may be granted on a showing of good cause.

13. In respect of a request, notice or other documents related to the panel proceedings that are not covered by Rule 10 or 11, each Party shall deliver one copy of the documents to the other Party by facsimile, email or other means of electronic transmission.

14. A Party may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.

Hearings

15. The timetable established in accordance with Rule 2 shall provide for at least one hearing for the Parties to present their case to the panel.

16. In hearings with the panel, each Party shall have an opportunity to present the facts of its case and its arguments. The complaining Party shall present its position first. The Parties shall be given an opportunity for final statements, with the complaining Party presenting its statement first.

17. The Parties shall make available to the panel written versions of their oral statements and responses to questions made in hearings with the panel.

18. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the Party complained against are afforded equal time to present their case.

19. A panel shall hold its hearing in closed session, unless the Parties otherwise agree.

Availability of Information

20. Subject to Rules 21 and 22, each Party's written submissions, written versions of its oral statements, and written responses to questions from the panel may be made available to the public by either Party.

21. A Party may designate, for confidential treatment, specific information it includes in its submissions, to the extent it considers strictly necessary to protect privacy or legitimate commercial interests of particular enterprises, public or private, or to address essential confidentiality concerns.

22. Each Party shall treat as confidential information submitted by the other Party which that Party has designated as confidential. Where a Party designates information as confidential, that Party shall, on request of the other Party, provide the panel and other Party with a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

23. The initial report presented to the Parties in accordance with Article 20.11.1 and any comments on it shall be confidential.

24. Each Party shall take such reasonable steps as are necessary to ensure that its individuals involved in panel proceedings, including its experts, interpreters, translators, and court reporters (designated note takers) maintain the confidentiality of the panel proceedings.

Information Gathering

25. The Parties shall respond promptly and fully to any request by the panel for such information as the panel considers necessary and appropriate.

26. On request of a Party, or on its own initiative, the panel may seek information and technical advice, or grant a request to provide views, from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree. The panel shall provide each Party with any views, information or technical advice it receives and an opportunity to provide comments.

Reports

27. The panel shall provide to the Parties an initial report, meeting the requirements specified in Article 20.11.1.

28. The initial report and final report of the panel shall be drafted without the presence of the Parties. Opinions expressed in the reports of the panel by its individual panellists shall be anonymous.

Venue

29. The venue for the panel hearings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the territories of the Parties with the first hearing to be held in the territory of the Party complained against.

Remuneration and Payment of Expenses

30. The panel shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants, designated note takers or other individuals that it retains in accordance with Rule 7.

Attachment to Annex 20-B
Model Rules of Procedure for Dispute Settlement Panel Proceedings

Indicative Timetable for a Dispute Settlement Panel

Panel established on xx/xx/xxxx

(a)	Receipt of first written submissions of the Parties	
	(i) Complaining Party:	14 days
	(ii) Party complained against:	21 days
(b)	Receipt of written rebuttal submissions of the Parties:	10-25 days
(c)	Date of first hearing with the Parties:	20-45 days
(d)	Issuance of initial report to the Parties:	60-90 days
(e)	Deadline for the Parties to provide comments on the initial report:	14 days
(f)	Issuance of final report to the Parties:	31 days
Total time:		170-240 days

CHAPTER 21
INSTITUTIONAL PROVISIONS

ARTICLE 21.1: CONTACT POINTS

1. Each Party shall designate a contact point or points to facilitate communications between the Parties. The contact point or points thus designated shall cover any matter arising under this Agreement, except those for which specific contact points or coordinators are designated under other Chapters.

2. On request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

ARTICLE 21.2: COOPERATION

On request of a Party, the Parties shall consult on any matter arising under this Agreement or that may affect the operation of this Agreement, including the interpretation and application of this Agreement.

ARTICLE 21.3: JOINT COMMITTEE

1. The Parties hereby establish a Joint Committee comprising officials of each Party, which shall be co-chaired by the Minister for Trade of Korea and the Minister for Trade of Australia, or their respective designees.

2. The Joint Committee shall:

   (a) supervise the implementation of this Agreement;

   (b) supervise the work of committees, working groups, and other bodies that are under its auspices referred to in paragraphs 1, 2 and 4 of Annex 21-A; and any other bodies established under this Agreement;

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

   (d) seek to resolve disputes regarding any matter arising under this Agreement in accordance with Article 20.7; and

   (e) consider any other matter that may affect the operation of this Agreement.

3. The Joint Committee may:

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

(b) consider and decide any amendment or other modification to this Agreement subject to ratification by each Party;

(c) as appropriate, issue interpretations of the provisions of this Agreement;

(d) adopt its own rules of procedure; and

(e) take such other action in the exercise of its functions as the Parties may agree.

4. Unless the Parties otherwise agree, the Joint Committee shall convene within one year of the date of entry into force of this Agreement and then annually for three years and thereafter as mutually determined.

ARTICLE 21.4: COMMITTEES AND WORKING GROUPS

1. The committees and working groups listed in paragraphs 1 and 3 of Annex 21-A are hereby established under the auspices of the Joint Committee.

2. The composition, functions and frequency of meetings of the committees or working groups established are stipulated in the relevant Chapters of this Agreement. The committees and working groups shall be co-chaired by relevant officials of the Parties. Meetings of the committees and working groups shall be held at such venues and dates as mutually agreed by the Parties and may be conducted in person, or by any other means as mutually determined by the Parties.

3. The Joint Committee may decide to establish other committees or working groups or other bodies in order to assist it in the performance of its tasks.

4. The committees and working groups under the auspices of the Joint Committee shall inform the Joint Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Joint Committee on their activities at each regular meeting of the Joint Committee. The creation or existence of a committee, working group or other bodies shall not prevent either Party from bringing any matter directly to the Joint Committee.

5. The Joint Committee may decide to change or undertake the task assigned to a committee, working group or other body, or to dissolve any committee, working group or other body.

6. The Parties may establish *ad hoc* committees, working groups or other bodies. The composition, functions and frequency of meetings of any *ad hoc* committees, working groups or other bodies shall be determined by the Parties.

ARTICLE 21.5: DECISION-MAKING

All decisions of the Joint Committee and all committees, working groups and other bodies established under this Agreement shall be made by mutual consent of the Parties.

ANNEX 21-A
COMMITTEES AND WORKING GROUPS

1. The Committees established are:

   (a) the Committee on Trade in Goods in accordance with Article 2.11 (Committee on Trade in Goods);

   (b) the Committee on Outward Processing Zones on the Korean Peninsula in accordance with Annex 3-B;

   (c) the Committee on Rules of Origin and Trade Facilitation in accordance with Article 4.12 (Committee on Rules of Origin and Trade Facilitation);

   (d) the Committee on Financial Services in accordance with Article 8.16 (Committee on Financial Services);

   (e) the Committee on Telecommunications in accordance with Article 9.25 (Committee on Telecommunications);

   (f) the Committee on Intellectual Property in accordance with Article 13.12 (Committee on Intellectual Property);

   (g) the Committee on Agricultural Cooperation in accordance with Article 16.11 (Committee on Agricultural Cooperation); and

   (h) the Committee on Energy and Mineral Resources Cooperation in accordance with Article 16.19 (Committee on Energy and Mineral Resources Cooperation).

2. The *ad hoc* committees, which may be requested to be established by a Party, are:

   (a) the *ad hoc* Committee on Labour in accordance with Article 17.3.2; and

   (b) the *ad hoc* Committee on Environment in accordance with Article 18.6.2.

3. The Working Group established is:

   (a) the Working Group on Professional Services in accordance with paragraph 3 of Annex 7-A (Professional Services).

4. The *ad hoc* Working Groups, which may be established on request of a Party, are:

   (a) the *ad hoc* Working Group on Technical Barriers to Trade in accordance with Article 5.9.4; and

(b) the *ad hoc* Committee on Audiovisual Co-production in accordance with Article 16 (Institutional Mechanism) of Annex 7-B.

CHAPTER 22
GENERAL PROVISIONS AND EXCEPTIONS

ARTICLE 22.1: GENERAL EXCEPTIONS

1. For the purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Administration and Trade Facilitation), 5 (Technical Barriers to Trade and Sanitary and Phytosanitary Measures) and 16 (Cooperation), Article XX of GATT 1994, including its interpretive notes, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters 7 (Cross-Border Trade in Services), 9 (Telecommunications), 10 (Movement of Natural Persons) and 15 (Electronic Commerce), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures to protect human, animal or plant life or health.

3. For the purposes of Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures:

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

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

(c) imposed for the protection of national treasures of artistic, historic or archaeological value; or

(d) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

The Parties understand that the measures referred to subparagraph (a) include environmental measures to protect human, animal or plant life or health, and that the measures referred to in subparagraph (d) include environmental measures relating to the conservation of living and non-living exhaustible natural resources.

4. Nothing in this Agreement shall prevent a Party from taking actions authorised by the Dispute Settlement Body of the WTO.

ARTICLE 22.2: ESSENTIAL SECURITY

1. Nothing in this Agreement shall be construed:

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

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

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

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment; or

(iii) taken in time of war or other emergency in international relations; or

(c) to 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.

2. A Party taking action under paragraphs 1(b) and (c) shall, to the extent possible, inform the Joint Committee of measures that have been taken and of their termination.

ARTICLE 22.3: TAXATION

1. Unless otherwise provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. The following provisions shall apply to taxation measures:

(a) Chapter 2 (Trade in Goods);

(b) Articles 7.2 (National Treatment) and 8.2 (National Treatment);

(c) Articles 7.3 (Most-Favoured-Nation Treatment) and 8.3 (Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax;

(d) Articles 11.3 (National Treatment) and 11.4 (Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax; and

(e) Articles 11.9.2 through 11.9.9.

3. Notwithstanding paragraph 2, nothing in the Articles referred to in paragraph 2 shall apply to:

(a) any most-favoured-nation obligation under this Agreement with respect to an advantage accorded by a Party in accordance with a tax convention;

(b) a non-conforming provision of any existing taxation measure;

(c) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(d) an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(e) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes as permitted by GATS Article XIV(d) without regard to the limitation in that Article to direct taxes; or

(f) a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

4. Article 11.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation.

5. Article 11.7 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 11.7 as the basis for a claim where it has been determined in accordance with this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 11.7 with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 11.16.2, the issue of whether that taxation measure is not an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 11.16.3.

6. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any tax convention, the latter shall prevail to the extent of the inconsistency.

7. If either Party considers there is any inconsistency relating to a taxation measure between this Agreement and any tax convention, the competent authorities shall immediately consult. For the purposes of this Article, the competent authorities shall include:

(a) for Australia, the Treasury; and

(b) for Korea, the Ministry of Strategy and Finance.

8. For the purposes of this Article, taxation measures shall not include any customs or import duties.

ARTICLE 22.4: 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 22.5: 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. The information shall be used only for the purposes specified by the Party providing the information. It shall not be disclosed without the specific written permission of the Party providing the information, except where the release or disclosure of information is necessary to comply with the legal requirements of a Party, in which case the Party that has received the information shall notify the other Party before such release or disclosure is made.

CHAPTER 23
FINAL PROVISIONS

ARTICLE 23.1: ANNEXES, APPENDICES AND FOOTNOTES

The Annexes, Appendices and footnotes to this Agreement constitute an integral part of this Agreement.

ARTICLE 23.2: ENTRY INTO FORCE

This Agreement shall enter into force 30 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or on such other date as the Parties may agree.

ARTICLE 23.3: AMENDMENTS

1. The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or on such date as the Parties may agree.

2. Unless otherwise provided in this Agreement, if any provision of the WTO Agreement that is incorporated into or referred to in this Agreement is amended, the Parties shall consult on whether to amend this Agreement.

ARTICLE 23.4: TERMINATION

1. This Agreement shall terminate 180 days after the date either Party notifies the other Party in writing that it wishes to terminate the Agreement.

2. Within 30 days of the delivery of a notification under paragraph 1, either Party may make a written request to the other Party to enter into consultations regarding whether any provision of this Agreement should terminate on a date later than that provided under paragraph 1. The consultations shall begin no later than 30 days after the Party delivers its request.

3. This Article shall not apply to Annex 7-B.

ARTICLE 23.5: AUTHENTIC TEXT

The Korean and English texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Seoul, this 8th day of April, 2014, in duplicate, in the English and Korean languages.

FOR THE GOVERNMENT OF AUSTRALIA:

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA: