COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF INDIA

PREAMBLE

The Republic of Korea (hereinafter referred to as "Korea") and the Republic of India (hereinafter referred to as "India"), and hereinafter referred to jointly as "Parties" and individually as "Party":

RECOGNISING their long-standing friendship, strong economic ties and close cultural links;

RECALLING the establishment of the Joint Study Group to examine the benefits of a Comprehensive Economic Partnership Agreement (hereinafter referred to as "CEPA") between Korea and India in January 2005, and its recommendations, which served as the framework for negotiations on the CEPA and its structure as an integrated package of agreements;

CONSIDERING that the expansion of their domestic markets, through economic integration, is important for accelerating their economic development;

DESIRING to promote mutually beneficial economic relations;

SHARING the belief that the CEPA would improve their attractiveness to capital and human resources, and create larger and new markets, to expand trade and investment not only between them but also in the region;

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

REAFFIRMING that this Agreement shall contribute to the expansion and development of world trade under the multilateral trading system embodied in the WTO Agreement;

BUILDING on their respective rights and obligations under the WTO Agreement and other bilateral, regional and multilateral instruments of cooperation to which both Parties are party;

FURTHER REAFFIRMING their rights to pursue economic philosophies suited to their development goals and their rights to realise their national policy objectives;

RECOGNISING that economic and trade liberalisation should allow for the optimal use of natural resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment; and

RESOLVED to promote reciprocal trade and investment, and to avoid circumvention of benefits of regional trade integration, through the establishment of clear and mutually advantageous trade rules, and industry as well as regulatory cooperation;

HAVE AGREED as follows:

CHAPTER ONE
GENERAL PROVISIONS AND DEFINITIONS

ARTICLE 1.1: OBJECTIVES

The objectives of this Agreement, as elaborated more specifically through its principles and rules are to:

(a) liberalise and facilitate trade in goods and services and expand investment between the Parties;

(b) establish a cooperative framework for strengthening and enhancing the economic relations between the Parties;

(c) establish a framework conducive for a more favourable environment for their businesses and promote conditions of fair competition in the free trade area;

(d) establish a framework of transparent rules to govern trade and investment between the Parties;

(e) create effective procedures for the implementation and application of this Agreement;

(f) explore new areas of economic cooperation and develop appropriate measures for closer economic partnership between the Parties;

(g) improve the efficiency and competitiveness of their manufacturing and services sectors and expand trade and investment between the Parties; and

(h) establish a framework for further regional and multilateral cooperation to expand and enhance the benefits of this Agreement throughout Asia, and thereby, to encourage the economic integration of Asian economies.

ARTICLE 1.2: RELATION TO OTHER AGREEMENTS

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

2. 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.

ARTICLE 1.3: GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless otherwise specified:

Agreement means the CEPA;

central level of government means:

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

(b) for India, the government of the Union of India;

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

days means calendar days, including weekends and holidays;

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;

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

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

goods/products of a Party means all domestic products including manufactures and commodities in their raw, semi processed and processed forms as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods;

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;

Harmonised System (HS) means the nomenclature of the Harmonised Commodity Description and Coding System defined in the International Convention on the Harmonised Commodity Description and Coding System including all legal notes thereto, as adopted and implemented by the Parties in their respective tariff laws;

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

measures by Parties means measures taken by:

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

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

national means:

(a) for Korea, a Korean as defined in Article 2 of the Constitution of Korea and its laws; and

(b) for India, natural persons deriving their status as Indian citizens from the law in force in India;

originating goods means goods qualifying under Chapter Three (Rules of Origin);

person means a natural person or an enterprise/juridical person;

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

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

regional level of government means, for India, the state and the Union Territories of India; for Korea, "regional level of government" is not applicable;

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

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

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

territory means:

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

(b) for India, the territory of India including its territorial seas and the air space above it and other maritime zones including the Exclusive Economic Zone and the continental shelf over which India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the *1982 United Nations Convention on the Law of the Sea* and International Law;

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

WTO means the World Trade Organization; and

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

2. In this Agreement, all words in the singular shall include the plural and all words in the plural shall include the singular, unless otherwise indicated in the context.

CHAPTER TWO
TRADE IN GOODS

ARTICLE 2.1: DEFINITIONS

For the purposes of this Chapter:

Anti-Dumping Agreement means the *Agreement on Implementation of Article VI of GATT 1994*;

A.T.A. Carnet Convention means the *Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, done on 6 December 1961*;

A.T.A. carnet has the same meaning as defined in the A.T.A. Carnet Convention;

customs duties[1] includes any duty or charge of any kind imposed in connection with the importation of a good, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;

(b) duty applied consistently with Articles 2.13 through 2.27;

(c) fee or other charge that is limited in amount to the approximate cost of services rendered, and does not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

(d) premium 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; or

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

MFN means "most favoured nation" treatment in accordance with Article I of GATT 1994.

ARTICLE 2.2: SCOPE AND COVERAGE

This Chapter applies to trade in goods between the Parties.

Section A: National Treatment and Market Access for Goods

ARTICLE 2.3: 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 interpretative notes, which is hereby incorporated into and made a part of this Agreement, *mutatis mutandis*.

ARTICLE 2.4: REDUCTION OR ELIMINATION OF CUSTOMS DUTIES

[1] Customs duties for India refer to basic customs duties as specified in the First Schedule to the *Customs Tariff Act*, 1975 of India. This is without prejudice to Korea's position either on the definition of customs duties or on the consistency of India's internal tax or charge equivalent to an internal tax with Article 2.3 of this Chapter or Article III of GATT 1994.

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

2. Upon the request of either Party, the Parties shall consult each other to consider the possibility of accelerating the reduction or elimination of customs duties as set out in their Schedules to Annex 2-A including the goods that are excluded from tariff concession in the Annex. An agreement by the Parties to accelerate the reduction or elimination of customs duties on any goods shall supersede any duty rate or staging category established for those goods in this Article and the Annex 2-A in accordance with Article 15.5 (Amendment) of this Agreement.

3. The reduced customs duty rates calculated in accordance with a Party's Schedule to Annex 2-A shall be applied rounded to the first decimal place.

ARTICLE 2.5: RULES OF ORIGIN

Goods covered by this Agreement shall be eligible for preferential tariff treatment, provided that they satisfy the rules of origin as set out in Chapter Three (Rules of Origin).

ARTICLE 2.6: NON-TARIFF MEASURES

1. Neither Party shall adopt or maintain any non-tariff measures on the importation of any goods of the other Party or on the exportation of any goods destined for the territory of the other Party except in accordance with its rights and obligations under the WTO Agreement or in accordance with other provisions of this Agreement.

2. Each Party shall ensure that such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade in goods between the Parties.

ARTICLE 2.7: CUSTOMS VALUE

Each Party shall determine the customs value of goods traded between the Parties in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

ARTICLE 2.8: RESTRICTIONS TO SAFEGUARD BALANCE OF PAYMENTS

Article XII of GATT 1994 and the *Understanding on Balance-of-Payments Provisions of GATT 1994* shall be incorporated into and made a part of this Agreement, for measures taken for balance of payments purposes for trade in goods.

ARTICLE 2.9: GENERAL AND SECURITY EXCEPTIONS

1. For the purposes of this Chapter, Articles XX and XXI of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.

2. Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to the other Party, or the goods of the other Party where a Party adopts or maintains measures in any laws and regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party, or goods of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such Party or goods.

ARTICLE 2.10: STATE TRADING ENTERPRISES

Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of GATT 1994.

ARTICLE 2.11: TARIFF CLASSIFICATION

For the purposes of this Chapter and Chapter Three (Rules of Origin), the basis for tariff classification would be the HS.

ARTICLE 2.12: TEMPORARY ADMISSION

1. Each Party shall accept in lieu of its national customs documents, and as due security for the sums referred to in Article 6 of the A.T.A. Carnet Convention, A.T.A. carnets valid for its territory, issued and used in accordance with the conditions laid down in the A.T.A. Carnet Convention, for temporary admission of:

(a) professional equipment necessary for representatives of the press or of broadcasting or television organisations for purposes of reporting or in order to transmit or record material for specified programmes, cinematographic equipment necessary in order to make a specified film or films or other professional equipment[2] necessary for the exercise of the calling, trade or profession of a person to perform a specified task;

(b) goods intended for display or demonstration at an event; and

(c) goods intended for use in connection with the display of foreign products at an event, including:

(i) goods necessary for the purposes of demonstrating foreign machinery or apparatus to be displayed;

(ii) construction and decoration material, including electrical fittings, for the temporary stands of foreign exhibitors;

(iii) advertising and demonstration material which is demonstrably publicity material for the foreign goods displayed, for example, sound recordings, films and lantern slides, as well as apparatus for use therewith; and

(iv) equipment including interpretation apparatus, sound recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses.

2. The facilities referred to in paragraph 1 shall be granted provided that:

[2] It would not include equipment which is to be used for internal transport or for the industrial manufacture or packaging of goods or (except in the case of hand-tools) for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects.

(a) the goods in all respects conform to the description, quantity, quality, value and other specifications given in the A.T.A. carnet duly certified by the customs authorities of the exporting Party;

(b) the goods are capable of identification on re-exporting;

(c) the number or quantity of identical articles is reasonable having regard to the purposes of importation; and

(d) the goods shall be re-exported within three months from the date of importation or such other longer period in accordance with the laws and practices of the Parties.

Section B: Trade Remedies

Section B-1: Anti-Dumping and Countervailing Duties

ARTICLE 2.13: GENERAL PROVISION

1. Except as otherwise provided for in this Agreement, the Parties retain their rights and obligations under Article VI of GATT 1994 and the Anti-Dumping Agreement.

2. (a) Notwithstanding paragraph 1, in the event of inconsistency between the articles set out in the following subparagraphs (2)(a)(i) through (iv) and any agreement, to which both Parties are party, that results from negotiations aimed at clarifying and improving disciplines under Article VI of GATT 1994 and the Anti-Dumping Agreement, such agreement shall prevail to the extent of the inconsistency:

(i) Article 2.14 (Notification of Petition for Investigation and Exchange of Information);

(ii) Article 2.17 (Lesser Duty Rule);

(iii) Article 2.18 (Prohibition of Zeroing); and

(iv) Article 2.19 (Exemption from Investigation after Termination on Review);

(b) A Party may withdraw its commitments under articles listed in subparagraph (a), provided that no agreement is reached in the WTO under Article VI of GATT 1994 and the Anti-Dumping Agreement on them within a reasonable period of time, but not less than two years from the date of entry into force of this Agreement;

(c) Notwithstanding subparagraph (b), neither Party may withdraw its commitments under articles listed in subparagraph (a) with respect to anti-dumping cases where the imports from the other Party are the only subject of anti-dumping investigation;

(d) A Party that intends to withdraw its commitments in accordance with subparagraph (b) shall notify the other Party of its intention at least three months before its withdrawal; and

(e) After the date of entry into force of this Agreement, any articles relating to

anti-dumping disciplines may be added to the list of articles in subparagraph (a), if both Parties so agree.

ARTICLE 2.14: NOTIFICATION OF PETITION FOR INVESTIGATION AND EXCHANGE OF INFORMATION

The investigating authority of a Party shall, upon accepting a properly documented application for the initiation of an anti-dumping investigation in respect of goods from the other Party, and before proceeding to initiate such an anti-dumping investigation, notify the other Party at least ten working days in advance of the date of initiation of the investigation.

ARTICLE 2.15: USE OF INFORMATION

1. Where originating goods are subject to an anti-dumping investigation, the export price of such goods before adjustment for fair comparison in accordance with Article 2.4 of the Anti-Dumping Agreement shall, subject to paragraph 2, be based on the value which appears in relevant documents.

2. In cases where the investigating authority of a Party determines that the value referred to in paragraph 1 is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed in accordance with Article 2.3 of the Anti-Dumping Agreement.

ARTICLE 2.16: RECOMMENDATIONS OF THE WTO COMMITTEE ON ANTI-DUMPING PRACTICES

Each Party may, in all investigations conducted against goods from the other Party, take into account the recommendations of the WTO Committee on Anti-Dumping Practices.

ARTICLE 2.17: LESSER DUTY RULE

If a Party takes a decision to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, it shall apply a duty less than the margin of dumping where such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 2.18: PROHIBITION OF ZEROING

When anti-dumping margins are established, assessed or reviewed under Articles 2, 9.3, 9.5, and 11 of the Anti-Dumping Agreement regardless of the comparison bases under Article 2.4.2 of the Anti-Dumping Agreement, all individual margins, whether positive or negative, should be counted toward the average.

ARTICLE 2.19: EXEMPTION FROM INVESTIGATION AFTER TERMINATION

1. In case where the investigating authority of the importing Party determines that the anti-dumping measures against imports from the other Party be terminated as a result of the review under Articles 11.2 and 11.3 of the Anti-Dumping Agreement, no investigation shall be initiated on the same goods during one year after the termination of the anti-dumping duties.

2. Notwithstanding the paragraph 1, the investigating authority of the importing Party may initiate an investigation in an exceptional case, provided that the authority is satisfied, on the basis of evidence available with it, that dumping or injury has recurred as a result of withdrawal of the duties and that initiation of such an investigation is necessary to prevent material injury or threat thereof to the domestic industry as a consequence of such dumped imports from the exporting Party.

ARTICLE 2.20: SUBSIDIES

The Parties reaffirm their commitments to abide by Articles VI and XVI of GATT 1994 and the *Agreement on Subsidies and Countervailing Measures* contained in Annex 1A to the WTO Agreement.

Section B-2: Safeguard Measures

ARTICLE 2.21: DEFINITIONS

For the purposes of Section B-2:

domestic industry means the producers as a whole of the like or directly competitive goods operating in the territory of a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

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

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

transition period means a period for a good from the date of entry into force of this Agreement until ten years from the date of completion of tariff elimination or completion of tariff reduction, as the case may be for each good.

ARTICLE 2.22: BILATERAL SAFEGUARD MEASURES

During the transition period only, if as a result of the reduction or elimination of a customs duty[3] under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party alone[4] constitute a substantial cause of serious injury or threat thereof to domestic industry producing a like or directly competitive good, the Party may:

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

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

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[3] A determination that an originating good is being imported as a result of the reduction or elimination of a customs duty provided for under this Agreement shall be made only if such reduction or elimination is a cause which contributes significantly to the increase in imports, but need not be equal to or greater than any other cause. The passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination referred to in this footnote. If the increase in imports is demonstrably unrelated to such reduction or elimination, the determination referred to in this footnote shall not be made.

[4] For the purposes of certainty, the Parties understand that a Party is not prevented from initiating a bilateral safeguard investigation in the event of a surge of imports from the territory of non-Parties. For further certainty, the Parties understand that bilateral safeguard measures can only be imposed on the good of the other Party when the increase in the import of such goods from that other Party alone constitute a substantial cause of serious injury or threat of serious injury, to domestic industry producing a like or directly competitive good.

(i) the MFN applied rate of customs duty on the good in effect at the time the measure is taken; and

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

ARTICLE 2.23: CONDITIONS AND LIMITATIONS ON IMPOSITION OF A BILATERAL SAFEGUARD MEASURE

The following conditions and limitations shall apply to an investigation or a measure described in Article 2.22:

(a) a Party shall immediately deliver written notice to the other Party upon:

(i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(ii) making a finding of serious injury or threat thereof caused by increased imports; and

(iii) taking a decision to apply a safeguard measure;

(b) in making the notification referred to in subparagraph (a), the Party proposing to apply a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, precise description of the good involved and the proposed measure, proposed date of introduction and expected duration;

(c) a Party proposing to apply a safeguard measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on the compensation set out in Article 2.25. The Parties shall in such consultations, review, *inter alia*, the information provided under subparagraph (b), to determine:

(i) compliance with Section B-2;

(ii) whether any proposed measure should be taken; and

(iii) the appropriateness of the proposed measure, including consideration of alternative measures;

(d) a Party shall apply a measure only following an investigation by its competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and made a part of this Agreement, *mutatis mutandis*;

(e) in undertaking the investigation described in subparagraph (d), a Party shall comply with the requirements of Articles 4.2(a) and (b) of the Safeguards Agreement, and to this end, Articles 4.2(a) and (b) are incorporated into and made a part of this Agreement, *mutatis mutandis*;

(f) the investigation shall in all cases be completed within one year following its date of initiation;

(g) no measure shall be maintained:

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

(ii) for a period exceeding two years, except that in exceptional circumstances, the period may be extended by up to additional two years, to a total of four years from the date of first imposition of the measure if the investigating authorities determine in conformity with procedures set out in subparagraphs (a) through (f), 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;

(h) no bilateral safeguard measure shall be taken against a particular good while a global safeguard measure 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 bilateral safeguard measure which is taken against that good shall be terminated;

(i) upon the termination of the safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for the measure; and

(j) no measures shall be applied again to the import of a good which has previously been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

ARTICLE 2.24: PROVISIONAL MEASURES

In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a measure described in Article 2.22 on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The duration of such provisional measure shall not exceed 200 days, during which time the requirements of Articles 2.23(d) and (e) shall be met. Any tariff increases shall be promptly refunded if the investigation provided for in Article 2.23(d) does not result in a finding that the requirements of Article 2.22 are met. The duration of any provisional measure shall be counted as part of the period described in Article 2.23(g)(ii).

ARTICLE 2.25: COMPENSATION

1. The Party proposing to apply a measure described in Article 2.22 shall provide to the other Party mutually agreed adequate means of 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 measure. If the Parties are unable to agree on compensation within 30 days in the consultations under Article 2.23(c), the Party against whose originating goods the measure is applied may take action having trade effects substantially equivalent to the measure applied under this Article. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects.

2. The right to take action referred to in the second sentence of paragraph 1 shall not be exercised for:

(a) the first two years that the measure is in effect; and

(b) the first three years that the measure is in effect where it has been extended beyond two years in accordance with Article 2.23(g)(ii);

provided that the measure described in Article 2.22 has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Section.

ARTICLE 2.26: ADMINISTRATION OF EMERGENCY ACTION PROCEEDINGS

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws, regulations, decisions and rulings governing all safeguard investigation proceedings.

2. Each Party shall entrust determinations of serious injury or threat thereof in safeguard investigation proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided for in its laws. Negative injury determinations shall not be subject to modification, except by such review.

3. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures for safeguard investigation proceedings.

ARTICLE 2.27: GLOBAL SAFEGUARD MEASURES

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

Section C: Technical Regulations and SPS Measures

ARTICLE 2.28: TECHNICAL REGULATIONS AND SPS MEASURES

1. Each Party reaffirms its rights and obligations under the TBT Agreement and the SPS Agreement.

2. For exchange of information, bilateral consultation, and mutual cooperation to

facilitate bilateral trade, while respecting each other's legitimate rights to adopt measures to protect human, animal and plant life or health, both Parties shall:

(a) in respect of TBT matters:

(i) exchange information on technical regulations, standards and conformity assessment procedures in the Parties;

(ii) address any TBT issues to identify a practical solution with a view to facilitating bilateral trade;

(iii) explore developing possible mutual recognition agreements or arrangements on technical regulations, standards and conformity assessment procedures between the Parties for mutual benefit and facilitating access to each other's market;

(iv) undertake consultation no later than one year from the date of entry into force of this Agreement with a view to arriving at mutual recognition agreements or arrangements for conformity assessment of the sectors listed in Annex 2-B within three years after the start of the consultation. The aforementioned period of consultation may be extended, as necessary. Any legitimate delay or failure to reach and conclude agreements or arrangements, including on the basis of science and risk-based assessment, shall not be regarded as a breach of a Party's obligations under this subparagraph. The Parties may undertake a joint study through their technical bodies, as necessary, before starting aforementioned consultation. In this case, the time-frame of the consultation may be modified accordingly. The Parties may, after mutual consultation, agree to include more sectors in Annex 2-B;

(v) strengthen cooperation between the Parties at relevant international and regional fora on standards and conformity assessment and promote the use of international standards and conformity assessment guidelines, as appropriate, as a basis for the development of national technical regulations; and

(vi) work towards framing guidelines for the recognition of suppliers' declaration on conformity assessment and standards in a manner consistent with international norms;

(b) in respect of SPS matters:

(i) exchange information on such matters as occurrences of specific SPS incidents in the Parties and change or introduction of their SPS-related regulations or standards, which may, directly or indirectly, affect trade in goods between the Parties;

(ii) identify and consult, based on the SPS Agreement and relevant international standards, guidelines and recommendations, on specific issues that may arise from the application of SPS measures, including acceptance of equivalence of the other Party's SPS measures and recognition of pest or disease free areas and areas of low-pest or disease prevalence as per the relevant provisions of the SPS Agreement. These shall be done in terms of the exporting Party objectively demonstrating to the importing Party that its

measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection and that the concerned areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. Reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures;

(iii) explore areas and forms of technical cooperation including personnel training and joint research in respect of mutually agreed SPS issues; and

(iv) identify other functions as mutually agreed upon by the Parties.

3. The Parties shall establish a Joint Working Group to address specific TBT or SPS issues, including works enumerated in paragraph 2. The Joint Working Group shall endeavour to resolve the issues raised before it within a reasonable period of time based on science and risk-based assessment.

4. Notwithstanding Article 14.3.1 (Choice of Forum), any dispute regarding TBT or SPS matters arising under this Article shall not be brought to dispute settlement under this Agreement unless the Parties otherwise agree.

CHAPTER THREE
RULES OF ORIGIN

ARTICLE 3.1: DEFINITIONS

For the purposes of this Chapter:

carrier means any vehicle for air, sea, and land transport;

CIF value means the price actually paid or payable to the exporter for a good when the good is loaded out of the carrier, at the port of importation, including the cost of the good, insurance, and freight necessary to deliver the good to the named port of destination. The valuation shall be made in accordance with the Customs Valuation Agreement;

FOB value means the price actually paid or payable to the exporter for a good when the good is loaded onto the carrier at the named port of exportation, including the cost of the good and all costs necessary to bring the good onto the carrier. The valuation shall be made in accordance with the Customs Valuation Agreement;

fungible materials means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings, etc;

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;

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

(a) fuel and energy;

(b) tools, dies and moulds;

(c) parts including 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;

materials means ingredients, raw materials, parts, components, subassemblies and goods that are used in the production of another good and physically incorporated into another good;

non-originating materials used in production means any materials whose country of origin is other than the Parties (imported non-originating) and any materials whose origin cannot be determined (undetermined origin);

originating materials means materials that qualify as originating under this Chapter;

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

producer means a person who grows, mines, raises, harvests, fishes, reproduces and breeds, traps, hunts, manufactures, processes, assembles or disassembles a good;

production means method of obtaining goods including growing, raising, mining, extracting, harvesting, fishing, producing, reproducing and breeding, trapping, gathering, collecting, hunting and capturing, manufacturing, processing, assembling or disassembling a good; and

used means utilised or consumed in the production of goods.

ARTICLE 3.2: ORIGINATING GOODS

For the purposes of this Agreement, goods shall be deemed originating and eligible for preferential tariff treatment if they are consigned according to Article 3.15 and conform to the origin requirements under any of the following conditions:

(a) goods wholly obtained or produced in the territory of the exporting Party, in accordance with Article 3.3; or

(b) goods not wholly obtained or produced in the territory of the exporting Party, provided that the said products are eligible under Article 3.4.

ARTICLE 3.3: WHOLLY OBTAINED OR PRODUCED

Within the meaning of Article 3.2(a), the following goods shall be considered as being wholly obtained or produced in the territory of a Party:

(a) raw or mineral goods extracted from its territory;

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

(c) live animals born and raised there;

(d) goods obtained from animals referred to in subparagraph (c);

(e) goods obtained by hunting or trapping within the land territory, or fishing or aquaculture conducted within the internal waters or within the territorial sea of the Party;

(f) goods of sea-fishing and other goods taken from the sea outside the territorial sea of a Party by vessels registered or recorded with a Party and flying its flag;

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

(h) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial sea of a Party, provided that the Party has rights to exploit such seabed or beneath the seabed in accordance with the *1982 United Nations Convention on the Law of the Sea*;

(i) articles collected there, including waste and scrap derived from production there, which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts or raw materials, or for recycling purposes; and

(j) goods produced there exclusively from goods referred to in subparagraphs (a) through (i) or from their derivatives, at any stage of production.

ARTICLE 3.4: NOT WHOLLY OBTAINED OR PRODUCED

1. Except as under Article 3.14 and provided that the final process of manufacturing is performed within the territory of the exporting Party, goods would be considered as originating within the meaning of Article 3.2(b),

(a) which satisfy the Product Specific Rules provided in Annex 3-A;

(b) except for goods covered under subparagraph (a) as provided for in Annex 3-A, if;

(i) the regional value content is not less than 35 percent of the FOB value; and

(ii) the goods have undergone a change in tariff classification in a subheading, at the six digit level, of the HS from tariff classification in which all the non-originating materials used in their manufacture are classified;

2. When a regional value content is required to determine an originating good, the regional value content of a good shall be calculated on the basis of the following method:

$$RVC = \frac{\text{FOB value - VNM}}{\text{FOB value}} \times 100$$

where,
RVC is the regional value content, expressed as a percentage;
FOB value is the value of the good as defined in Article 3.1;
VNM means the value of non-originating materials specified in paragraph 4.

3. For the purpose of paragraph 2, if the material does not satisfy the requirements of paragraph 1, the non-qualifying value of the materials shall be that proportion which cannot be attributed to one or both of the Parties, provided that the requirements of Article 3.6 at each stage of value accumulation are satisfied.

4. The value of the non-originating materials used in the production of a good shall be:

(a) for imported materials, the CIF value as defined in Article 3.1; or

(b) for materials of undetermined origin, the earliest price as ascertained to have been paid for in the territory of the Party where the working or processing takes place, in accordance with the Customs Valuation Agreement.

5. For the value of non-originating materials, the following expenses, where included under paragraph 4, may be deducted from the value of the non-originating materials:

(a) inland transportation costs incurred to transport the materials 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 duties or taxes paid or payable.

ARTICLE 3.5: INDIRECT MATERIALS

In order to determine whether a good originates in a Party, the origin of the indirect materials shall not be taken into account.

ARTICLE 3.6: NON-QUALIFYING OPERATIONS

1. Notwithstanding any provision in this Chapter, a good shall not be considered to have satisfied the requirements for an originating good in Article 3.4 merely by reason of going through the following operations or processes:

(a) preserving operations[1] to ensure that the products remain in good condition during transport;

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

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

(d) simple[2] painting and polishing operations;

(e) sifting, screening, sorting, classifying, grading or matching, including the

[1] Preserving operations include drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt or sulfur dioxide, removal of damaged parts, and like operations.

[2] "simple" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.

making-up of sets of articles;

(f) simple combining operations, labelling, pressing, cleaning or dry cleaning, packaging operations, or any combination thereof;

(g) cutting to length or width and hemming, or stitching or overlocking of fabrics which are readily identifiable as being intended for a particular commercial use;

(h) trimming and/or joining together by sewing, looping, linking or attaching accessory articles such as straps, bands, beads, cords, rings and eyelets;

(i) one or more finishing operations on yarns, fabrics or other textile articles, such as bleaching, waterproofing, decating, shrinking, mercerizing, or similar operations;

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

(k) operations to colour sugar or form sugar lumps;

(l) peeling, stoning and unshelling;

(m) unflaking, crushing, squeezing, slicing, macerating and removal of bones;

(n) sharpening, simple grinding or simple cutting and repackaging;

(o) simple[3] placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

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

(q) simple mixing[4] of products, whether or not of different kinds;

(r) simple[5] assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(s) simple[6] testing or calibrations;

(t) mere dilution with water or another substance that does not materially alter the characteristics of the goods;

(u) slaughtering of animals; or

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[3] See footnote 2.

[4] "simple mixing" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. **Chemical reaction** means a process, including a biochemical process, which results in a molecule with a new structure by breaking intra-molecular bonds and by forming new intra-molecular bonds, or by altering the spatial arrangement of atoms in a molecule.

[5] See footnote 2.

[6] See footnote 2.

(v) a combination of two or more operations referred to in subparagraphs (a) through (u).

2. All operations carried out in a Party on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

ARTICLE 3.7: ACCUMULATION

Originating materials from the territory of a Party, incorporated in the production of a good in the territory of the other Party shall be considered to originate in the territory, of the other Party.

ARTICLE 3.8: DE MINIMIS

1. A good that does not undergo a change in tariff classification pursuant to Article 3.4 and Annex 3-A in the final process of production shall be considered as originating if:

(a) for goods except for those falling within Chapters 1 through 14 and Chapters 50 through 63 of the HS, the value of all non-originating materials used in its production, which do not undergo the required change in tariff classification, does not exceed ten percent of the FOB value of the good;

(b) for goods falling within Chapters 50 through 63 of the HS, the total weight of non-originating basic textile materials used in its production, which do not undergo the required change in tariff classification, does not exceed seven percent of the total weight of all the basic textile materials used; and

(c) the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

2. The value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement for the good.

ARTICLE 3.9: ACCESSORIES, SPARE PARTS AND TOOLS

Accessories, spare parts or tools delivered with a good that form part of the good's standard accessories, spare parts or tools, shall be treated as originating goods if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

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

(b) the quantities and value of the accessories, spare parts or tools are standard trade practice for the good in the domestic market of the exporting Party; and

(c) if the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools 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: PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE

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, and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers 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 3.11: PACKING MATERIALS AND CONTAINERS FOR SHIPMENT

Packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether:

(a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification; and

(b) the good satisfies a regional value content requirement.

ARTICLE 3.12: FUNGIBLE MATERIALS

1. Where identical and interchangeable originating and non-originating materials are used in the manufacture of a product, those materials shall be physically segregated, according to their origin, during storage.

2. A producer facing considerable costs or material difficulties in keeping separate stocks of identical and interchangeable originating and non-originating materials used in the manufacture of a product, may use the so-called “accounting segregation” method for managing stocks.

3. The accounting method shall be recorded, applied and maintained in accordance with Generally Accepted Accounting Principles applicable in the Party in which the product is manufactured. The method chosen shall:

(a) permit a clear distinction to be made between originating and non-originating materials acquired and/or kept in stock; and

(b) guarantee that no more products receive originating status than would be the case if the materials had been physically segregated.

ARTICLE 3.13: PRINCIPLE OF TERRITORIALITY

1. Except as provided for in Articles 3.7 and 3.14, the conditions for acquiring originating status set out in Articles 3.2 through 3.12 shall be fulfilled without interruption in a Party.

2. Except as provided for in Article 3.7, an originating product exported from a Party to a non-Party shall, when returned, be considered to be non-originating unless it can be demonstrated to the satisfaction of the customs authority in accordance with laws and regulations of the importing Party concerned that:

(a) the returning product is the same as that exported; and

(b) the returning product has not undergone any operation beyond that necessary to preserve it in good condition while being exported.

ARTICLE 3.14: EXEMPTION FROM THE PRINCIPLE OF TERRITORIALITY

Notwithstanding the provisions of Article 3.13, the acquisition of originating status in accordance with the conditions set out in Articles 3.2 through 3.12 shall not be affected by working or processing carried out in the area agreed by both Parties in the Exchange of Notes on materials exported from the Party concerned and subsequently re-imported there, provided that the conditions set out in Annex 3-B are fulfilled.

ARTICLE 3.15: DIRECT CONSIGNMENT

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

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

(a) the goods have not entered into trade or consumption there;

(b) the goods have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition; and

(c) the goods have remained under the customs control in the country of transit.

ARTICLE 3.16: INTERPRETATION AND APPLICATION

For the purposes of this Chapter:

(a) the basis for tariff classification in this Chapter is the HS;

(b) in applying the Customs Valuation Agreement for the determination of the origin of a good under this Chapter:

(i) the principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;

(ii) the provisions of this Chapter shall take precedence over the Customs Valuation Agreement to the extent of any difference; and

(iii) the definitions in Article 3.1 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference; and

(c) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

ARTICLE 3.17: CONSULTATIONS AND MODIFICATIONS

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner.

2. Pursuant to Article 15.2.2(c) (Joint Committee and Review), the Parties shall consult to review, no later than three years after the date of entry into force of this Agreement, the rules of origin and discuss necessary amendments or modifications to this Chapter and its Annexes, including Article 3.4.1 and Product Specific Rules provided in Annex 3-A, taking into account developments in technology, production processes, and other related matters including the recommended amendments to the HS.

CHAPTER FOUR
ORIGIN PROCEDURES

ARTICLE 4.1: DEFINITIONS

For the purposes of this Chapter:

customs authority means the authority that is responsible under the law of a Party for the administration and application of customs laws and regulations;

determination of origin means a determination as to whether a good qualifies as an originating good in accordance with Chapter Three (Rules of Origin);

identical goods means goods that are same in all respects, including physical characteristics and quality, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter Three (Rules of Origin);

indirect materials means "indirect materials" as defined in Article 3.1 (Definitions);

materials means "materials" as defined in Article 3.1 (Definitions);

producer means "producer" as defined in Article 3.1 (Definitions); and

production means "production" as defined in Article 3.1 (Definitions).

ARTICLE 4.2: ISSUING AUTHORITIES OF CERTIFICATE OF ORIGIN

1. The Certificate of Origin shall be issued by the Government designated authorities (hereinafter referred to as "Issuing Authorities") of the exporting Party as provided in Annex 4-A.

2. Each Party shall inform the other Party of the names and addresses of the authorised officials of its respective Issuing Authorities and also provide the original sets of their specimen signatures and specimen of official seals. Any change in names, addresses, specimen signatures or official seals shall be promptly informed to the other Party.

3. For the purposes of verifying the requirements for preferential tariff treatment, the Issuing Authorities shall have the right to request for any supporting documentary evidence or to carry out any verification considered appropriate, consistent with its laws or practices.

ARTICLE 4.3: APPLICATION FOR CERTIFICATE OF ORIGIN

1. The exporter or the producer of the goods qualified for preferential tariff treatment shall apply in writing or electronically, as the case may be, to the relevant Issuing Authorities requesting for pre-export verification of the origin of the goods. The Issuing Authorities may conduct pre-export verification. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said goods to be exported thereafter. The pre-export verification may not apply to the goods of which, by their nature, origin can be easily verified.

2. At the time of carrying out the formalities for exporting the goods under preferential tariff treatment:

(a) the exporter or his or her authorised representative shall submit a written application for a Certificate of Origin together with appropriate supporting documents proving that the goods to be exported qualify for the issuance of the Certificate of Origin; or

(b) where an exporter is not the producer of the good, the application for a Certificate of Origin may be on the basis of the producer's origin declaration that the goods qualify as originating goods, including the result of pre-export verification pursuant to paragraph 1.

3. The Issuing Authorities shall, to the best of their competence and ability, carry out proper examination upon each application for a Certificate of Origin to ensure that:

(a) the application for the Certificate of Origin is duly completed and signed by the exporter or its authorised signatory;

(b) the origin of the goods is in conformity with Chapter Three (Rules of Origin);

(c) the other statements of the Certificate of Origin correspond to supporting documentary evidence submitted; and

(d) export of multiple items declared on a single Certificate of Origin shall be allowed, provided that each item qualifies as originating separately in its own right.

ARTICLE 4.4: ISSUANCE OF A CERTIFICATE OF ORIGIN

1. A Certificate of Origin shall:

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

(b) be completed in English in conformity with the specimen and the instructions contained therein as set out in the Annex 4-B; and

(c) comprise one original and three copies.

2. The Issuing Authorities, while retaining the duplicate, shall provide the original and remaining two copies to the exporter. The original shall be forwarded, together with the triplicate, by the exporter to the importer for submission to the customs authority at the port or place of importation. The triplicate shall be retained by the importer. The quadruplicate shall be retained by the exporter.

3. No erasures and superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the errors and making any addition required. Such alterations shall be approved and certified by an official authorised to sign the Certificate of Origin issued by the relevant Issuing Authorities. Unused spaces shall be crossed out to prevent any subsequent addition.

4. The Certificate of Origin shall be issued at the time of exportation, or within seven working days from the date of shipment whenever the goods to be exported can be considered originating in that Party. Under exceptional cases where a Certificate of

Origin has not been issued at the time of exportation or within seven working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively but not later than one year from the date of shipment, bearing the words "ISSUED RETROSPECTIVELY" in Remarks box of the Certificate of Origin.

5. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the Issuing Authorities which issued it for a certified true copy of the original and the triplicate to be made on the basis of the export documents in their possession bearing the endorsement of the words "CERTIFIED TRUE COPY", (in lieu of the original certificate) in Remarks box of the Certificate of Origin. This copy shall bear the date of the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued not later than one year from the date of issuance of the original Certificate of Origin and on the condition that the exporter provides to the relevant Issuing Authorities the quadruplicate.

ARTICLE 4.5: VALIDITY OF CERTIFICATE OF ORIGIN

1. A Certificate of Origin shall be valid for 12 months from the date of issue in the exporting Party, and the claim for preferential tariff treatment shall be made within the said period to the customs authority of the importing Party.

2. A Certificate of Origin, which is submitted to the customs authority of the importing Party after the said expiration date specified in paragraph 1, may be accepted for the purpose of claiming preferential tariff treatment, in accordance with the procedures applicable in that Party where the failure to submit these documents by the final date is due to exceptional circumstances.

3. In all cases, the customs authority in the importing Party may accept such Certificate of Origin, provided that the goods have been imported before the expiration date of the said Certificate of Origin in accordance with the procedures applicable in that Party.

4. A single Certificate of Origin may be used for:

(a) a single shipment of goods that results in the filing of one or more entries on the importation of the goods into the territory of a Party; or

(b) more than one shipment of goods that results in the filing of one entry on the importation of the goods into the territory of a Party.

ARTICLE 4.6: INVOICING BY A NON-PARTY OPERATOR

1. The customs authority in the importing Party may accept a Certificate of Origin in cases where the sales invoice is issued by an operator located in a third country or by an exporter for the account of the said operator, provided that the good meets the requirements of Chapter Three (Rules of Origin).

2. The exporter of the goods shall indicate "third country invoicing" and such information as name, address and country of the operator issuing the invoice in the Certificate of Origin.

ARTICLE 4.7: DISCREPANCIES IN THE CERTIFICATE OF ORIGIN

The discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the customs authority of the importing Party for the purpose of carrying out the formalities for importing the goods shall not *ipso facto* invalidate the Certificate of Origin, if it does in fact correspond to the said goods.

ARTICLE 4.8: CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

1. Except as otherwise provided for in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) request preferential tariff treatment at the time of importation of an originating good, if required by the customs authority of the importing Party;

(b) make a written declaration, if it deems necessary, that the good qualifies as an originating good;

(c) submit the original Certificate of Origin to the customs authority of the importing Party at the time of importation, if required by the customs authority of the importing Party;

(d) provide, on the request of that Party's customs authority, any other documentation relating to the importation of the good; and

(e) promptly make a corrected declaration in a manner required by the customs authority of the importing Party, subject to the customs laws of the importing Party and pay any duties along with interest and other charges owing, where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct.

2. Each Party may in accordance with its laws and regulations, provide that, where a good would have qualified as an originating good when it was imported into its territory, the importer of the good may, within a period of at least one year or for such longer period specified by the importing Party's laws and regulations 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.

3. For the purposes of paragraph 1(d), the customs authority of the importing Party may require an importer to demonstrate that the good was shipped in accordance with Article 3.15 (Direct Consignment) by providing with:

(a) bills of lading or waybills indicating the shipping route and all points of shipment and transhipment prior to the importation of the good; and

(b) where the good is shipped through or transhipped in a non-Party, a copy of the customs control documents indicating that the good remained under customs control while in that non-Party.

4. Where the customs authority of the importing Party determines that a Certificate of Origin is illegible, defective on its face or has not been completed pursuant to Article 4.4,

or discovers that discrepancies exist between the Certificate of Origin and the written declaration, the importer will be granted a period of not less than five working days, but not exceeding 30 working days from the date of request by the customs authority to provide a copy of the corrected Certificate of Origin.

5. An importer that makes a corrected declaration of origin pursuant to paragraph 1(e) and pays any duties owing, will not be subject to penalties under Article 4.16, in accordance with each Party's laws and regulations.

ARTICLE 4.9: WAIVER OF CERTIFICATE OF ORIGIN

Goods sent as small packages from private persons to private persons or forming part of travellers' personal luggage may be admitted as originating goods without requiring the submission of a Certificate of Origin, in accordance with each Party's laws and regulations.

ARTICLE 4.10: RECORD KEEPING REQUIREMENT

1. The application for a Certificate of Origin and all documents related to origin shall be retained by the Issuing Authorities, exporter and producer for not less than five years from the date of issuance of the Certificate of Origin.

2. A copy of the Certificate of Origin and all relevant import documents shall be retained by an importer for not less than five years from the date of importation.

3. An importer, exporter or producer may choose to maintain records specified in paragraphs 1 and 2 in any medium that allows for prompt retrieval, including, but not limited to, digital, electronic, optical, magnetic or hard copy.

4. Importers, exporters and producers that are required to maintain documents related to origin pursuant to paragraphs 1 and 2 will make those documents available for inspection by an officer of the customs authority or Issuing Authorities of a Party conducting a verification visit and provide facilities for inspection thereof.

ARTICLE 4.11: VERIFICATION BY COMPETENT AUTHORITY OF EXPORTING PARTY

1. The importing Party may, at random or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof, request the Issuing Authorities[1] of the exporting Party for a retroactive check. The Issuing Authorities shall conduct such check subject to the following procedures:

(a) the request for a retroactive check shall be accompanied with the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on that Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;

(b) the Issuing Authorities receiving a request for a retroactive check shall respond to the request promptly and reply within three months after receipt

[1] In the case of Korea, the Issuing Authorities referred to Articles 4.11 through 4.13 for the purposes of origin verification for the exported goods into India refer to the customs authority in accordance with its customs laws and regulations.

of the request;

(c) the customs authority of the importing Party may suspend the provision of preferential tariff treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and that there is no suspicion of fraud; and

(d) the Issuing Authorities shall promptly transmit the results of the verification process to the customs authority of the importing Party which shall then determine whether or not the subject good is originating. The retroactive check process, including the process of notifying the Issuing Authorities of the exporting Party of the results of determination on whether the subject good is originating or not, should be completed within six months. While the process of the retroactive check is being undertaken, subparagraph (c) shall be applied.

2. The customs authority of the importing Party may request an importer for information or documents relating to the origin of imported goods in accordance with its laws and regulations before requesting the retroactive check pursuant to paragraph 1.

ARTICLE 4.12: VERIFICATION BY CUSTOMS AUTHORITY OF IMPORTING PARTY

1. If the customs authority of the importing Party is not satisfied with the results of the retroactive check pursuant to Article 4.11, it may, under exceptional circumstances, conduct a verification in the exporting Party by means of:

(a) written requests for information and documentation from the exporter or producer;

(b) written questionnaires to the exporter or producer; and/or

(c) verification visits to the premises of an exporter or producer in the exporting Party.

2. The written request or questionnaire pursuant to paragraph 1(a) or (b) will indicate that the time period the exporter or producer has to complete and return the questionnaire or the information and documentation required will be 30 days or for such longer period as the Parties may agree, from the date of its receipt.

3. When the customs authority of a Party has received the completed questionnaire or the information and documentation required pursuant to paragraph 1(a) or (b), and considers that it needs more information to determine the origin of the goods subject to verification, it may request additional information from the exporter or producer.

4. Where an exporter or producer fails to return a duly completed questionnaire or fails to provide the information and documentation required within the period referred to in paragraph 2, the importing Party may deny preferential tariff treatment to the good in question after providing at least 30 days written notice to the exporter or producer to provide written comments or additional information that will be taken into account prior to completing the verification.

5. Prior to conducting a verification visit pursuant to paragraph 1(c):

(a) an importing Party shall deliver a written notification of its intention to conduct the verification visit simultaneously to:

(i) the producer or exporter whose premises are to be visited;

(ii) the Issuing Authorities of the Party in the territory of which the verification visit is to occur;

(iii) the customs authority of the Party in the territory of which the verification visit is to occur; and

(iv) the importer of the good subject to the verification visit;

(b) the written notification mentioned in subparagraph (a) shall be as comprehensive as possible and shall include, among others:

(i) the name of the customs authority issuing the notification;

(ii) the name of the producer or exporter whose premises are to be visited;

(iii) the proposed date of the verification visit;

(iv) the coverage of the proposed verification visit, including reference to the good subject to the verification; and

(v) the names and designation of the officials performing the verification visit;

(c) an importing Party shall obtain the written consent of the producer or exporter whose premises are to be visited;

(d) when a written consent from the producer or exporter is not obtained within 30 days from the date of receipt of the notification pursuant to subparagraph (a), the notifying Party may deny preferential tariff treatment to the good referred to in the Certificate of Origin that would have been subject to the verification visit; and

(e) the Issuing Authorities receiving the notification may postpone the proposed verification visit and notify in writing the customs authority of the importing Party of such intention within 15 days from the date of receipt of the notification. Notwithstanding any postponement, any verification visit shall be carried out within 60 days from the date of such receipt, or for such longer period as the Parties may agree.

6. For the purposes of paragraph 1(c), an exporter or producer of a good will identify any observers to be present during such verification visit by the customs authority of the importing Party.

7. The importing Party conducting the verification visit shall provide the producer or exporter and importer whose goods are subject to the verification and the relevant issuing authority with a written determination of whether or not the subject good qualifies as an originating good. Any suspended preferential tariff treatment shall be reinstated upon the determination that goods qualify as originating goods.

8. The producer or exporter shall be allowed 30 days from the date of receipt of the

written determination pursuant to paragraphs 4 and 7 to provide written comments or additional information regarding the eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination shall be communicated to the Issuing Authorities within 30 days from the date of receipt of the comments or additional information from the producer or exporter.

9. The verification visit process, including the actual visit, the determination and its notification of whether the subject good is originating or not shall be carried out and its results shall be communicated to the Issuing Authorities within a maximum period of six months from the first day when the verification visit was conducted. While the process of verification is undertaken, Article 4.11.1(c) shall be applied.

10. The customs authority of a Party may, prior to the verification visit, request the importer of the good to voluntarily obtain and supply written information provided by the exporter or producer of the good in the territory of the other Party. The failure of the importer to obtain and supply such information will not be considered as a failure of the exporter or producer to supply the information, or as a ground for denying preferential tariff treatment.

ARTICLE 4.13: VERIFICATION OF MATERIALS THAT ARE USED IN THE PRODUCTION OF THE GOOD

1. Where the customs authority of a Party, in conducting a verification of origin of a good imported into its territory under Articles 4.11 and 4.12, conducts a verification of the origin of a material that is used in the production of the good, the verification of the material may be conducted in accordance with the procedures set out in Article 4.12.1.

2. The customs authority of a Party may consider the material to be non-originating in determining whether the good is an originating good where the producer or supplier of that material does not allow the customs authority access to information required to make a determination of whether the material is an originating material by the following or other means:

(a) denial of access to its records;

(b) failure to respond to a verification questionnaire; or

(c) refusal to consent to a verification visit within 30 days of receipt of notification under Article 4.12.5(d) as made applicable by Article 4.12.1.

3. A Party will not consider a material that is used in the production of a good to be a non-originating material solely on the basis of postponement of a verification visit under Article 4.12.5(e) as made applicable by paragraph 1.

4. Communications under Articles 4.11 through 4.13 between the Parties shall be in the English language.

ARTICLE 4.14: DENIAL OF PREFERENTIAL TARIFF TREATMENT

1. Except as otherwise provided for in this Chapter, the importing Party may deny 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 Chapter Three (Rules of

Origin);

(b) the exporter, producer or importer of the good that is required to maintain records or documentation under Article 4.10 fails to maintain records or documentation relevant to determining the origin of the good or denies access to the records or documentation;

(c) the importer, exporter or producer fails to provide information that the Party requested pursuant to Articles 4.12.1(a) and 4.12.1(b) demonstrating that the good is an originating good;

(d) after receipt of a written notification for a verification visit pursuant to Article 4.12.5, the exporter or producer in the territory of the other Party prevents such verification visit; or

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

2. For the purposes of paragraph 1(e), "pattern of conduct" means at least two instances of false or unsupported representations by an exporter or producer of a good resulting in at least two written determinations being sent to that exporter or producer pursuant to Articles 4.12.4 and 4.12.7, that conclude, as a finding of fact, that Certificates of Origin applied by that exporter or producer with respect to identical goods contain false or unsupported representations.

ARTICLE 4.15: CONFIDENTIALITY

1. Each Party shall maintain, in accordance with its laws and regulations, confidentiality of the information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Where the Party receiving the information is required by its laws and regulations to disclose information, that Party shall ensure to notify the Party or persons who provided that information.

2. The confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of determinations of origin, and of customs matters except with the permission of the Party or persons who provided the confidential information.

3. Notwithstanding paragraph 2, information that is obtained pursuant to this Chapter may be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs-related laws and regulations implementing Chapter Three (Rules of Origin) and this Chapter. The Party or persons who provided the information will be notified in advance of such use.

ARTICLE 4.16: PENALTIES

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

2. When it is suspected that fraudulent acts in connection with the Certificate of Origin have been committed, the Issuing Authorities concerned shall cooperate in the action to be taken in the territory of the respective Party against the persons involved.

ARTICLE 4.17: REVIEW

After five years from the date of entry into force of this Agreement, the Parties shall examine and revise, if deemed necessary, the system of the Certificate of Origin including certification completed and signed by the exporter or producer and other procedures under this Chapter.

ARTICLE 4.18: UNIFORM REGULATIONS/RULES

1. The Parties shall establish and implement, through their respective laws, regulations or administrative policies, by the date of entry into force of this Agreement, Uniform Regulations/Rules regarding the interpretation, application and administration of Chapter Three (Rules of Origin) and this Chapter.

2. Each Party shall implement any modification of or addition to the Uniform Regulations/Rules within such period as the Parties may agree.

CHAPTER FIVE
TRADE FACILITATION AND CUSTOMS COOPERATION

ARTICLE 5.1: OBJECTIVES AND PRINCIPLES

With the objectives of facilitating trade under this Agreement and cooperating in pursuing trade facilitation initiatives on a bilateral basis between Korea and India, both Parties agree to administer their import and export processes for goods traded under this Agreement on principles that:

(a) procedures be simplified and harmonised on the basis of international standards while recognising the importance of balance between compliance and facilitation to ensure the free flow of trade and to meet the needs of governments for revenue and the protection of society;

(b) entry procedures be consistent and transparent to ensure predictability for importers and exporters;

(c) a Party includes consultations with the representatives of its trading community before adopting significant modifications to procedures;

(d) procedures be based on risk assessment principles to focus compliance efforts by promoting effective use of resources; and

(e) the Parties encourage mutual cooperation, technical assistance and the exchange of information, including information on best practices, for the purposes of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement.

ARTICLE 5.2: 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. Pursuant to paragraph 1, each Party shall ensure that its customs authority shall adopt or maintain procedures that:

(a) provide for the release of goods on completion of all formalities in compliance with its laws and regulations;

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

(c) provide option to importers to obtain release of imported goods, other than prohibited, controlled or regulated goods, at the place of importation, without transfer to bonded warehouses or other similar facilities; and

(d) in accordance with its laws and regulations, allow importers to temporarily release goods by providing sufficient guarantee in the form of a surety, a deposit, or any other appropriate instrument, covering the ultimate payment of the customs duties, taxes and fees in connection with the importation of the goods.

3. Each Party shall endeavour to adopt and maintain a system under which goods in need of emergency can go through the customs procedures for 24 hours a day including holidays.

4. The Parties recognise that, for certain goods or under certain circumstances, such as goods subject to quota or to health-related or public safety requirements, releasing the goods may require the submission of more extensive information, before or at the time of arrival of the goods so that the customs authority can examine the goods for release.

5. The Parties shall endeavour to ensure that the requirements of their respective agencies related to the import and export of goods are coordinated to facilitate trade, regardless of whether these requirements are administered by an agency or the customs authority on behalf of that agency. In furtherance of this objective, each Party shall endeavour to take steps to harmonise the document filing requirements of its respective agencies with the objective of allowing importers and exporters to present all required documents to one agency.

6. The Parties, through their customs authorities, shall establish means of consultation with their trade and business communities to promote greater cooperation and the exchange of information.

ARTICLE 5.3: AUTOMATION

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

(a) make electronic systems accessible to customs users; and

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

ARTICLE 5.4: RISK MANAGEMENT

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

ARTICLE 5.5: EXPRESS SHIPMENTS

Each Party shall endeavour to adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall, to the extent possible:

(a) provide a separate and expedited customs procedures for express shipments, and where applicable, use the *World Customs Organization Guidelines for the Immediate Release of Consignments by Customs*;

(b) provide for advance electronic submission and processing of information before physical arrival of express shipments to enable their release upon arrival; and

(c) consistent with its laws and regulations, provide simplified documentary requirements for express shipments.

ARTICLE 5.6: TRANSPARENCY

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

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

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

ARTICLE 5.7: REVIEW AND APPEAL

1. Each Party shall provide an easily accessible process for administrative and judicial review or appeal of the decisions taken by its customs authority.

2. Subject to each Party's laws and regulations, any affected person shall have the right to appeal against the decisions taken by its customs authority. In case it is required for reasons of confidentiality, each Party shall provide for submission of the information by the producer or exporter on behalf of the importer directly to the Party conducting the administrative review. Without prejudice to the use of such information in the process of review as per each Party's laws and regulations, the exporter or producer providing the information may ask the Party conducting the administrative review to treat that information as confidential in accordance with Article 4.15 (Confidentiality).

3. Application for review or appeal of the decisions taken by the customs authority of a Party shall be made in writing and shall be accompanied by all relevant documents.

ARTICLE 5.8: ADVANCE RULINGS

1. In accordance with its laws and regulations, each Party shall endeavour to provide, through its customs or other competent authorities, for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, concerning:

(a) classification of goods;

(b) principles to be adopted for the purpose of determination of value of goods;

(c) determination of origin of goods; or

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

2. Each Party shall adopt or maintain procedures for the issuance of such advance rulings, including the details of the information required to process an application for a ruling.

3. Subject to any confidentiality requirements in its laws and regulations, each Party shall make available to the public, for example, on the Internet, its advance rulings on tariff classification and any other matter as the Parties may agree.

4. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective laws and regulations on the matters listed in paragraph 1.

ARTICLE 5.9: CUSTOMS COOPERATION

1. The Parties undertake to adopt international best practices for trade facilitation, which may include the adoption of advanced customs procedures.

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

3. The Parties shall commit:

(a) for the purposes of facilitating the flow of trade between them, in customs-related matters regarding the importation, exportation and transit of goods, to pursuing the harmonisation of documentation used in trade and data elements according to international standards;

(b) to intensifying cooperation between their customs laboratories and scientific departments;

(c) to the exchange of customs' personnel between the Parties;

(d) to jointly organising training programmes on customs-related issues;

(e) to the development of effective mechanisms for communicating with the trade and business communities;

(f) to developing verification standards and a framework to ensure that both Parties act in a consistent manner in determining that goods imported into their territories meet the requirements set out in Chapter Three (Rules of Origin);

(g) to the extent practicable, to assisting each other in the tariff classification, valuation and determination of origin of goods, for the purposes of preferential tariff treatment; and

(h) to promoting a strong and efficient regime of intellectual property rights in accordance with their laws and regulations.

4. Each Party, on request, shall notify the other Party, in writing, the classification of a good of the other Party, determined by it. The Parties shall consult to address the discrepancies regarding classification between the Parties.

ARTICLE 5.10: CUSTOMS COMMITTEE

1. The Parties agree to establish a Customs Committee to address any customs-related issues for:

(a) the uniform interpretation, application and administration of Chapter Three (Rules of Origin), Chapter Four (Origin Procedures), this Chapter and Uniform Regulations/Rules;

(b) addressing issues on tariff classification and valuation relating to determinations of origin;

(c) reviewing of rules of origin;

(d) developing detailed guidelines for origin verification procedures to ensure uniform interpretation, application and administration of Articles 4.11 through 4.13 ; and

(e) considering any other customs-related matter referred to it by the customs authority of the Parties or the Parties or Joint Committee.

2. The Customs Committee will meet within one year from the date of entry into force of this Agreement and shall meet thereafter as required and at least once a year, alternately between Korea and India.

3. The Customs Committee shall comprise representatives of customs and other competent authorities from each Party and shall draw up its own rules of procedure at its first meeting.

4. The Customs Committee may formulate resolutions, recommendations or opinions which it considers necessary and report to the Parties or to the Joint Committee.

ARTICLE 5.11: CUSTOMS CONTACT POINTS

Each Party shall designate official contact points and provide details thereof to the other Party, with a view to facilitating the effective implementation of this Chapter and other related Chapters. If the matter cannot be resolved through the contact points, the matter shall be referred to the Customs Committee set out in Article 5.10.

CHAPTER SIX
TRADE IN SERVICES

ARTICLE 6.1: DEFINITIONS

For the purposes of this Chapter:

a juridical person is:

> **owned** by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;
>
> **controlled** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; or
>
> **affiliated** with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;

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;

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

commercial presence means any type of business or professional establishment, including through:

(a) the constitution, acquisition or maintenance of a juridical person; or

(b) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;

computer reservation system (CRS) 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;

direct taxes comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

financial services means "financial service" as defined in Annex 6-C;

juridical person means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association, cooperative or society[1];

juridical person of the other Party means a juridical person which is either:

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[1] A cooperative or a society are legal entities constituted under the relevant applicable laws in India

(a) constituted or otherwise organised under the law of the other Party, and is engaged in substantive business operations in the territory of the other Party, or a non-Party; or

(b) in the case of the supply of a service through commercial presence, owned or controlled by natural or juridical person of the other Party;

measures by Parties affecting trade in services include measures in respect of:

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

(b) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally; or

(c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

monopoly supplier of a service means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

natural person of a Party means a natural person who resides in the territory of the Party or elsewhere and who under its laws:

(a) is a national of that Party; or

(b) has the right of permanent residence in that Party;

person means either a natural person or a juridical person;

selling and marketing of air transport services mean 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. These activities do not include the pricing of air transport services nor the applicable conditions;

services means all services except services supplied in the exercise of governmental authority;

service consumer means any person that receives or uses a service;

service of the other Party means a service which is supplied:

(a) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or

(b) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;

service supplier means any person that supplies or seeks to supply a service[2];

[2] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this

supply of a service includes the production, distribution, marketing, sale and delivery of a service; and

trade in services is defined as the supply of a service:

(a) from the territory of a Party into the territory of the other Party (cross-border);

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

(c) by a service supplier of a Party, through commercial presence in the territory of the other Party (commercial presence); or

(d) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party (presence of natural persons).

ARTICLE 6.2: SCOPE AND COVERAGE

1. This Chapter applies to measures by a Party affecting trade in services.

2. For the purposes of this Chapter, measures adopted or maintained by a Party mean measures adopted or maintained by central, regional or local governments and authorities, or by non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated by central, regional or local governments and authorities.

3. This Chapter does not apply to:

(a) government procurement;

(b) subsidies or grants, including government-supported loans, guarantees and insurance; or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;

(c) services provided in the exercise of governmental authority, provided that such services are supplied neither on a commercial basis, nor in competition with one or more service providers; and

(d) transportation and non-transportation air services, including domestic and international services, whether scheduled or non-scheduled, and related services in support of air services[3] other than:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services.

Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied. The Parties understand that 'seeks to provide' or 'provides a service' has the same meaning as 'supplies a service' as used in Article XXVIII(g) of GATS.

[3] The Parties understand that ground handling services are part of related services in support of air services.

4. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

5. Nothing in this Chapter shall 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 the terms of this Chapter as well as the terms of specific commitments undertaken.

6. New services, including new financial services, shall be considered for possible incorporation into this Chapter at future reviews held in accordance with Article 6.19, or at the request of either Party immediately. The supply of services which are not technically or technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation at future reviews or at the request of either Party immediately.

ARTICLE 6.3: REVIEW OF MOST FAVOURED NATION COMMITMENTS

If, after the date of entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-Party, it shall give consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

ARTICLE 6.4: MARKET ACCESS

1. With respect to market access through the modes of supply defined in Article 6.1, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of specific commitments[4].

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of specific commitments, are defined as:

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

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

(c) limitations on the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test[5];

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[4] If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in Article 6.1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 6.1, it is thereby committed to allow related transfers of capital into its territory.

[5] Subparagraph (c) does not cover measures of a Party which limits inputs for the supply of services.

(d) limitations on 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;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 6.5: NATIONAL TREATMENT

1. In the sectors inscribed in its Schedule of specific commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers[6].

2. Any subsequent establishment, acquisition and expansion of investments by a service supplier that is incorporated, constituted, set up or otherwise duly organised under the law of a Party, and which is owned by a service supplier of the other Party, shall be regarded as an investment of the other Party, for the purpose of determining the applicable treatment to be accorded under this Article[7].

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

4. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

5. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.

ARTICLE 6.6: ADDITIONAL COMMITMENTS

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 6.4 or 6.5, including those regarding qualifications, standards or licencing matters. Such commitments shall be inscribed in a

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[6] Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

[7] The Parties understand that although such service suppliers may be accorded any better treatment which is available under the regime of that Party, at the time of such subsequent establishment, acquisition and expansion of investments, any such better treatment accorded shall not be construed as an automatic modification to the Parties' respective Schedules in Annex I (Non-Conformity Measures for Investment(Existing Measures)) or II (Non-Conformity Measures for Investment(Future Measures)) in Chapter Ten (Investment).

Party's Schedule of specific commitments.

ARTICLE 6.7: DOMESTIC REGULATION

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Paragraph 2 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

5. With the objective of ensuring that domestic regulations, including measures relating to qualification requirements and procedures, technical standards and licencing requirements, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI:4 of GATS, with a view to their incorporation into this Chapter. The Parties note that such disciplines aim to ensure that such requirements are *inter alia*:

(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 licencing procedures, not in themselves a restriction on the supply of the service.

6. Pending the incorporation of disciplines pursuant to paragraph 5 for sectors where a Party has undertaken specific commitments and subject to any terms, limitations, conditions or qualifications set out therein, a Party shall not apply licencing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(a) does not comply with the criteria outlined in paragraph 5(a), (b) or (c); and

(b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

7. In determining whether a Party is in conformity with the obligations under paragraph 6, account shall be taken of international standards of relevant international

organisations[8] applied by that Party.

8. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

ARTICLE 6.8: RECOGNITION

1. For the purposes of the fulfillment of its standards or criteria for the authorisation, licencing or certification of services suppliers, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party.

2. After the date of entry into force of this Agreement, upon request being made in writing by a Party to the other Party in any regulated service sector, the Parties shall encourage that their respective professional bodies negotiate and conclude, within 12 months of the date of entry into force of this Agreement, in that service sector for mutual recognition of education, or experience obtained, requirements met, or licences or certifications granted in that service sector, with a view to the achievement of early outcomes. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such agreement or arrangements shall not be regarded as a breach of a Party's obligations under this paragraph and shall not be subject to Chapter Fourteen (Dispute Settlement). Progress in this regard will be continually reviewed by the Parties in the course of the review pursuant to Article 15.2 (Joint Committee and Review).

3. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a country that is not a Party to this Agreement, that Party shall accord the other Party, upon request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the territory of that other Party should also be recognised.

4. The Parties agree that they shall not be responsible in any way for the settlement of disputes arising out of or under these agreements or arrangements for mutual recognition concluded by their respective professional, standard-setting or self-regulatory bodies under this Article and that the provisions of Chapter Fourteen (Dispute Settlement) shall not apply to disputes arising out of, or under the provisions of such agreements or arrangements.

ARTICLE 6.9: MONOPOLY AND EXCLUSIVE SERVICE SUPPLIERS

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's Schedule of specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's Schedule of specific commitments, the Party shall ensure

[8] The term "relevant international organisations" refers to international bodies whose membership is open to relevant bodies of both Parties.

that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations in its territory.

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its territory**.**

ARTICLE 6.10: BUSINESS PRACTICES

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 6.9, may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

ARTICLE 6.11: SAFEGUARD MEASURES

1. Neither Party shall take safeguard action against services and service suppliers of the other Party from the date of entry into force of this Agreement. Neither Party shall initiate or continue any safeguard investigations in respect of services and service suppliers of the other Party.

2. The Parties shall review the issue of safeguard measures in the context of developments in international fora of which both Parties are party.

ARTICLE 6.12: PAYMENTS AND TRANSFERS

1. Except under the circumstances envisaged in Article 6.13, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund*, including the use of exchange actions which are in conformity with them, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 6.13 or at the request of the Fund.

ARTICLE 6.13: RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or a threat thereof, a Party may, in accordance with Articles XI and XII of GATS adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions relating to such obligations. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

(a) be consistent with the *Articles of Agreement of the International Monetary Fund*;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and

(e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any country that is not a Party to this Agreement.

3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party.

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

ARTICLE 6.14: GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public morals or to maintain public order[9];

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

[9] The public order exception may be invoked by a Party only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety; or

(d) inconsistent with Article 6.5, provided that the difference in treatment is aimed at ensuring the equitable or effective[10] imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

2. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures under which it accords more favourable treatment to persons of a non-Party than that accorded to persons of the other Party to this Agreement as a result of a bilateral double taxation avoidance agreement between the Party and such non-Party.

ARTICLE 6.15: SECURITY EXCEPTIONS

1. Nothing in this Chapter 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 the supply of services as carried out directly or indirectly for the purposes of provisioning a military establishment;

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

(iii) taken in time of war or other emergency in international relations; or

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[10] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of nonresidents is determined with respect to taxable items sourced or located in the Party's territory; or
(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
(iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
(v) distinguish service suppliers subject to tax on world-wide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base. Tax terms or concepts in paragraph 1(d) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

(iv) relating to protection of critical public infrastructure for communications, power and water supply from deliberate attempts intended to disable or degrade such infrastructures[11]; 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. Each Party shall inform the other Party to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

3. Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to a service supplier of the other Party where a Party adopts or maintains measures in any laws and regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or a service supplier of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such a service supplier.

ARTICLE 6.16: SUBSIDIES

1. The Parties shall review the treatment of subsidies in the context of developments in multilateral fora of which both Parties are party.

2. In the event that either Party considers that its interests have been adversely affected by a subsidy or grant provided by the other Party, upon request, the other Party shall enter into consultations with a view to resolving the matter.

3. During the consultations referred to in paragraph 2, the subsidising Party may, as it deems fit, consider a request of the other Party for information relating to the subsidy scheme or programme such as:

(a) its laws and regulations under which the measure is introduced;

(b) form of the measure, including grant, loan or tax measure;

(c) policy objective and/or purpose of the measure;

(d) dates and duration of the programme or subsidy and any other time limits attached to it; and

(e) eligibility requirements of the measure, including criteria applied with respect to the potential population of beneficiaries.

4. Chapter Fourteen (Dispute Settlement) shall not apply to any requests made or consultations held under this Article or to any disputes that may arise between the Parties under this Article.

ARTICLE 6.17: SCHEDULE OF SPECIFIC COMMITMENTS

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Articles 6.4 through 6.6. With respect to sectors where such commitments are

[11] Paragraph 1(b)(iv) is subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services.

undertaken, each Schedule of specific commitments shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate the time frame for implementation of such commitments; and

(e) the date of entry into force of such commitments.

2. Measures inconsistent with Articles 6.4 and 6.5 shall be inscribed in the column relating to Article 6.4. In this case the inscription will be considered to provide a condition or qualification to Article 6.5 as well.

3. Schedules of specific commitments shall be annexed to this Chapter as Annexes 6-A and 6-B and shall form an integral part of this Agreement.

4. Regarding commitments on Articles 6.4 and 6.5 for trade in services, only the Schedule of specific commitments in Annex 6-A or 6-B applies.

ARTICLE 6.18: MODIFICATION OF SCHEDULES

1. A Party may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with this Article. The modifying Party shall notify the other Party of its intent to so modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal.

2. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Party shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in the Schedule of specific commitments prior to such negotiations. The Parties shall endeavour to conclude negotiations on such compensatory adjustment to mutual satisfaction within six months, failing which recourse may be had to Chapter Fourteen (Dispute Settlement).

ARTICLE 6.19: PROGRESSIVE LIBERALISATION

The Parties shall endeavour to review their Schedules of specific commitments at least once every three years, or earlier, at the request of either Party, with a view to facilitating the elimination of substantially all remaining discrimination between the Parties with regard to trade in services covered in this Chapter over a period of time. In this process, there shall be due respect for the national policy objectives and the level of development of the Parties, in both overall and individual sectors.

ARTICLE 6.20: TRANSPARENCY

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

ARTICLE 6.21: DISCLOSURE OF CONFIDENTIAL INFORMATION

Nothing in this Agreement shall require each Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 6.22: DENIAL OF BENEFITS

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a country that is not a Party to this Agreement;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied by

(i) a vessel registered under the laws of a non-Party, and

(ii) a person which operates or uses the vessel in whole or in part but which is of a non-Party;

(c) to a service provider of the other Party where the Party establishes that the service is being provided by a juridical person that is owned or controlled by persons of a non-Party or of the denying Party and that has no real and continuous business activities or no substantive business operations in the territory of the other Party; or

(d) to a service supplier of the other Party if the service supplier is a juridical person owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures which include notification or an order, with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

ARTICLE 6.23: SERVICES-INVESTMENT LINKAGE

1. For the avoidance of doubt, the Parties confirm, in respect of this Chapter, that:

(a) subject to paragraph 2, the following articles of Chapter Ten (Investment) apply, *mutatis mutandis*, to measures affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party, only to the extent that they relate to an investment, regardless of whether or not such a service sector is scheduled in a Party's Schedule of specific commitments in Annex 6-A or 6-B:

(i) Article 10.4 (Minimum Standard of Treatment);

(ii) Article 10.10 (Transfers);

(iii) Article 10.12 (Expropriation and Compensation);

(iv) Article 10.13 (Losses and Compensation);

(v) Article 10.14 (Subrogation);

(vi) Article 10.15 (Special Formalities and Information Requirements);

(vii) Article 10.19 (Access to the Judicial and Administrative Procedures); and

(viii) Article 10.21 (Settlement of Disputes between a Party and an Investor of the other Party); and

(b) Article 10.22 (Entry into Force, Duration and Termination) shall be applicable to paragraph (a).

2. Notwithstanding Article 10.2 (Scope and Coverage), the following articles of Chapter Ten (Investment) apply, *mutatis mutandis*, to measures affecting the supply of financial services by a service supplier of a Party through commercial presence in the territory of the other Party, only to the extent that they relate to an investment, regardless of whether or not such a service sector is scheduled in a Party's Schedule of specific commitments in Annex 6-A or 6-B:

(a) Article 10.12 (Expropriation and Compensation); and

(b) Article 10.21 (Settlement of Disputes between a Party and an Investor of the other Party) solely for claims that a Party has breached Article 10.12 (Expropriation and Compensation).

CHAPTER SEVEN
TELECOMMUNICATIONS

ARTICLE 7.1: DEFINITIONS

For the purposes of this Chapter:

cost-oriented rates means rates based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

end-user means a final consumer of, or subscriber to, a public telecommunications transport service, including a service supplier but excluding a supplier of public telecommunications transport services;

essential facilities means facilities of a public telecommunications transport 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 transport networks or 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 which are set aside for the dedicated use of, or availability to, a particular customer or other users;

major supplier means a supplier of public telecommunications transport networks or services which has the ability to materially affect the terms of participation having regard to price and supply in the relevant market for public telecommunications transport networks or services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market;

non-discriminatory means treatment no less favourable than that accorded to any other users of like public telecommunications transport networks or services in like circumstances;

public telecommunications transport network means telecommunications infrastructure which permits telecommunications between and among defined network termination points;

public telecommunications transport service[1] means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or

[1] With respect to Korea, telecommunications services as defined in Article 4.4 of *Telecommunication Business Act* are not considered public telecommunications transport services for the purposes of this Agreement.

more points without any end-to-end change in the form or content of the customer's information;

supplier of public telecommunications transport services of the other Party means any supplier of public telecommunications transport services owned or controlled by persons of the other Party with commercial presence in the territory of a Party, including those who provide such services to other suppliers of public telecommunications transport services;

telecommunications means the transmission and reception of signals by any electromagnetic means;

telecommunications regulatory body means a central level body responsible for the regulation of telecommunications; and

users means a service consumer or a service supplier.

ARTICLE 7.2: SCOPE AND COVERAGE

1. This Chapter applies to measures affecting trade in telecommunications services.

2. This Chapter shall apply, subject to rules, regulations and licence conditions as applicable within the territory of each Party, under the framework of Chapter Six (Trade in Services).

3. This Chapter does not apply to measures adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

4. Nothing in this Chapter shall be construed to:

   (a) require a Party to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services; or

   (b) require a Party (or to require a Party to oblige service suppliers in its territory) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

Section A: Access to and Use of Public Telecommunications Transport Networks and Services

ARTICLE 7.3: ACCESS AND USE

1. Each Party shall ensure that service suppliers of the other Party is accorded access to and use of public telecommunications transport networks and services, on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, under paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications transport networks and services offered in its territory, through its licenced suppliers of public telecommunications transport networks or services, within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such service suppliers are permitted to:

   (a) purchase or lease and attach terminal or other equipment which interfaces

with the public telecommunications transport networks and which is necessary to supply a service supplier's services;

(b) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier[2];

(c) perform switching, signalling and processing functions;

(d) use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally; and

(e) provide services to individual or multiple end-users over any leased or owned circuit(s) to the extent that the scope and type of such services are consistent with its laws and regulations.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within its territory or across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of the Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, or to protect the privacy of personal data of end-users subject to the requirement that such measures are not applied in a manner which 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 transport networks and services other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally;

(b) protect the technical integrity of public telecommunications transport networks or services;

(c) ensure that service suppliers of the other Party do not supply services unless permitted pursuant to commitments in its Schedule; or

(d) ensure that such access to and use of telecommunications transport networks and services should not become a security or safety hazard and is not in contravention of any statute, rule or regulation and public policy of the Party which are publicly available and applied without discrimination on the suppliers and users of services of similar categories.

6. Provided that the Parties satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

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[2] In India, interconnection of private networks to public telecommunications transport networks is not permitted under its current laws and regulations. However, India will permit interconnection as and when it changes its relevant laws and regulations.

(a) restrictions on resale or shared use of such services;

(b) a requirement to use specified technical interfaces, including interface protocols, for the interconnection with such networks and services;

(c) requirements, where necessary, for the inter-operability of such services;

(d) 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;

(e) restrictions on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

(f) notification, registration and licencing.

7. Notwithstanding the preceding paragraphs, each Party may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in each Party's Schedule.

Section B: Conduct of Major Suppliers[3]

ARTICLE 7.4: TREATMENT BY MAJOR SUPPLIERS

1. Each Party shall ensure that any major supplier in its territory accords suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable than such major supplier accords to its subsidiaries, its affiliates, or any non-affiliated service supplier regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications transport networks or services; and

(b) the availability of technical interfaces necessary for interconnection.

2. A Party shall assess such treatment on the basis of whether such suppliers of public telecommunications transport networks or services, subsidiaries, affiliate, and non-affiliated service suppliers are in like circumstances.

3. Nothing in this Article shall prevent either Party to take such measures as are necessary to protect the security of their networks subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

ARTICLE 7.5: ACCESS TO MAJOR SUPPLIERS' INFRASTRUCTURE

1. Each Party shall endeavour to require the major suppliers in its territory to provide suppliers of public telecommunications transport networks or services of the other Party:

[3] For greater clarity, the obligations imposed under this Section only apply with respect to those public telecommunications transport networks or services that result in a supplier of public telecommunications transport networks or services being a major supplier, in accordance with laws and regulations of the Parties.

(a) access to the major suppliers' unbundled network elements for interconnection or for the provision of public telecommunications transport networks or services;

(b) physical co-location of equipment necessary for interconnection or access to unbundled network elements, at premises owned or controlled by the major suppliers; and

(c) access to poles, ducts, conduits or any other structures deemed necessary by the Party, which are owned or controlled by such major suppliers;

on terms, conditions, and at rates that are reasonable, transparent and non-discriminatory, subject to mutually agreed terms and conditions within the overall policy framework of that Party.

2. Implementation of paragraph 1 shall be determined by each Party in accordance with its laws and regulations.

3. Nothing in this Article shall prevent either Party to take such measures as are necessary to protect the security of their networks subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

ARTICLE 7.6: COMPETITIVE SAFEGUARDS

Prevention of anti-competitive practice in telecommunications

1. Each Party shall, through the relevant authority, maintain appropriate measures for the purpose of preventing suppliers of public telecommunications transport networks or services who, alone or together, are a major supplier in its territory, from engaging in or continuing anti-competitive practices.

Safeguards

2. For the purposes of paragraph 1, anti-competitive practices shall include:

(a) using information obtained from competitors for anti-competitive results; and

(b) not making available, on a timely basis, to suppliers of public telecommunications transport networks or services, technical information about essential facilities and commercially relevant information which are necessary for them to provide public telecommunications transport networks or services.

ARTICLE 7.7: INTERCONNECTION

Interconnection with Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection at any specified technically feasible point in the network as per mutual agreement subject to regulations by regulatory body. Such interconnection is provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates[4] and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for like services of its subsidiaries or other affiliates;

(b) in a timely manner[5], on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent and reasonable, having regard to economic feasibility, so that the supplier need not pay for network components or facilities that it does not require for the services to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications transport networks or services, subject to charges that reflect the cost of construction of necessary additional facilities, technical feasibility and mutually agreed terms and conditions.

Public Availability of Interconnection Offers

2. Each Party shall ensure that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

Public Availability of the Procedures for Interconnection Negotiations

3. Each Party shall make publicly available the applicable procedures for interconnection negotiations with major suppliers in its territory.

Public Availability of Interconnection Agreements Concluded with Major Suppliers

4. (a) Each Party shall require major suppliers in its territory to file all their interconnection agreements to which they are a party with its telecommunications regulatory body.

(b) Each Party shall ensure to make available to suppliers of public telecommunications transport networks or services which are seeking interconnection, interconnection agreements in force between a major supplier and any other supplier of public telecommunications transport networks or services in its territory, subject to any requirements which the telecommunications regulatory body may impose to protect the commercial confidentiality information contained in these interconnection agreements.

Resolution of interconnection disputes

5. Each Party shall ensure that a service supplier of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier will have recourse, either:

(a) at any time; or

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[4] The Parties understand that interconnection rates are commercially negotiated between suppliers of public telecommunications transport networks or services.

[5] The Parties understand that timeliness may vary from case to case, depending upon the complexity of each interconnection negotiation, which may be affected by a range of factors. However, interconnection may not be delayed without justifiable reason.

(b) after a reasonable period of time which has been made publicly known;

to an independent domestic body to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

Section C: Other Measures

ARTICLE 7.8: INDEPENDENT REGULATORY BODIES

1. Each Party shall ensure that its telecommunications regulatory body or dispute resolution body is separate from, and not accountable to, any supplier of public telecommunications transport networks or services.

2. Each Party shall ensure that the decisions of, and the procedures used by its telecommunications regulatory body or dispute resolution body, are impartial with respect to all market participants.

ARTICLE 7.9: 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 7.10: LICENCING CONDITIONS

1. Where a licence is required, the Party shall make publicly available:

   (a) all the licencing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

   (b) the terms and conditions of individual licences.

2. In case of denial of licence, the reasons for denial, on applicants' request, shall normally be given by each Party within a reasonable period of time.

ARTICLE 7.11: ALLOCATION AND USE OF SCARCE TELECOMMUNICATIONS RESOURCES[6]

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 assigned or allocated by each government for specific government uses.

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[6] The Parties understand that decisions on allocating and assigning spectrum, and frequency management are not measures that are per se inconsistent with Article 6.4 (Market Access). Accordingly, each Party retains the right to exercise its spectrum and frequency management policies, which may affect the number of suppliers of public telecommunications services, provided that this is done in a manner that is consistent with the provisions of this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

Recourse

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of the other Party have timely recourse to a telecommunications regulatory body or other relevant body to resolve disputes arising under domestic measures.

Reconsideration[7]

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by the determination or decision of the telecommunications regulatory body may petition that body for reconsideration of that determination or decision. Neither Party may permit such a petition to constitute grounds for non-compliance with such determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision.

Appeal

3. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of the telecommunications regulatory body has the opportunity to appeal such determination or decision to an independent judicial or administrative authority.

ARTICLE 7.13: TRANSPARENCY

Each Party shall ensure that:

(a) decisions of its telecommunications regulatory body are published or otherwise made available to all interested persons within a reasonable period of time;

(b) interested persons are provided with adequate advance public notice of and the opportunity to comment on any rulemaking proposed by the telecommunications regulatory body[8]; and

(c) its measures relating to public telecommunications transport networks or services are made publicly available, including:

(i) tariffs and other terms and conditions of service;

(ii) specifications of technical interfaces;

(iii) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network or services;

(iv) notification, permit, registration or licencing requirements, if any; and

[7] The Parties understand that reconsideration shall not apply to the determination or decision of a regulatory body with respect to disputes between service suppliers or between service suppliers and users.

[8] The obligations will be applied in accordance with each Party's laws and regulations.

(v) information on bodies responsible for preparing, amending, and adopting standards-related measures.

ARTICLE 7.14: RELATIONSHIP TO OTHER CHAPTERS

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

CHAPTER EIGHT
MOVEMENT OF NATURAL PERSONS

ARTICLE 8.1: GENERAL PRINCIPLES

1. This Chapter reflects the preferential trading relationship between the Parties and their mutual desire to facilitate temporary entry of natural persons on a comparable basis and to establish transparent criteria and streamlined procedures for temporary entry, while recognising the need to ensure border security. This Chapter provides for rights and obligations additional to those set out in Chapter Two (Trade in Goods), Chapter Six (Trade in Services) and Chapter Ten (Investment) in relation to the movement of natural persons between the Parties.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. Nothing contained in this Chapter shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in a manner so as to unduly impair the benefits accruing to the other Party or delay trade in goods or services or conduct of investment activities under this Agreement.

ARTICLE 8.2: SCOPE AND DEFINITIONS

1. This Chapter applies to measures affecting the movement of natural persons of a Party who enter into the territory of the other Party, where such persons are:

(a) service sellers of the former Party;

(b) service suppliers of the former Party;

(c) sellers of goods of the former Party;

(d) investors of the former Party in respect of their investments in the territory of the latter Party; or

(e) employed by an investor of the former Party in respect of an investment of that investor in the territory of the latter Party.

2. For the purposes of this Chapter, the following definitions shall apply:

(a) **natural person of a Party** is as defined in Chapter Six (Trade in Services) and specifically covers only a national of a Party as described in paragraph 1;

(b) **immigration visa** means an employment visa or business visa granting a natural person of the other Party the right to reside or work or remain in the territory of host country, without the intent to reside permanently;

(c) **temporary entry** means entry by a business visitor, an intra-corporate transferee, or a professional as the case may be without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes;

(d) **service seller** means a natural person of a Party who is a representative of a service supplier of that Party and is seeking temporary entry into the other Party for the purpose of negotiating the sale of services for that service supplier, where such a representative will not be engaged in making direct sales to the general public or in supplying services directly;

(e) **seller of goods** means any natural person of a Party engaged in the manufacture, production, supply or distribution of industrial or agricultural goods seeking temporary entry into the other Party in order to sell goods to, or to enter into a distribution or retailing arrangement with a natural person or an enterprise of the other Party engaged in an industrial or commercial activities, provided, however, that such person shall not sell goods directly to the general public of the other Party;

(f) **professional** means a natural person of a Party who is employed in a specialised occupation that requires theoretical and practical application of specialised knowledge and;

(i) attainment of a post secondary degree in the specialty requiring three or more years of study (or the equivalent of such a degree) as a minimum of entry into the occupation. Such degrees include Bachelors' degree, Masters' degree and Doctoral degree conferred by institutions in Korea or India; and

(ii) in the case of regulated professions, registration, licence or credentials, as specified by the relevant authorities of a Party, if applicable, to engage in a business activity;

(g) **business visitor** means a natural person of either Party who is:

(i) a service seller who enters the territory of the other Party for the sale of services or entering into agreements for such sale for that services supplier;

(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 of a Party or an employee of an investor, who is a manager, executive or specialist as defined under subparagraph (h), seeking temporary entry to establish an investment;

(h) **intra-corporate transferee** means an employee of a service supplier, juridical person, as defined in Chapter Six (Trade in Services), an investor or enterprise of a Party established in the territory of the other Party referred to below as an organisation, through a branch, subsidiary or affiliate, who has been so employed for a period of not less than one year immediately preceding the date of the application for temporary entry, and who is a manager, executive or specialist as defined below:

(i) **manager** means a natural person within an organisation who primarily directs the organisation or a department or sub-division of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions such as promotion or leave authorisation, 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 provision of the service or operation of an investment. However, this does not prevent the manager, in the course of executing his or her duties as described above, from secondarily performing tasks necessary for the provision of the service or operation of an investment;

(ii) **executive** means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. An executive would not primarily perform tasks related to the actual provision of the service or the operation of an investment. However, this does not prevent the executive, in the course of executing his duties as described above, from secondarily performing tasks necessary for the provision of the service or operation of an investment; or

(iii) **specialist** means a natural person within an organisation who possesses knowledge at an advanced level of expertise and who possesses relevant knowledge of the organisation's service, research, equipment, techniques or management. A specialist may include, but is not limited to, members of a licenced profession;

(i) **contractual service supplier** means a person possessing appropriate educational and other qualifications relevant to the service to be provided who is engaged in the supply of a contracted service as an employee of a juridical person that has no commercial presence in the other Party, where the juridical person obtains a service contract from a juridical person of the other Party. The contractual service supplier should have been an employee of the juridical person for a period of not less than one year immediately preceding the date of application for admission; and

(j) **independent professional** means a self-employed person possessing appropriate educational and other qualifications relevant to the service to be provided who is engaged in the supply of a contracted service, where the professional has a service contract from a person of the other Party.[1]

ARTICLE 8.3: GRANT OF TEMPORARY ENTRY

1. Each Party shall grant temporary entry to natural persons of the other Party, who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter.

2. Each Party shall process expeditiously applications for temporary entry from natural persons of the other Party, including requests for further extensions, particularly applications from members of professions for which mutual recognition arrangements have been concluded pursuant to Article 6.8 (Recognition). Each Party shall notify the applicant for temporary entry, either directly or through his or her prospective employers,

[1] Each Party reserves the right to confine the party to the service contract to a juridical person, if illegal immigration relating to a service contract between natural persons of the Parties takes place within two years from the date of entry into force of this Agreement. In case of illegal immigration, the Parties shall share the information.

of the outcome of final determination, including the period of stay and other conditions.

3. Natural persons of either Party who are granted temporary entry into the territory of the other Party shall not be required to make contributions to social security funds in the host country. In such cases, they will not be eligible for social security benefits in the other Party for the duration of the stay.

4. A Party may refuse to issue an immigration visa authorising employment to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

5. *Business visitors*

(a) Korea shall grant temporary entry to a business visitor for a period of not more than 90 days; and

(b) India shall grant temporary entry to a business visitor for a period of not more than 180 days or for longer duration for a maximum period up to five years with 180 days stay stipulation on a single visit; and

Such a business visitors' visa under subparagraphs (a) and (b) shall be granted, provided that the business visitor:

(i) complies with immigration measures applicable to temporary entry;

(ii) presents proof of nationality of the other Party;

(iii) is an employee of a juridical person not already having commercial presence in the host country; and

(iv) does not receive any remuneration from a source located within the visiting Party;

Neither Party may require labour market test as a condition for temporary entry or impose numerical restriction relating to temporary entry for business visitors.

6. *Intra-Corporate Transferees*

Each Party shall grant temporary entry to an intra-corporate transferee of the other Party, who otherwise complies with applicable immigration measures, for an initial period of up to two years for Korea and up to one year for India, or the period of the contract, whichever is less.

The period of stay may be extended:

(a) for Korea, provided the conditions on which it is based remain in effect; and

(b) for India, on year to year basis for a total term not exceeding five years if the above conditions are still met by the applicants;

Neither Party may require labour market test as a condition for temporary entry or impose numerical restriction relating to temporary entry for intra-corporate transferees.

7. *Professionals*

Each Party shall grant temporary entry to a professional of the other Party who is seeking to provide services as a contractual service supplier or an independent professional in a profession as set out in Annex 8-A, if that natural person otherwise complies with immigration measures applicable to temporary entry, for an initial period of up to one year or the period of the contract, whichever is less, on the presentation of:

(a) proof of nationality of the other Party;

(b) documentation demonstrating that he or she will be so engaged and describing the purpose of entry, including the letter of contract from the entity engaging the services of the natural person in the host Party; and

(c) documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.

ARTICLE 8.4: EMPLOYMENT OF SPOUSES AND DEPENDANTS

Each Party shall grant temporary entry and provide a work permit or authorisation to a spouse and a dependant of a intra-corporate transferee, contractual service supplier or independent professional qualifying for temporary entry, if the spouse or the dependant otherwise complies with immigration measures applicable to temporary entry and meets the relevant employment qualifications.

ARTICLE 8.5: REGULATORY TRANSPARENCY

1. Each Party shall maintain or establish contact points or other mechanisms to respond to inquiries from interested persons regarding regulations affecting the temporary entry of natural persons. These contact points shall also be the authorised points allowing business persons to report and seek clarifications, if any, on instances where they have encountered special difficulties in the process of seeking temporary entry in the other Party.

2. To the extent possible, each Party shall allow reasonable time between publication of final regulations affecting the temporary entry of natural persons and their effective date, and such notification to the other Party can be made electronically available.

3. Prior to the date of entry into force of this Agreement, the Parties shall exchange information on current procedures relating to the processing of applications for temporary entry.

ARTICLE 8.6: RESOLUTION OF PROBLEMS

The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems, (within the framework of their laws, regulations and other similar measures governing the temporary entry of natural persons) which may arise from the implementation and administration of this Chapter.

ARTICLE 8.7: DISPUTE SETTLEMENT

1. A Party may not initiate proceedings under Chapter Fourteen (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless,

(a) the matter involves a breach of any of the provisions relating to the right of entry accruing under this Chapter;

(b) the matter involves a pattern of practice; and

(c) its natural persons affected by the pattern of practice have exhausted the available domestic administrative remedies of the other Party.

2. The remedies referred to in paragraph 1(c) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of proceedings for domestic administrative remedies including proceedings by way of review, and the failure to issue a determination is not attributable to the delay caused by the natural person.

ARTICLE 8.8: RESERVATIONS

The commitments made by each Party under this Chapter shall be subject to any terms, conditions, reservations or limitations it has scheduled in respect of each service sector under Chapter Six (Trade in Services).

CHAPTER NINE
AUDIO-VISUAL CO-PRODUCTION

ARTICLE 9.1: GENERAL PRINCIPLE

1. Recognising that audio visual, including film, animation, broadcasting programme, game[1] and visual effects, co-productions can significantly contribute to the development of the audio visual industry and to an intensification of cultural and economic exchange between them, the Parties agree to consider and negotiate co-production agreements in the audio visual sector.

2. The co-production agreement in accordance with paragraph 1 is an integral part of this Agreement. The detailed co-production agreement would be negotiated between the competent authorities of the Parties, which are the Ministry of Information and Broadcasting for India and the Ministry of Culture, Sports and Tourism and the Korea Communications Commission for Korea.

ARTICLE 9.2: SCOPE

The scope of the co-production agreement under Article 9.1.2 includes film, broadcasting programme, game, visual effects and animation for exploitation in theatres and on television, videocassettes, videodisc, digital device (CD-ROM, DVD, VOD, mobile phone, etc.) or by any other form of distribution. New forms of audio visual production will be included in the co-production agreement through the exchange of notes between the Parties.

ARTICLE 9.3: BENEFITS

Co-produced projects in compliance with the co-production agreement shall be deemed to be national productions in the territory of each Party and shall thus be fully entitled to all the benefits including government support which are accorded under the applicable laws and regulations of each Party.

ARTICLE 9.4: AMENDMENT

The amendment of the co-production agreement can be done by the mutual consent of the Parties.

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[1] Under this Chapter, "game" does not include gambling, which means risking something of value in the expectation of receiving prizes upon the outcome of a game of chance.

CHAPTER TEN
INVESTMENT

Section A: Definitions

ARTICLE 10.1: DEFINITIONS

For the purposes of this Chapter:

disputing investor means an investor that makes a claim under Section C;

disputing Party means a Party against which a claim is made under Section C;

enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association and a branch of an enterprise;

freely usable currency means any currency designated as such by the International Monetary Fund and any amendments thereto;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States,* done at Washington, 18 March 1965, as may be amended;

investment means every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits or the assumption of risk;

(a) Forms that an investment may take include, but are not limited to:

(i) an enterprise[1];

(ii) shares, stocks and other forms of equity participation of an enterprise;

(iii) bonds, debentures, loans, and other debt instruments of an enterprise;

(iv) rights under contracts, including turnkey, construction, management, production, concession or revenue-sharing contracts;

(v) claims to money established and maintained in connection with the conduct of commercial activities;

(vi) intellectual property rights;

(vii) rights conferred pursuant to domestic law or contract, such as licences, authorisations and permits, except for those that do not create any rights protected by domestic law; and

[1] The Parties understand that in order for an enterprise in the territory of a host Party to qualify as an "investment" under this Chapter, it must have a place of business and assets used to carry out business activities in the territory of that Party.

(viii) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges;

For subparagraph (a), returns that are invested in accordance with prevailing law shall be treated as investments and any alteration in the form in which assets are invested or reinvested shall not affect their character as investments.

(b) Investment does not mean:

(i) claims to money that arise solely from:

(A) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party; or

(B) the extension of credit in connection with a commercial transaction, such as trade financing; or

(ii) any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a)(i) through (viii);

returns means monetary returns yielded by or derived from an investment including, but not limited to, any profits, interests, capital gains, dividends, royalties, fees, or payments in connection with intellectual property rights;

investment of an investor of a Party means an investment owned or controlled, directly or indirectly, by an investor of such Party;

investor of a Party means a Party or a national or an enterprise of a Party that is seeking to make, is making, or has made, investments in the territory of the other Party;

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

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations Commission on International Trade Law, 1976.

Section B: Investment

ARTICLE 10.2: SCOPE AND COVERAGE

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

(a) investors of the other Party;

(b) investments of investors of the other Party in the territory of the former Party; and

(c) with respect to Article 10.16, all investments in the territory of the former Party.

2. This Chapter applies to the existing investments on the date of entry into force of this Agreement, as well as to the investments made or acquired after this date.

3. The provisions of this Chapter do not bind a 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 for that Party.

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

5. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of the cross-border supply of services does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

6. This Chapter shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants except for Articles 10.5 and 10.21, whether or not such subsidies or grants are offered exclusively to domestic investors and investments.

7. This Chapter shall not apply to measures adopted or maintained by a Party with respect to financial services.

8. This Chapter shall not apply to any taxation measures.

ARTICLE 10.3: 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 investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments of its own investors in its territory 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 or local government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional or local government to investors, and to investments of investors, of the Party of which it forms a part.

ARTICLE 10.4: MINIMUM STANDARD OF TREATMENT

1. Each Party shall accord to an investment of an investor of the other Party in its territory "fair and equitable treatment" and "full protection and security." The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

2. The obligation in paragraph 1 includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process.

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

ARTICLE 10.5: PERFORMANCE REQUIREMENTS

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct, operation or sale or other disposition of an investment of an investor of the other Party in its territory:

(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 or services provided in its territory, or to purchase goods or services from natural or legal persons or any other entity in its territory;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;

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

(f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its territory, except when the requirement

(i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws, or

(ii) concerns the transfer of intellectual property and is undertaken in a manner not inconsistent with the TRIPS Agreement; 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. Paragraph 1 does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment and business activities in its territory of an investor of the other Party, on compliance with any of the requirements set forth in paragraphs 1 (f) and (g).

3. Nothing in this Article shall be construed so as to derogate from the rights and obligations of the Parties under the *Agreement on Trade-Related Investment Measures*, contained in Annex 1A of the Marrakech Agreement Establishing the World Trade Organization.

ARTICLE 10.6: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party may require that an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of the Party that is an investment of an investor of the other Party, 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 10.7: TRANSPARENCY

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect any matter covered by this Chapter.

2. Each Party shall, upon request by the other Party, promptly respond to specific questions and provide that other Party with information on matters set out in paragraph 1.

3. Paragraphs 1 and 2 shall not be construed so as to oblige either Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

ARTICLE 10.8: NON-CONFORMING MEASURES

1. Articles 10.3, 10.5 and 10.6 shall not apply to:

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

      (i) the central or a regional level of government, set out in its Schedule to Annex I; or

      (ii) a local government[2];

   (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 10.3, 10.5 and 10.6.

2. Articles 10.3, 10.5 and 10.6 shall not apply to any reservation for measures 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 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 10.3 and 10.6 shall not apply to government procurement by a Party.

5. Nothing in this Chapter shall be construed so as to derogate from rights and obligations under international agreements in respect of protection of intellectual property rights to which both Parties are party, including the TRIPS Agreement and other treaties concluded under the auspices of the World Intellectual Property Organization.

6. For the avoidance of doubt, in relation to supply of services through commercial presence, the parties agree that the Schedule of Specific Commitments in Annex 6-A and 6-B of Chapter Six (Trade in Services) shall solely apply to the commitments with regard to the trade in services.

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[2] For Korea, **local government** means a local government as defined in the *Local Autonomy Act.*

ARTICLE 10.9: REVIEW OF RESERVATIONS

1. If, after the date of entry into force of this Agreement, a Party enters into any agreement on investment with a non-Party, it shall give consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement.

2. As part of review of this Agreement pursuant to Article 15.2 (Joint Committee and Review), the Parties undertake to review their respective Schedule of Reservations with a view to decreasing its reservations and reducing the terms, limitations, conditions and qualifications on national treatment, performance requirements, and senior management and boards of directors.

3. In any other case, a Party may, upon reasonable notice, request the other Party for a review of its reservations.

4. Any incorporation or review under this Article should maintain the overall balance of commitments undertaken by each Party under this Agreement.

ARTICLE 10.10: TRANSFERS

1. Each Party shall allow all transfers relating to an investment in its territory of an investor of the other Party to be made freely and without delay. Such transfers include:

(a) the initial capital and additional amounts to maintain or increase the investment;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees, returns in kind and other amounts derived from the investment;

(c) proceeds from the sale or liquidation of all or any part of the investment;

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

(e) payments made in accordance with Articles 10.12 and 10.13;

(f) payments arising out of the settlement of a dispute under Section C; and

(g) earnings of nationals of the other Party who work in connection with an investment in the territory of that Party.

2. Each Party shall allow transfers to be made without delay in a freely usable currency at the market rate of exchange prevailing on the date of the transfer with respect to spot transactions in the currency to be transferred.

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

4. Notwithstanding paragraphs 1 through 3, a Party may delay or prevent a transfer

[3] Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under Article XI of GATT 1994.

through the equitable, non-discriminatory and good faith application of its laws relating to:

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

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses;

(d) reports of transfers of currency or other monetary instruments;

(e) ensuring compliance with orders or judgments in adjudicatory proceedings; or

(f) social security, public retirement or statutory savings schemes, including provident funds, retirement gratuity programmes and employees insurance programmes[4].

ARTICLE 10.11: TEMPORARY SAFEGUARD MEASURES

1. A Party may, subject to paragraph 2, adopt or maintain measures relating to cross-border capital transactions or Article 10.10:

(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 either Party.

2. The measures referred to in paragraph 1:

(a) shall be consistent with *the Articles of Agreement of the International Monetary Fund*;

(b) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(c) shall be temporary and phased out progressively as the situation improves;

(d) shall promptly be notified to the other Party;

(e) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(f) shall be applied on a national treatment basis; and

(g) shall ensure that the other Party is treated as favourably as any non-Party.

3. Measures adopted or maintained pursuant to paragraph 1(b) shall not exceed a minimum period required. In addition, a Party adopting such measures or any changes

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[4] With regard to paragraph 4(f), it is understood that the Party concerned shall not prevent or delay the transfer of funds by the investors, except to the extent of funds required to satisfy or settle the unpaid social security, public retirement or statutory savings schemes, including provident funds, retirement gratuity and employees insurance.

thereof shall commence consultations with the other Party in order to review the restrictions adopted by it.

4. Nothing in this Chapter shall be regarded as affecting the rights and obligations of the Parties under *the Articles of Agreement of the International Monetary Fund*.

ARTICLE 10.12: EXPROPRIATION AND COMPENSATION

1. Neither Party may, directly or indirectly, nationalise or expropriate an investment of an investor of the other Party in its territory, except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 10.4; and

(d) on payment of compensation in accordance with paragraphs 2 through 4.

2. Compensation shall:

(a) be paid without delay and be fully realisable;

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

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

3. If the fair market value is denominated in a freely usable currency, the compensation paid 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 paid – 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. The investor whose investment is expropriated shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek review of the expropriation measure or valuation of the compensation that has been assessed in accordance with the principles and provisions set out in this Article.

6. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

7. This Article is to be interpreted in accordance with the understanding of the Parties on expropriation as set out in Annex 10-A, which shall form an integral part of this Agreement.

ARTICLE 10.13: LOSSES AND COMPENSATION

1. An investor of a Party which has suffered losses relating to its investment in the territory of the other Party due to war or to other armed conflict, state of emergency, revolution, insurrection, civil disturbance, or any other similar event in the territory of the other Party, as regards restitution, indemnification, compensation or any other settlement, shall be accorded by that other Party treatment no less favourable than that which it accords to its own investors or to investors of any non-Party, whichever is more favourable to the investor.

2. Notwithstanding paragraph 1, an investor of a Party which, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Party resulting from

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

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

shall be accorded by the other Party restitution or compensation which in either case shall be prompt, adequate and effective and with respect to compensation, shall be in accordance with Article 10.12.

ARTICLE 10.14: SUBROGATION

1. Where a Party or an agency authorised by that Party has granted indemnity, 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 a 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 Party by virtue of the principle of subrogation to the rights of the investor.

2. Where a Party or the agency authorised by the 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 the agency authorised by the Party, making the payment, pursue those rights and claims against the other Party.

3. Articles 10.10, 10.12 and 10.13 shall apply *mutatis mutandis* as regards payment to be made to the Party or the agency prescribed in paragraphs 1 and 2 by virtue of such recognition of rights and claims, and the transfer of such payment.

ARTICLE 10.15: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as the requirement that investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protection afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Article 10.3, a Party may require an investor of the other Party, or

its investment in its territory, to provide routine information concerning that investment solely for information or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the 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 10.16: HEALTH, SAFETY AND ENVIRONMENTAL MEASURES

1. Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Agreement that is in the public interest, such as measures to meet health, safety or environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.

ARTICLE 10.17: DENIAL OF BENEFITS

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, subject to prior notification and consultation with the other Party, and where the denying Party establishes that:

(a) the enterprise has no substantial business activities in the territory of the other Party; and

(b) the enterprise is owned or controlled by an investor of a non-Party or of the denying Party.

ARTICLE 10.18: EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between States where like conditions prevail, or a disguised restriction on investors and investments, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order;

(b) necessary to protect human, animal or plant life or health, or the environment;

(c) necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Chapter;

(d) necessary to protect national treasures of artistic, historic or archaeological value; or

(e) necessary to conserve exhaustible, natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. Nothing in this Chapter 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 actions which it considers necessary for the protection of its essential security interests;

(i) 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;

(ii) taken in time of war or other emergency in international relations;

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

(iv) to protect critical public infrastructures for communications, power and water supply from deliberate attempts intended to disable or degrade such infrastructures[5];

(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; or

(d) to require a Party to accord the benefits of this Chapter to an investor that is an enterprise of the other Party where a Party adopts or maintains measures in any of its laws or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or an investor of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such an enterprise or to its investments.

3. Paragraph 2 shall be interpreted in accordance with the understanding of the Parties regarding Security Exceptions for Investment and Non-justiciability of Security Exceptions set out in Annexes 10-B and 10-C respectively, which shall form an integral part of this Agreement.

4. A Party shall immediately inform the other Party to the fullest extent possible, of measures taken under paragraphs 1, 2(b) and (c) and of their termination, if such measures were taken.

ARTICLE 10.19: ACCESS TO JUDICIAL AND ADMINISTRATIVE PROCEDURES

Each Party shall within its territory accord to investors of the other Party treatment no less favourable than the treatment, which it accords in like circumstances to its own investors, with respect to access to its courts of justice and administrative tribunals and agencies in all levels of jurisdiction both in pursuit and in defence of such investors' rights.

ARTICLE 10.20: OTHER OBLIGATIONS

[5] Paragraph 2(b)(iv) is subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investment.

If the laws or regulations of either Party or international obligations existing at present or established hereafter between the Parties in addition to this Chapter, result in a position entitling investors of the other Party and investments by investors of the other Party to treatment more favourable than is provided for by this Chapter, such position shall not be affected by this Chapter.

Section C: Settlement of Disputes

ARTICLE 10.21: SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

1. This Article establishes a mechanism for settlement of investment disputes under this Chapter and assures equal treatment among the investors or investments of both the Parties in accordance with principles of international reciprocity and due process before an arbitral tribunal. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former Party under this Chapter, which causes loss or damage to the investor or its investments.

2. The parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations, which may include the use of non-binding third-party procedures.

3. Any such dispute which has not been settled within a period of six months from the date of request for consultations and negotiations may be submitted to the courts or administrative tribunals of the Party concerned or to arbitration. In the latter event, the investor has the choice among any of the following:

(a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other arbitral institution or in accordance with any other arbitral rules, if the parties to the dispute so agree.

4. Once the investor has submitted the dispute to either the courts or administrative tribunals of the disputing Party or any of the arbitration mechanisms provided for in paragraph 3, the choice of the procedure shall be final.

5. Each Party hereby consents to the submission of a dispute to arbitration under paragraphs 3(a), (b) and (c) in accordance with the provisions of this Article, conditional upon:

(a) the submission of the dispute to such arbitration takes place within three years from the date on which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter and of the loss or damage incurred by the disputing investor or its investment; and

(b) the disputing investor gives written notice which shall be delivered at least 90 days before the claim to arbitration is submitted, to the disputing Party of its intention to submit the dispute to such arbitration and which

(i) selects one of the fora in paragraph 3(a), (b) or (c) as the forum for dispute settlement, and

(ii) briefly summarises the alleged breaches of the disputing Party under this Chapter (including the articles alleged to have been breached) and the loss or damage allegedly caused to the investor or its investment.

6. Notwithstanding paragraph 4, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of monetary damages or the resolution of the substance of the matter in dispute before a court or administrative tribunal of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's rights and interests during the pendency of the arbitration.

7. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

Section D: Final Provisions

ARTICLE 10.22: ENTRY INTO FORCE, DURATION AND TERMINATION

In the event that this Agreement is terminated, the provisions of this Chapter, the provisions in Chapter Fourteen (Dispute Settlement), and other provisions in this Agreement necessary for or consequential to the application of this Chapter, except pre-establishment national treatment under Articles 10.3 and 10.8, shall continue to be in effect with respect to investments made or acquired before the date of termination of this Agreement for a further period of 15 years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

ANNEX 10-A
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 made in the territory of that Party.

2. Article 10.12.1 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 10.12.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure:

(a) The determination of whether an action or 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:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;[6] and

(iii) the character of the government action, including its objectives and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest.

(b) Except in rare circumstances, such as, for example, when a measure or series of measures is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilisation (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations.

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[6] For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

ANNEX 10-B
SECURITY EXCEPTIONS FOR INVESTMENT

The Parties confirm the following understanding with respect to interpretation and/or implementation of this Chapter:

(a) the measures referred to in Article 10.18.2(d) are measures where the intention and objective of the Party imposing the measures is for the protection of its essential security interests. These measures shall be imposed on a non-discriminatory basis and may be found in any of its laws or regulations:

(i) In the case of Korea, Korea does not presently adopt or maintain any unilateral measures against a non-Party or investor of a non-Party in its laws or regulations; and

(ii) In the case of India, the applicable measures referred to in Article 10.18.2(d) are essentially set out in the regulations framed under the *Foreign Exchange Management Act (FEMA)*. India shall upon request by Korea, provide information on the measures concerned; and

(b) the measures which a Party adopts or maintains with respect to a non-Party or investors of a non-Party shall not impinge upon the other Party's sovereign rights to conduct its foreign policy nor shall it prohibit enterprises of foreign enterprises that are subject to such measures from establishing themselves in the other Party.

ANNEX 10-C
NON JUSTICIABILITY OF SECURITY EXCEPTIONS

The Parties confirm the following understanding with respect to the interpretation and/or implementation of this Chapter:

(a) in respect of disputes submitted to arbitration pursuant to Article 10.21.3, where the disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a security exception as set out in Article 10.18.2, any decision of the disputing Party taken on such security considerations shall be non-justiciable in that it shall not be open to any arbitral tribunal to review the merits of any such decision, even where the arbitral proceedings concern an assessment of any claim for damages and/or compensation, or an adjudication of any other issues referred to the tribunal; and

(b) for the avoidance of doubt, Article 10.21.3 shall be applicable in the arbitral proceedings for damages and/or compensation due to the measures taken under security exceptions as set out in Article 10.18.2.

ANNEX I

EXPLANATORY NOTES

1. Pursuant to Article 10.8 (Non-Conforming Measures), the Schedule to this Annex sets out the reservations taken by India for sectors, sub-sectors or activities for which it may maintain existing measures that do not conform with some or all of the obligations imposed by :

(a) Article 10.3 (National Treatment);

(b) Article 10.5 (Performance Requirements); or

(c) Article 10.6 (Senior Management and Boards of Directors).

2. Where appropriate, reservations are referenced to the ISIC classification (ISIC Rev.3.1) as set out in Statistical Office of the United Nations Statistical Papers. Where appropriate ISIC code is not available for sectors or sub-sectors, for India, those reservations may be referenced to the National Industrial Classification Code (NIC) 1987 as set out by the Central Statistical Organization of the Government of India as alternatives. And, for Korea, those reservations may be referenced to the Korea Standard Industry Code (KSIC 2000) as set out by the Korea National Statistical Office as alternatives.

3. Each Schedule entry sets out the following elements:

(a) **Sector** refers to the general sector in which the reservation is taken;

(b) **Sub-Sector** refers to the specific sector in which the reservation is taken;

(c) **Industrial Classification** refers, where applicable, to the activity covered by the reservation according to the UN ISIC code (ISIC Rev.3.1) or domestic industry classification codes (National Industrial Classification Code 1987, Korea Standard Industry Code 2000);

(d) **Level of Government** Indicates the level of government maintaining the scheduled measures;

(e) **Type of Reservation** specifies the obligation (National Treatment, Performance Requirement and Senior Management and Board of Directors) for which a reservation is taken;

(f) **Reservation Measure**[1] identifies the laws, regulations, rules, procedures, decisions, administrative actions or any other measures. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) **Description** sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the measure for which the entry is made.

[1] For greater certainty, in the case of Korea, a change in the level of government at which a measure is administered or enforced does not, by itself, decrease the conformity of the measure with the obligations referred to in Article 10.8.1. For India, the measures indicated in each entry in the Schedule would be in accordance with the powers of the Union (Central Government) as contained in Article 73 and Article 246 of the Constitution of India.

4. In the interpretation of a Schedule entry, all elements of the entry, with the exception of **Industry Classification**, shall be considered. An entry shall be interpreted in light of the relevant articles of the Chapters against which the entry is made. To the extent that:

(a) the **Measures** element is qualified by a liberalization commitment from the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and

(b) the **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless any discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

5. For India, for purposes of this Annex, unless otherwise specified:

(a) **"Foreign Institutional Investor"** or **"FII"** means a foreign entity that is registered with the Securities Exchange Board of India as a Foreign Institutional Investor/FII.

(b) **" non-resident"** means a person who is not resident in India.

(c) A "**person resident in India**" means:

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include:

A) a person who has gone out of India or who stays outside India, in either case:

i) for or on taking up employment outside India, or

ii) for carrying on a business outside India or vocation outside India, or

iii) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) a person who has come to or stays in India, in either case, otherwise than:

i) for or on taking up employment in India, or

ii) for carrying on in India a business or vocation in India, or

iii) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

(d) **"non-resident Indian" or "NRI"** means a person resident outside India who is either a citizen of India or a person of Indian Origin

(e) **"Person of Indian Origin" or "PIO"** means a citizen of any country other than Bangladesh or Pakistan or Sri Lanka, if:

(i) he at any time holds Indian passport; or

(ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

(iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii);

(f) **"Venture Capital Fund"** means a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in Indian Venture Capital Undertakings in accordance with the said Regulations. An IVCU is defined as a company incorporated in India whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI

6. For Korea, **a foreign person** means a foreign national or an enterprise organized under the laws of another country.

7. Regarding commitments on supply of services through commercial presence, only the Schedule of Specific Commitments annexed to Chapter 6 on Trade in Services will apply. For greater certainty, Articles 10.5 (Performance Requirements) and 10.6 (Senior Management and Board of Directors) in Chapter 10 on Investment will not be applicable to Services Sector. Commitments in the form of Reservations on Articles 10.3 (National Treatment), 10.5 (Performance Requirements) and 10.6 (Senior Management and Board of Directors) for investments other than those for supply of a service through commercial presence are described only in Annex I and Annex II to Chapter 10 (Investment). In the event of any inconsistency between the commitments in the form of Reservations under the Chapter 10 on Investment and the specific commitments made under the Chapter 6 on Trade in Services, the provision in the Chapter on Trade in Services shall prevail to the extent of the inconsistency.

8. For Korea, the reservation entry No. 5 and 8 will not apply to services activity under the sector.

9. Both Parties agree that no addition, deletion or modification will be carried out in the entries in the Schedule with regard to the Sector, Sub-sector, Industrial classification, Type of Reservation and Description from the date of entry into force of this Agreement. However, with regard to the Reservation Measures, the Parties shall, within a period of six (6) months from the date of entry into force of the Agreement, specify the details of Reservation Measures including the relevant provision of the legislation relating to the Description as set forth in the Schedules.

ANNEX Ⅰ

Schedule of Korea

1.

Sector	Agriculture and Livestock
Sub-Sector	
Industry Classification	KSIC 01212 Farming of Beef Cattle KSIC 51312 Wholesale of Meat
Type of Reservation	National Treatment (Article 10.3)
Reservation Measure	*Foreign Investment Promotion Act* (Law No. 9071, March 28, 2008), Article 4 and 22 *Enforcement Decree of the Foreign Investment Promotion Act* (Presidential Decree No. 20947, July 29, 2008), Article 5 *Consolidated Public Notice for Foreign Investment* (No. 2008-55, February 29, 2008, Ministry of Knowledge Economy), Appendix 1
Description	Foreign persons may not: (i) invest in an enterprise engaged in rice or barley farming or (ii) hold 50 percent or more of the equity interest of an enterprise engaged in beef cattle farming or yook-ryu(meat) wholesaling.
Phase-Out	None

2.

Sector	Transportation
Sub-Sector	Air Transportation
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Senior Management and Board of Directors (Articles 10.6)
Reservation Measure	Articles 3, 6, 112, 113, 114 and 132 of the *Aviation Act* (Law No. 9071, Mar 28, 2008), Articles 278, 278-2, 298 and 299 of its *Enforcement Regulations* (Ordinance of the Ministry of Land, Transport & Maritime Affairs No. 12, May 8, 2008)
Description	None of the following persons may own any of national carriers: 1. a foreign national; 2. a foreign government or a foreign gong-gong-dan-che (organization for public purposes); 3. an enterprise organized under foreign law; 4. an enterprise in which any of those referred to in items 1 through 3 owns 50 percent or more of the equity interest, or has control; or 5. an enterprise organized under Korean law whose dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) is a foreign national or half or more of whose senior management are foreign nationals.
Phase-Out	None

3.

Sector	Sea Map Making
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3)
Reservation Measure	*Marine Scientific Research Act* (Law No. 8852, February 29, 2008), Articles 6, 7, and 8 *Territorial Sea and Contiguous Zone Act* (Law No. 4986, December 6, 1995), Article 5
Description	A foreign person, a foreign government, or a Korean enterprise owned or controlled by a foreign person that intends to conduct marine scientific research in the territorial waters or exclusive economic zone of Korea must obtain prior authorization or consent from Minister of Land, Transport and Maritime Affairs whereas a Korean national or a Korean enterprise not owned or controlled by a foreign person need only to provide notification.
Phase-Out	None

4.

Sector	All Manufacturing Sectors
Sub-Sector	
Industry Classification	
Type of Reservation	Performance Requirements (Article 10.5)
Reservation Measure	Act on the Promotion of Saving and Recycling of Resources(Law No. 8852, Feb.29, 2008), Article 16, 17, 18, 19 and 27 Act for Resource Recycling of Electrical and Electronic equipment and vehicle(Law No. 8852, Feb.29, 2008), Article 15, 16 and 17
Description	Manufacturers who are under recycling duties and those to whom such manufacturers have entrusted their recycling duties shall follow the recycling standards for their products and packaging materials prescribed by the Minister of Environment. Furthermore, the above persons shall submit the recycling duty performance plans and result reports each year, and shall pay the recycling levy in case of failure to satisfy the amounts of the prescribed recycling duty.
Phase-Out	None

5.

Sector	Sale, maintenance and repair of low-emission motor vehicles
Sub-Sector	
Industry Classification	
Type of Reservation	Performance Requirements(Article 10.5)
Reservation Measure	Special Act on Metropolitan Air Quality Improvement(Law No. 9036, Mar.28, 2008), Article 23 Enforcement Decree(Presidential Decree No. 21033, Sep.25, 2008), Article 26
Description	A distributor of motor vehicles shall submit an annual plan to supply low-emission motor vehicles in accordance with the annual popularization standard of low-emission motor vehicle (1.5%, 2006). The distributor shall obtain approval of the plan by the Minister of Environment and report business results to the Minister of Environment.
Phase-Out	None

6.

Sector	Manufacture of Chemical Products
Sub-Sector	Manufacture of Biological Products
Industry Classification	KSIC 24212 Manufacture of Biological Products
Type of Reservation	Performance Requirements (Article 10.5)
Reservation Measure	*Pharmaceutical Affairs Act* (Law No. 8552, February. 29, 2008), Article 42 *Enforcement Regulations of the Pharmaceutical Affairs Act* (Ordinance of the Ministry of Health and Welfare No. 71, October. 16, 2008), Article 21
Description	A person who manufactures blood products must procure raw blood materials from a blood management body in Korea.
Phase-Out	None

7.

Sector Publishing

Sub-Sector Publishing of Periodicals (Excluding Newspapers)

Industry Classification

Type of Reservation National Treatment (Article 10.3)

Senior Management and Boards of Directors (Article 10.6)

Reservation Measure Act on the Guarantee of Freedom and Function of Newspapers, Etc. (Law No. 8852, February 29, 2008), Articles 13 and 26

Enforcement Decree of the Act on the Guarantee of Freedom and Function of Newspapers, Etc. (Presidential Decree No. 20676, February 29, 2008), Articles 17, 18, 19, and 20

Description The publisher or the editor-in-chief of an enterprise that publishes periodicals must be a Korean national.

The following persons may not publish periodicals in Korea:

(a) a foreign government or a foreign person;

(b) an enterprise organized under Korean law whose dae-pyo-ja (for example, a chief executive officer, president, or similar principal senior officer) is not a Korean national; or

(c) an enterprise organized under Korean law in which a foreign person holds 50 percent or more of share or equity interest.

A foreign person that publishes periodicals may establish a branch

	or office in Korea subject to authorization from the Minister of Culture and Tourism. As of the date this Agreement enters into force, such branch or office may print and distribute its periodicals in Korea in the original language, provided that such periodicals are edited in the territory of the other Party.
Phase-Out	None

8.

Sector	Agriculture
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3)
Reservation Measure	Grain Management Act (Law No. 8852, February 29, 2008), Article 12 Livestock Industry Act (Law No. 8852, February 29, 2008), Articles 24 and 27 Seed Industry Act (Law No. 8852, February 29, 2008), Article 142 Feed Management Act (Law No. 8852, February 29, 2008), Article 6 Ginseng Industry Act(Law No. 8852, February 29, 2008), Article 20 Foreign Investment Promotion Act (Law No. 9071, March 28, 2008), Articles 4 and 22 Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 20947, July 29, 2008), Article 5 Consolidated Public Notice for Foreign Investment (No. 2008-55, February 29, 2008, Ministry of Knowledge Economy), Appendix 1 Act on Distribution and Price Stabilization of Agricultural and Fishery Products (Law No. 8852, February 29, 2008), Articles 15, 17, and 43 Notice on TRQ Products (Ministry of Agriculture and Forestry Notice No. 2008-17, May 16, 2008)
Description	Only the Livestock Cooperatives under the Agriculture Cooperative Act may establish and manage a ga-chook-sijang (livestock market) in Korea. Only a local government may establish a gong-yeong-domae-sijang (public wholesale market). Only producers' organizations or public interest corporations prescribed in the Enforcement Decree of the Act on Distribution and Price Stabilization of Agricultural and Fishery Products may establish a gong-pan-jang (joint wholesale market). For greater certainty, Articles 10.3(National Treatment) do not prevent Korea from adopting or maintaining any measure with respect to the administration of the WTO Tariff-Rate-Quota.
Phase-Out	None

9.

Sector	Energy Industry
Sub-Sector	Electric Power Generation Other Than Nuclear Power Generation; Electric Power Transmission, Distribution and Sales
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3)
Reservation Measure	*Securities and Exchange Act* (Law No. 8985, March 21, 2008), Article 203 *Enforcement Decree of the Securities and Exchange* Act (Presidential Decree No. 20653, February 29, 2008), Article 87-2 *Foreign Investment Promotion Act* (Law No. 9071, March 28, 2008), Articles 4, 5 and 22 *Enforcement Decree of the Foreign Investment Promotion Act,* (Presidential Decree No. 20947, July 29, 2008), Article 5 *Consolidated Public Notice for Foreign* Investment (No. 2008-55, February 29, 2008, Ministry of Knowledge Economy), Appendix 1 *Notice of Ministry of Finance and Economy* (No. 2000-17, September 28, 2000) *Regulation on Supervision of Securities Business* (Financial Service Commission Notice No. 2008-16, July 3, 2008), Sec. 7-6

Description	The aggregate foreign share of KEPCO's issued stocks may not exceed 40 percent. A foreign person may not become the largest shareholder of KEPCO. The aggregate foreign share of power generation facilities, including cogeneration facilities of heat and power (GHP) for the district heating system (DHS), may not exceed 30 percent of the total facilities in the territory of Korea. The aggregate foreign share of electric power transmission, distribution and sales businesses should be less than 50 percent. A foreign person may not be the largest shareholder.
Phase-Out	None

10.

Sector	Energy Industry
Sub-Sector	Gas Industry
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3)
Reservation Measure	*Act on the Improvement of Managerial Structure and Privatization of Public Enterprises* (Law No. 8852, Feb 29, 2008), Article 19 *Securities and Exchange Act* (Law No. 8985, Mar 21, 2008), Article 203 *Foreign Investment Promotion Act* (Law No. 9071 Mar 28, 2008), Articles 4 and 5 *Articles of Incorporation of the Korea Gas Corporation* (Mar 28, 2008), Article 11
Description	Foreign persons, in the aggregate, may not own more than 30 percent of the share of KOGAS.
Phase-Out	None

11.

Sector	All Services Sectors
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Performance Requirements (Articles 10.5) Senior Management and Boards of Directors (Articles 10.6)
Reservation Measure	Any existing or current regulations or measures in force on the date of entry of this Agreement.
Description	Korea reserves the right to maintain any measure relating to investments in services sectors subject to the condition that they do not violate the obligations under the Services Chapter.
Phase-Out	None

ANNEX I

Schedule of India

1.

Sector	All sectors
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	A person resident outside India, including an entity incorporated outside India, can purchase shares of an Indian company under the FDI Scheme. There are separate regulatory treatment provided to FIIs and Venture Capital Funds in relation to investment in Indian Companies, which may be modified from time to time. Non-resident Indians (NRIs) are allowed to invest in shares of listed Indian companies in recognised Stock Exchanges under the Portfolio Investment Scheme (PIS). NRIs can invest on repatriation and non-repatriation basis under Portfolio Investment Scheme route up to 5% of the paid up capital / paid up value of each series of debentures of listed Indian companies. The aggregate paid-up value of shares / convertible debentures purchased by all NRIs cannot exceed 10 per cent of the paid-up capital of the company / paid-up value of each series of debentures of the company. The aggregate ceiling of 10 per cent can be raised to 24 per cent, if the General Body of the Indian company passes a special resolution to that effect. Shares purchased by NRIs on the stock exchange under PIS cannot be transferred by way of sale under private arrangement or by way of gift to a person resident in India or outside India without prior approval of the Reserve Bank of India (RBI).

FDI is not permitted in Indian partnerships and any association of persons (which would include societies and trusts) except upon obtaining the prior consent of the Reserve Bank of India for such investment.

NRIs and Persons of Indian Origin (PIOs) can invest into partnerships and any association of persons if such investment is being made on a non-repatriable basis and if such investment is being made on a repatriable basis, then the prior approval of RBI would be needed for such investment.

When the total holdings of FIIs/NRIs under the Scheme reach the trigger limit, which is 2 per cent below the applicable limit (for companies with paid-up capital of Rs. 1000 crores and above, the trigger limit is 0.5 per cent below the applicable limit), Reserve Bank will issue a notice to all designated branches of banks cautioning that any further purchases of shares of the particular Indian company will require prior approval of Reserve Bank. Reserve Bank gives case-by-case approvals to FIIs for purchase of shares of companies included in the Caution List. This is done on a first-come-first-served basis. Once the shareholding by FIIs/NRIs reaches the overall ceiling / sectoral cap / statutory limit, Reserve Bank puts the company on the Ban List. Once a company is placed on the Ban List, no FII or NRI can purchase the shares of the company under the Portfolio Investment Scheme

Reservation Measure

Regulations 5 (1) , 5(2), 5(3), 5(4), and 5(6) of the Foreign Exchange Management (Transfer or Issue of Security to a Person resident outside India) Regulations, 2000 (FEMA Regulations)

Schedule 1 of FEMA Regulations incorporating the FDI Scheme

Schedule 2 of FEMA Regulations incorporating the Portfolio Investment Scheme.

Schedule 3 of FEMA Regulations for Investment by NRIs/PIOs under the Portfolio Investment Scheme.

Schedule 4 of FEMA Regulations for Investment by NRI/PIOs by purchase of shares on the Stock Exchange other than under

the Portfolio Investment Scheme on Non-repatriation basis.

Schedule 6 of FEMA Regulations for Investment by Foreign Venture Capital Funds

Indian company means a company incorporated in India under the Indian Companies Act, 1956.

2.

Sector	All sectors
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	Prior approval of the Government will be required even for investments covered under the automatic route, if the foreign investor has an existing joint venture or trademark/technical collaboration agreement in India as on 12.1.2005 in the same field. The same field is determined by the 4-digit National Industrial Code, 1987. If the proposed investment is in an activity that has the same NIC Code classification as that of the existing joint venture or technical collaboration, then these limitations will be applicable. This is not applicable in the following circumstances: i. investments made by Venture Capital Funds registered with Securities Exchange Board of India (SEBI) ii. where in the existing joint venture investment by either of the parties is less than 3% iii. where the existing venture/collaboration is defunct or sick iv. investment into Information Technology sector, mining sector for same area/mineral v. investment by multinational financial institutions
Reservation Measure	Government policy *[Press Note 1(2005) & Press Note 3(2005)]* Provision to regulation 9 of Foreign Exchange Management (Transfer or Issue of Security to a Person resident outside India) Regulations, 2000 governing transfer of shares and convertible debentures of an Indian company to a person resident outside India.

3.

Sector	All sectors
Sub-sector	
Industry classification	
Type of Reservation	National Treatment (Article 10.3)
Description	The Central Government may, in public interest, suspend or relax permission granted or restriction imposed by the Foreign Exchange Management Act, 1999 (FEMA, 1999), by notification specifying the duration of such suspension. The Central Government may from time to time give general or special directions as it thinks fit, to the Reserve Bank of India in the discharge of functions with relation to administration of the FEMA, 1999. Where a company contravenes any of the provisions of the FEMA, 1999, or any rule, direction or order made there-under, the company and every person who at the time the contravention was committed, was in charge of, and was responsible to the company for conduct of the business of the company would be liable to be punished under the provisions of the FEMA, 1999 unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.
Reservation Measure	Sections 40, 41 and 42 of the Foreign Exchange Management Act, 1999 . The Industries (Development and Regulation) Act, 1951, Securities and Exchange Board of India Act, 1992, Foreign Contribution (Regulations) Act, 1976, Foreign Trade

(Development and Regulations) Act, 1976 , Reserve Bank of India Act, 1934 , Banking Regulation Act, 1949, Securities Contracts (Regulation) Act, 1956, Prevention of Money Laundering Act, 2002, Income Tax Act, 1961, Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 , Customs Act, 1962, Central Excise Act, 1944, The Bureau of Indian Standards Act, 1986.

4.

Sector	All sectors
Sub-Sector	Items reserved for manufacture by Micro, Small and Medium enterprises.
Industrial Classification	
Type of Reservation	Performance Requirement (Article 10.5)
Description	The Central Government may, for (a) promoting in a harmonious manner the industrial economy of the country and easing the problem of unemployment, and (b) securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good: (1) identify ancillary and small scale industrial undertakings that need supportive measures, exemptions and other favourable treatment to enable them to maintain their viability; (2) specify supportive measures, exemptions and other favourable treatment to such ancillary and small scale industrial undertakings (3) specify, by notified order, the requirements which shall be complied with by an industrial undertaking to enable it to be regarded, as an ancillary, or a small scale, industrial undertaking and different requirements may be so specified for different purposes or with respect to industrial undertakings engaged in the manufacture or production of different articles. Prior government approval would be required for foreign direct investment where more than 24% foreign equity is proposed to be inducted into a small scale unit manufacturing items reserved for the small scale sector. Such units with more than 24% foreign equity will not be eligible for the benefits available to a small scale unit as per the policy of the Government.

The Central Government has the power to classify enterprises engaged in the manufacture or production of goods pertaining to any industry specified in Schedule I of the Industries (Development & Regulation) Act, 1951(IDRA) as: (i) micro enterprises, (ii) small enterprises or (iii) medium enterprises. The Central Government, may from time to time, notify such measures, programmes, guidelines or instructions as it may deem fit to promote and strengthen micro enterprises, small enterprises and medium enterprises and to promote competition among them.

Non- SSI units can undertake manufacture of items reserved for the small scale sector only if they undertake 50% export obligations.

Industrial units are classified as Small scale based on investment in Plant and machinery in the case of manufacturing units and investment in equipment in the case services sector.

Reservation Measure

Industries (Development & Regulation) Act, 1951- Section 11 B

Micro, Small & Medium Enterprises Development (MSMED) Act, 2006- Section 7

5.

Sector	Atomic Energy
Sub-Sector	Atomic Power Generation Manufacturing and supply of nuclear fuel Radioactive Waste Treatment and Disposal Radio isotope and Radiation Generation Facilities Services relating to Nuclear Energy Planning, Maintenance and Repair Services
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	Foreign direct investment is prohibited in Atomic Energy Sector.
Reservation Measure	Atomic Energy Act, 1962 Industries (Development & Regulation), Act, 1951 Annexure A (B) of Schedule 1 to Regulation 5(1) of the Foreign Exchange Management (Transfer or Issue of Security to a Person resident outside India) Regulations 2000. Press Note 4 (2006)

6.

Sector	Chit Fund Business, Nidhi, Transferable Development Rights; Agriculture & Plantation (other than Tea Plantation); and Real estate business(other than construction development)
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	No person resident outside India shall make investment in India in any form, in any company or partnership firm or proprietary concern, or any entity, whether incorporated or not which is engaged or proposes to engage – i) in the business of chit fund, or ii) as Nidhi company, or iii) in agricultural or plantation activities, or iv) in real estate business, or construction of farm houses, or v) in trading in Transferable Development Rights. i) Chit means a transaction whether called chit, chit fund, chitty, kuri or by any other name which a person enters into an agreement with a specified number of persons that every shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of installments over a definite period and that each such subscriber shall, in his turn, as demand or by auction or by tender or in such other manner as may be specified in the chit agreement entitled to the prize amount. ii) Nidhi or mutual benefit society means a company which the Central Government may by notification in the official gazette declare to be a nidhi company or a mutual benefit society.

iii) Real estate business (however for the purposes of this limitation, “real estate” does not include development of townships, construction of residential/commercial premises, roads and bridges)

iv) Transferable Development Rights means certificates issued in respect of category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation which are transferable in part or whole.

NRIs are allowed to invest in development of serviced plots, construction of built up residential premises, investment in real estate covering residential and commercial premises including business centers and offices, development of townships, city and regional level urban infrastructure facilities including roads and bridges, investment in manufacture of building materials, investment in participatory ventures for all of the above; and investment in housing finance institutions without the conditions of minimum capitalization or minimum area for development or lock-in of investment.

Reservation Measure

Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000- Regulation 4b.

Chit Funds Act, 1982 and policies, rules, regulations, notifications, circulars, guidelines, press notes, made thereunder.

Companies Act, 1956 and policies, rules, regulations, notifications, circulars, guidelines, press notes, made thereunder.

7.

Sector	Gambling, Betting, Lottery
Sub-Sector	
Industrial Classification	Lottery- NIC 840 and 841
Type of Reservation	National Treatment (Article 10.3)
Description	Foreign investment is not permitted in lottery business, gambling and betting. Foreign technology collaboration or use of franchise/trademark/brand name of foreign collaborator, or management contract, etc. is not permitted in lottery business, gambling and betting. This includes foreign investment through, FII portfolio investment, NRI/OCB investment on non-repatriable basis and investment by foreign venture capital investors.
Reservation Measure	Annex A (B) of Schedule 1 to Regulation 5 (1) of the Foreign Exchange Management (Transfer or Issue of Security to a Person resident outside India) Regulations, 2000 Government Policy vide Press Note 5(2002)

8.

Sector	Retail trading (except Single Brand Product Retailing)
Sub-Sector	
Industrial Classification	Retail trade- NIC 65- 68
Type of Reservation	National Treatment (Article 10.3)
Description	Foreign investment is prohibited in Retail trade except in Single brand product retail trade. However, FDI upto 51% is allowed with prior permission of the Government in retail trading of Single Brand products subject to the following conditions: i. Products to be sold should be of a 'Single Brand' only. ii. Products should be sold under the same brand internationally. iii. 'Single Brand' product-retailing would cover only products which are branded during manufacturing.
Reservation Measure	Annex A(B) of Schedule 1 to regulation 5 (1) of the Foreign Exchange Management (Transfer or Issue of Security to a Person resident outside India) Regulations, 2000. Press Note 3 (2006) dated 10.2.2006

9.

Sector	Acquisition of Land
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	Save and except as otherwise provided under FEMA and regulations made thereunder, no person resident outside India can transfer any immovable property in India. A person resident outside India, who is a citizen of India, may : (a) acquire immovable property in India other than agricultural property, plantation or farmhouse, in accordance with prescribed regulations; (b) transfer immovable property in India to a person resident in India; (c) transfer immovable property other than agricultural or plantation property or farmhouse to a person resident outside India who is a citizen of India or to a person of Indian origin, resident outside India. A person of Indian origin, resident out-side India may: (a) acquire immovable property in India other than agricultural property, plantation or farmhouse, in accordance with prescribed regulations; (b) acquire any immovable property in India other than agricultural land, plantation or farmhouse by way of gift from person resident in India or from a resident out-side India who is a citizen of India or from a person of Indian origin resident outside India, (c) acquire any immovable property by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of foreign exchange laws in force at the time of acquisition by him or the provisions of the FEMA regulations or from a person resident in India; (d) transfer any immovable property in India

	other than agricultural land, farmhouse or plantation by way of sale to a person resident in India; (e) transfer agricultural land, farmhouse or plantation property in India by way of gift or sale to a person resident in India who is a citizen of India; (f) transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India or to a person of Indian origin resident outside India. A person resident outside India can purchase immovable property in India including land only if he has established in India a branch, office (excluding liaison office) or other place of business for carrying on a permitted activity in India which is necessary for or incidental to carrying on such activity provided that it complies with all applicable laws, regulations or directions and a declaration in this regard is filed with Reserve Bank of India.
Reservation Measure	Article 73 of The Constitution of India read with Article 246 of The Constitution of India Regulation 5 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 Foreign Exchange Management (Establishment in India of Branch or Office or other place of business) Regulations, 2000- permitted activities for a branch office of a person resident outside India included as Schedule 1 Transfer of Property Act and rules, regulations, notifications, policies, guidelines and circulars made thereunder. The Registration Act, 1908 and rules, regulations, notifications, policies, guidelines and circulars made thereunder. The Indian Stamp Act (as may have been amended by each state in respect of transactions in its jurisdictions) and rules, regulations, notifications, policies, guidelines and circulars made thereunder.

Agriculture, hunting and forestry

10.

Sector	Agriculture
Sub-Sector	Farming & Plantations
Industrial Classification	00(Agricultural production); 01 (Plantations)
Type of Reservation	National Treatment (Article 10.3)
Description	FDI is not allowed in any agricultural/plantation sector/activity except the following: (i) FDI is allowed up to 100% under the automatic route in Floriculture, Horticulture, development of seeds, animal husbandry, pisciculture, aqua-culture and cultivation of vegetables and mushrooms under controlled conditions and services related to agro and allied sectors*. (ii) FDI up to 100% is allowed with prior Foreign Investment Promotion Board (FIPB) permission in the Tea sector including tea plantations subject to : i) the foreign investor undertaking to divest 26% equity in favour of Indian partner/Indian public within 5 years and ii) prior approval of the state government concerned in case of any change in land use in future.
Reservation Measure	Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000- Regulation 4 (b). Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000- Annex A (B) to Schedule 1.

* ‘under controlled conditions’ means in a non-natural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include but are not limited to tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding or protection from weather.

‘services related to agro and allied sectors’ includes pest destroying, spraying and pruning of infected stems, operation of irrigation system, animal shearing and livestock services (other than veterinary services), nursery and horticultural services, soil conservation services, soil desalination services, harvesting, threshing, land clearance, land draining services.

MINING

11.

Sector	Mining
Sub-Sector	Mining covering exploration and mining of diamonds and precious Stones; gold, and silver.
Industrial Classification	NIC 133 (Mining of precious/semi-precious metal ores) NIC 156 (Mining of precious/semi-precious stones)
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5)
Description	FDI up to100% is permitted subject to the provisions of the Mines and Minerals (Development & Regulation) Act, 1957. Also subject to the condition that in the event the foreign investor is establishing a 100% subsidiary, it shall submit a declaration to the effect that it has no existing joint venture for the same area or for a particular mineral
Reservation Measure	Mines and Minerals (Development & Regulation) Act 1957 and rules, regulations, notifications, policies, directives, guidelines and circulars made thereunder. Industries (Development and Regulation) Act, 1951 and policies, rules, regulations, notifications, circulars, guidelines, press notes, made thereunder. Government policy vide Press Note 4 (2006) and Press Note 7 (2008).

MINING AND QUARRYING

12.

Sector	Mining and Quarrying
Sub-Sector	Mining of coal and lignite, extraction of peat
Industrial Classification	NIC-10
Type of Reservation	Performance Requirement (Article 10.5)
Description	FDI up to 100% under automatic route is allowed for mining of coal and lignite for captive consumption by: (i) power projects, (ii) iron and steel, (iii) cement production and (iv) other eligible activities permitted under Coal Mines (Nationalization) Act, 1973 and Rules, Regulations, notifications, policies, directives, guidelines and circulars made thereunder. FDI is not allowed for coal mining for any other activities.
Reservation Measure	Mines and Minerals (Development & Regulation) Act 1957 and rules, regulations, notifications, policies, directives, guidelines and circulars made thereunder. Coal Mines (Nationalization) Act, 1973 – Section 3

13.

Sector	Mining and Quarrying
Sub-Sector	Mining of uranium and thorium ores
Industrial Classification	NIC- 14
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Uranium and Thorium ores are "atomic minerals" under Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) Under the provisions of the Mines and Minerals (Development and Regulation)Act, 1957, the reconnaissance or prospecting or mining operations can be undertaken only pursuant to a licence and consequent lease and no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of reconnaissance permit or of a prospecting license or, as the case may be, a mining lease, granted under MMDR Act and the rules made thereunder. Government shall not grant reconnaissance permit, prospecting licence or mining lease to any person unless such person a. is an Indian national, or a Company as defined in sub-section (1) of Section 3 of the Companies Act, 1956; and b. satisfies such conditions as may be prescribed : Provided that in respect of any mineral specified in the First Schedule of MMDR Act, 1957, no prospecting licence or mining lease shall be granted except with the previous approvals of the Central Government.

Explanation – For the purposes of this sub-section, a person shall be deemed to be an Indian national, -

a. in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and
b. in the case of an individual, only if he is a citizen of India

A State Government may either with the previous approval of the Central Government or at the instance of the Central Government impose such further conditions as may be necessary in the interests of mineral development, including development of atomic minerals (Mineral Concession Rules 1960)

Reservation Measure

Mines and Minerals (Development & Regulation) Act 1957 (No.67 of 1957), Mineral Concession Rules, 1960, and other policies, rules, regulations, made thereunder.

Atomic Energy Act, 1962 and policies, rules , regulations, orders issued thereunder.

14.

Sector	Mining and Quarrying
Sub-Sector	Mining of iron ores, Mining of metal ores, Mining of non-metallic minerals (other than Petroleum and natural gas)
Industrial Classification	NIC- 12(Mining of Iron Ores) NIC-13 (Mining of metal ores other than iron ores) NIC-15 (Mining of non-metallic minerals not elsewhere classified)
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5)
Description	FDI up to 100% is permitted on the automatic route in mining of non-atomic and non-fuel minerals subject to applicable laws and regulations including the Mines and Minerals (Development and Regulations) Act, 1957. Under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, the reconnaissance or prospecting or mining operations can be undertaken only pursuant to a licence and consequent lease and no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of reconnaissance permit or of a prospecting license or, as the case may be, a mining lease, granted under MMDR Act and the rules made thereunder. Government shall not grant reconnaissance permit, prospecting licence or mining lease to any person unless such person – a. is an Indian national, or a Company as defined in sub-section (1) of Section 3 of the Companies Act, 1956; and b. satisfies such conditions as may be prescribed :

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted except with the previous approvals of the Central Government.

Explanation – For the purposes of this sub-section, a person shall be deemed to be an Indian national, -

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India

A State Government may either with the previous approval of the Central Government or at the instance of the Central Government impose such further conditions as may be necessary in the interests of mineral development, including development of atomic minerals (Mineral Concession Rules 1960)

The holder of a mining lease granted shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified.

Reservation Measure

Mines and Minerals (Development & Regulation) Act -

Section 5 and Section 9

15.

Sector	Other Mining and Quarrying\
Sub-Sector	Quarrying of stone, sand and clay
Industrial Classification	NIC 150
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5)
Description	These are categorized as Minor Minerals under Section 3 of the Mines and Minerals (Development & Regulation) Act. The State Governments have the powers to regulate operations of mining of minor minerals.
Reservation Measure	Mines and Minerals (Development & Regulation) Act 1957 (No.67 of 1957) Mineral Concession Rules, 1960

16.

Sector	Titanium bearing minerals and ores.
Sub-Sector	Mining and production of Titanium ores (Ilmenite, Rutile, and Leucoxene) and Zirconium minerals (Zircon)
Industrial Classification	NIC-136
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5)
Description	FDI up to 100% is allowed with prior government approval in mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities, subject to sectoral regulations and Mines and Minerals (Development and Regulation) Act, 1957. The separation of titanium bearing minerals and ores will be subject to the following additional conditions (i) value addition facilities are set up within India along with transfer of technology; (ii) disposal of tailings during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection)Rules 2004; Atomic Energy (Safe Disposal of Radioactive Wastes)Rules, 1987 No FDI is permitted in mining of prescribed substances as notified by the Department of Atomic Energy, under the Atomic Energy Act, 1962. Under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, the reconnaissance or prospecting or mining operations can be undertaken only pursuant to a license and consequent lease and no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of reconnaissance permit or of a prospecting license or, as the case may be, a mining lease, granted under MMDR Act and the rules

made thereunder.

Government shall not grant reconnaissance permit, prospecting licence or mining lease to any person unless such person –

(a) is an Indian national, or a Company as defined in sub-section (1) of Section 3 of the Companies Act, 1956; and
(b) satisfies such conditions as may be prescribed :

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted except with the previous approvals of the Central Government.

Explanation – For the purposes of this sub-section, a person shall be deemed to be an Indian national, -

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and
(b) in the case of an individual, only if he is a citizen of India

A State Government may either with the previous approval of the Central Government or at the instance of the Central Government impose such further conditions as may be necessary in the interests of mineral development, including development of atomic minerals (Mineral Concession Rules 1960)

The holder of a mining lease granted shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified

Reservation Measure

Article 73 of The Constitution of India read with Article 246 of The Constitution of India.

Government Policy on Exploitation of Beach Sand minerals notified vide Government of India Resolution No. 8/1(1)/97-PSU/1422 dated 6-10-1998

Government Notification S.O.61(E) dated 18.1.2006 re-notifying the list of prescribed substances under the Atomic Energy Act, 1962, excluding Titanium bearing ores and concentrates, and Zirconium, its alloys and compounds and minerals/ concentrates

including Zircon from the list of prescribed substances.

Industries (Development and Regulation)Act, 1951.

Mines and Minerals (Development and Regulation) Act, 1957

Atomic Energy (Radiation Protection)Rules 2004

Atomic Energy (Safe Disposal of Radioactive Wastes)Rules, 1987.

Press Note 6(2008) and Press Note 7 (2008)

MANUFACTURING.

17.

Sector	Defence Industry
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	FDI in Defence Industry (manufacturing) Sector is subject to licencing under the Industries (Development & Regulation)Act, 1951 and also subject to following limitations: a. non-resident equity cannot exceed 26% b. There is a three year lock in period for transfer of equity from one foreign investor to another foreign investor (including NRIs and OCBs with 60% of more NRI stake) and such transfer would be subject to prior approval of the Foreign Investment Promotion Board (FIPB) and the Government. c. FDI shall be subject to policies made by the Government under the Industries (Development and Regulation) Act, 1951 from time to time d. Treatment of Indian companies having FDI in terms of procurement of products shall be governed by the rules and procedure regulating procurement by defence services as may be issued or modified from time to time by Ministry of Defense, Government of India e. FDI approval will be given by FIPB in consultation with Ministry of Defense f. Licenses will be given to Indian companies/partnership firms given by the Department of Industrial Policy and promotion in consultation with Ministry of Defense g. The applicant should be an Indian company/partnership firm. h. The management of the applicant company / partnership should be in Indian hands with majority

representation on the Board as well as the Chief Executive of the company / partnership firm being resident Indians.

i. Full particulars of the Directors and the Chief Executives should be furnished along with the applications.

j. The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sectors and having an established R & D base.

k. No minimum capitalization for FDI purposes

l. The standards and testing procedures for equipment to be produced under license from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency under appropriate confidentiality clause.

m. The licensing authority would satisfy itself about the adequacy of the networth of the foreign investor, taking into account the category of weapons and equipment that are proposed to be manufactured

n. Capacity norms for production will be provided in the license based on the application as well as the recommendations of the Ministry of Defense, which will look into existing capacities of similar or allied products

o. Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.

p. Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of Ministry of Home Affairs and State Government with the prior approval of Ministry of Defense. No such item shall be sold within the country to any person or entity. The export of manufactured items will be subject to guidelines as applicable to ordinance factories and defense public sector undertakings. Non- lethal items will be permitted for sale to person/entities other than the Central or state government with the prior approval of Ministry of Defense.

Reservation Measure

Industries (Development & Regulations)Act, 1951- Section 11 and First Schedule to the Act.

Arms Act- Section 2(b) and 2(c) on definition of arms and

ammunition.

Government Policy - Press Note 4 (2001) and Press Note 2(2002)

18.

Sector	Refining of Petroleum
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	FDI up to 49% is allowed with prior approval of Foreign Investment Promotion Board (FIPB) in Public Sector Undertakings in the Petroleum refining sector. No divestment or dilution of domestic equity in the existing PSUs is allowed. FDI up to 100% is permitted on the automatic route in Private companies engaged in petroleum refining. Petroleum refining is subject to the sectoral policy relating to petroleum and natural gas notified by the Government of India.
Reservation Measure	Article 73 of The Constitution of India read with Article 246 of The Constitution of India. Petroleum Act, 1934, and rules, regulations, notifications issued thereunder. The Oilfields (Regulations and Development) Act, 1948 and rules and regulations thereunder.

The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 and policies, rules, regulations, notifications, circulars, guidelines, press notes, made thereunder.

The Petroleum and Natural Gas Regulatory Board Act, 2006 and policies, rules, regulations, notifications, circulars, guidelines, press notes, made thereunder.

The Explosives Act, 1884 and policies, rules, regulations, notifications, circulars, guidelines, press notes, made thereunder.

Government Policy - Press Note 4 (2006) and Press Note 5(2008)

19.

Sector	All Services Sectors
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	India reserves the right to maintain any measure relating to investments in services sectors subject to the condition that they do not violate the obligations under the Services Chapter. .
Reservation Measure	Any existing or current regulations or measures in force on the date of entry of this Agreement.

20.

Sector	All Sectors
Sub-Sector	
Industrial Classification	
Type of Reservation	Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Any existing measures framed by the State Governments are not subject to either PR or SMBD obligations derived from the Articles in the investment chapter.
Reservation Measure	Any existing or current regulations or measures in force on the date of entry of this Agreement.

ANNEX II

EXPLANATORY NOTES

1. Pursuant to Articles 10.8 (Non-Conforming Measures), the Schedule of a Party to this Annex sets out, the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 10.3 (National Treatment);

(b) Article 10.5 (Performance Requirements); or

(c) Article 10.6 (Senior Management and Boards of Directors).

2. Where appropriate, reservations are referenced to the ISIC classification (ISIC Rev. 3.1) as set out in Statistical Office of the United Nations Statistical Papers. Where appropriate ISIC code is not available for sectors or sub-sectors, for India, those reservations may be referenced to the National Industrial Classification Code (NIC) 1987 as set out by the Central Statistical Organization of the Government of India as alternatives. And, for Korea, those reservations may be referenced to the Korea Standard Industry Code (KSIC 2000) as set out by the Korea National Statistical Office as alternatives.

3. Each Schedule entry sets out the following elements:

(a) **Sector** refers to the sector for which the entry is made;

(b) **Sub-Sector** refers to the specific sector in which the reservation is taken;

(c) **Industrial Classification** refers, where applicable, to the activity covered by the reservation according to the UN ISIC code (ISIC Rev.3.1) or domestic industry classification codes (National Industrial Classification Code 1987, Korea Standard Industry Code 2000);

(d) **Type of Reservation** specifies the obligation (National Treatment, Performance Requirement and Senior Management and Board of Directors) for which a reservation is taken;

(e) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sectors, sub-sectors, or activities covered by the entry; and

(f) **Description** sets out the scope of the sectors, sub-sectors, or activities covered by the entry.

4. In the interpretation of a Schedule entry, all elements of the entry, with the exception of **Industry Classification**, shall be considered. The **Description** element shall prevail over all other elements.

5. For Korea, **foreign person** means a foreign national or an enterprise organized under the laws of another country. For India, a **non-resident** means a person who is not resident in India and includes a body corporate registered or incorporated outside India.

6. Regarding commitments on supply of services through commercial presence, only the Schedule of Specific Commitments annexed to Chapter 6 on Trade in Services will apply. For greater certainty, Articles 10.5 (Performance Requirements) and 10.6 (Senior Management and Board of Directors) in Chapter 10 on Investment will not be applicable to Services Sector. Commitments in the form of Reservations on Articles 10.3 (National Treatment), 10.5 (Performance Requirements) and 10.6 (Senior Management and Board of Directors) for investments other than those for supply of a service through commercial presence are described only in Annex I and Annex II to Chapter 10 (Investment). In the event of any inconsistency between the commitments in the form of Reservations under the Chapter 10 on Investment and the specific commitments made under the Chapter 6 on Trade in Services, the provision in the Chapter on Trade in Services shall prevail to the extent of the inconsistency.

7. For Korea, the reservation entry No. 8, 10, 14,15,16,17,19,20,23 and 24 will not apply to services activity under the respective sectors.

ANNEX II

Schedule of Korea

1.

Sector	All Sectors
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5)
Description	1. Korea reserves the right to adopt, with respect to the establishment or acquisition of an investment, any measure that is necessary for the maintenance of public order pursuant to Article 4 of the Foreign Investment Promotion Act (2008) and Article 5 of the Enforcement Decree of the Foreign Investment Promotion Act (2008), provided that Korea promptly provides written notice to India that it has adopted such a measure and that the measure:

(a) is applied in accordance with the procedural requirements set out in the Foreign Investment Promotion Act (2008), Enforcement Decree of the Foreign Investment Promotion Act (2008), and other applicable law;

(b) is adopted or maintained only where the investment poses a genuine and sufficiently serious threat to the fundamental interests of society;

(c) is not applied in an arbitrary or unjustifiable manner;

(d) does not constitute a disguised restriction on investment; and

(e) is proportional to the objective it seeks to achieve.

2. Without prejudice to any claim that may be submitted to arbitration pursuant to Article 21(Settlement of Disputes between a party and an Investor of the other party), a claimant may submit to arbitration under Section C of Chapter 10 (Investment) a claim that:

(a) Korea has adopted a measure for which it has provided notice pursuant to paragraph 1; and

(b) the claimant or, as the case may be, an enterprise of Korea that is a juridical person that the claimant owns or controls directly or indirectly, has incurred loss or damage by reason of, or arising out of, the measure.

In the event of such a claim, Section C of Chapter 10 (Investment) shall apply, mutatis mutandis, and all references in Section C of Chapter 10 (Investment) to a breach, or to an alleged breach, of an obligation under Section B of Chapter 10 (Investment) shall be understood to refer to the measure, which would constitute a breach of an obligation under Section B of Chapter 10 (Investment) but for this entry. However, no award may be made in favor of the claimant, if Korea establishes to the satisfaction of the tribunal that the measure satisfies all the conditions listed in subparagraphs (a) through (e) of paragraph 1.

Existing Measures

Foreign Investment Promotion Act (Law No. 9071, March 28, 2008), Article 4
Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 21098, October 29, 2008), Article 5

2.

Sector:	All sectors
Sub-Sector:	Defense industry
Industry Classification:	
Type of Reservation:	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description:	Korea reserves the right to adopt or maintain any measure with respect to cross border trade in services and investments in the defense industry. Foreign investors (stipulated in the Article 2 of the Foreign Investment Promotion Act) who intends to acquire the outstanding shares of defense industry(the enterprise stipulated in Article 3 of the Act on Defense Acquisition Program) other than the newly issued ones shall obtain a prior permission from the Minister of Knowledge Economy.
Existing Measure:	Law No. 9071 The Article 6 of *the Foreign Investment Promotion Act*, Mach 28, 2008 Law No. 8852 The Article 35 of *the Act on Defense Acquisition Program*, February 29, 2008

3.

Sector	All Sectors
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to the transfer or disposition of equity interests or assets held by state enterprises or governmental authorities. Such a measure shall be implemented in accordance with the provisions of Article 10.7(Transparency). This entry does not apply to former private enterprises that are owned by the state as a result of corporate reorganization processes. For purposes of this entry: A state enterprise shall include any enterprise created for the sole purpose of selling or disposing of equity interests or assets of state enterprise or governmental authorities. Without prejudice to Korea's commitments undertaken in Annex I and Annex II, Korea reserves the right to adopt or maintain any measure with respect to the transfer to the private sector of all or any portion of services provided in the exercise of governmental authority.
Existing Measures	*Securities and Exchange Act* (Law No 8985, March 21, 2008), Article 203

4.

Sector	Acquisition of Land
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	Korea reserves the right to adopt or maintain any measure with respect to the acquisition of land by foreign persons, except that a juridical person shall continue to be permitted to acquire land where the juridical person: 1. is not deemed foreign under Article 2 of the *Foreigner's Land Acquisition Act*, and 2. is deemed foreign under the *Foreigner's Land Acquisition Act* or is a branch of a foreign juridical person subject to approval or notification in accordance with the *Foreigner's Land Acquisition Act*, if the land is to be used for any of the following legitimate business purposes: (a) land used for ordinary business activities; (b) land used for housing for senior management; and (c) land used for fulfilling land-holding requirements stipulated by pertinent laws. Korea reserves the right to adopt or maintain any measure with respect to the acquisition of farmland by foreign persons.
Existing Measures	Foreigner's Land Acquisition Act (Law No. 8179, February 29, 2008), Articles 2 through 6 Farmland Act (Law No. 8852, January 29, 2008), Article 6

5.

Sector	Firearms, swords, explosives, etc.
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to the firearms, swords and explosives sector, including manufacture, use, sale, storage, transport, import, export and possession of firearms, swords and explosives.
Existing Measures	Control of Firearms, Swords, Explosives, etc. Act Control of Shooting and Shooting Range Act.

6.

Sector	Disadvantaged Groups
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure that accords rights or preferences to socially or economically disadvantaged groups, such as the disabled, persons who have rendered distinguished services to the state, and ethnic minorities.
Existing Measures	None

7.

Sector	National Electronic / Information System * Including the national geographical information system
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure affecting the administration and operation of any state-owned electronic information system that contains proprietary government information or information gathered pursuant to the regulatory functions and powers of the government. This entry does not apply to payment and settlement systems related to financial services.
Existing Measures	

8.

Sector	Social Services
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for public purposes: income security or insurance, social security or insurance, social welfare, public training, health, and child care.
Existing Measures	None

9.

Sector	All Manufacturing Sectors
Sub-Sector	
Industry Classification	
Type of Reservation	Performance Requirements (Article 10.5)
Description	Korea reserves the right to adopt or maintain any measure with respect to the following measures: the obligation to recycle products and packaging materials; the submission of recycling performance plans and results; payment of applicable recycling levies. Manufacturers who are under recycling duties and those to whom such manufacturers have entrusted their recycling duties shall follow the recycling standards for their products and packaging materials prescribed by the Minister of Environment. Furthermore, the above persons shall submit the recycling duty performance plans and result reports each year, and shall pay the recycling levy in case of failure to satisfy the amounts of the prescribed recycling duty.
Existing Measures	Act on the Promotion of Saving and Recycling of Resources(Law No. 8852, Feb.29, 2008), Article 16, 17, 18, 19 and 27 Act for Resource Recycling of Electrical and Electronic equipment and vehicle(Law No. 8852, Feb.29, 2008), Article 15, 16 and 17

10.

Sector	Sale, maintenance and repair of low-emission motor vehicles
Sub-Sector	
Industry Classification	
Type of Reservation	Performance Requirements (Article 10.5)
Description	Korea reserve the right to adopt or maintain any measure with respect to the following measures: the obligation to distribute a certain percentage of low-emission motor vehicles; the submission and approval of plans to distribute low-emission motor vehicles. A distributor of motor vehicles shall submit an annual plan to supply low-emission motor vehicles in accordance with the annual popularization standard of low-emission motor vehicle (1.5%, 2006). The distributor shall obtain approval of the plan by the Minister of Environment and report business results to the Minister of Environment
Existing Measures	Special Act on Metropolitan Air Quality Improvement(Law No. 9036, Mar.28, 2008), Article 23 Enforcement Decree(Presidential Decree No. 21033, Sep.25, 2008), Article 26

11.

Sector	Atomic Energy
Sub-Sector	Nuclear Power Generation; Manufacturing and Supply of Nuclear Fuel; Nuclear Materials; Radioactive Waste Treatment and Disposal (including treatment and disposal of spent and irradiated nuclear fuel); Radioisotope and Radiation Generation Facilities; Monitoring Services for Radiation; Services Related to Nuclear Energy; Planning, Maintenance, and Repair Services
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to the atomic energy industry.
Existing Measures	The Electricity Business Act (Law No. 9017, Mar. 28, 2008)

12.

Sector	Energy Industry
Sub-Sector	Electric Power Generation other than Nuclear Power Generation; Electric Power Transmission, Distribution, and Sales; Electricity Business
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to electric power generation, transmission, distribution, and sales. Any such measure shall not decrease the level of foreign ownership permitted in the electric power industry as provided by the entry in Korea's Schedule to Annex I related to Energy Industry (electric power). Notwithstanding this entry, Korea shall not adopt or maintain any measure inconsistent with Article 5 (Performance Requirement.1.(f))
Existing Measures	Article 203 of the Securities and Exchange Act (Law No. 8985, March. 21, 2008) Article 87-2 of its Enforcement Decree (Presidential Decree No. 20653, February. 29, 2008) Articles 7, 73-5 and 78 of the Electricity Business Act (Law No. 9017, Mar. 28, 2008) Articles 4 and 5 of the Foreign Investment Promotion Act (Law No. 9071, Mar. 28, 2008) Article 5 of its Enforcement Decree (Presidential Decree No. 20947, July.29, 2008) Article 5 of the Regulations on Foreign Investment and Technology Inducement (The Ministry of Knowledge Economy Notice No. 2008-141 October. 1, 2008)

13.

Sector	Energy Industry
Sub-Sector	Gas industry
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to the import and wholesale distribution of natural gas and the operation of terminals and the national high pressure pipeline network. Any such measure shall not decrease the level of foreign ownership permitted in the gas industry as provided by the entry in Korea's Schedule to Annex I related to Energy Industry (gas industry).
Existing Measures	Article 19 of the Act on the Improvement of Managerial Structure and Privatization of Public Enterprises (Law No. 8852, Feb 29, 2008) Article 1 of the Korea Gas Corporation Act (Law No. 8976, Mar 21, 2008) Articles 1, 3, 11, 15, 16, 16-2, 16-3, 17, 17-2, 18-4, 22, 24, 25, 30, 35 and 43 of the City Gas Business Act (Law No. 9021, Mar 28, 2008) Article 11 of the Articles of Incorporation of the Korea Gas Corporation (Mar. 28, 2008) Article 9 of the Petroleum and Alternative Fuel Business Act (Law No. 8852, Feb. 29, 2008) Article 203 of the Securities and Exchange Act (Law No. 8985, March. 21, 2008) Articles 4 and 5 of the Foreign Investment Promotion Act (Law No. 9017, Mar. 28, 2008)

14.

Sector	Transportation Industry
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to internal waterways transportation, space transportation, international maritime passenger transportation services, maritime cabotage, and the acquisition of Korean vessels.
Existing Measures	

15.

Sector	Motion picture and video tape production and distribution and projection
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5)
Description	Korea reserves the right to adopt or maintain any measure setting criteria for determining whether broadcasting programs and audio-visual contents are Korean.
Existing Measures	Act on Promotion of Motion Pictures and Video Products (Law No. 9004, March 28, 2008), Articles 27, and 40 Enforcement Decree of the Act on Promotion of Motion Pictures and Video Products (Presidential Decree No. 20676, February 29, 2008), Article 10 and 19 Enforcement Regulations of the Act on Promotion of Motion Pictures and Video Products(Ordinance of the Ministry of Culture, Sports and Tourism No. 1, March 6, 2008), Article 5 Notice on Programming Ratio (Korea Communications Commission No. 2008-72, May 18, 2008)

16.

Sector	Motion picture and video tape production and distribution and projection
Sub-Sector	
Industry Classification	
Type of Reservation	Performance Requirements (Article 10.5)
Description	Korea reserves the right to adopt or maintain any preferential co-production arrangement for film or television productions. Official co-production status, which may be granted to a co-production produced under such a co-production arrangement, confers national treatment on works covered by a co-production arrangement.
Existing Measures	Act on Promotion of Motion Pictures and Video Products (Law No. 9004, March 28, 2008), Articles 25 Notice on Programming Ratio (Korea Communications Commission No. 2008-72, May 18, 2008)

17.

Sector	Real Estate Services (not including Real Estate Brokerage and Appraisal Services)
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to real estate development and supply.
Existing Measures	

18.

Sector	Cadastral Map-Making
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	Korea reserves the right to adopt or maintain any measure with respect to cadastral surveying services and cadastral map making.
Existing Measures	

19.

Sector	Business and Environmental Services -
Sub-Sector	Examination, Certification, and Classification of Agricultural Raw Materials and Live Animals (nong chuk san mul)
Industry Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	Korea reserves the right to adopt or maintain any measure with respect to examination, certification, and classification of agricultural raw materials and live animal products. For greater certainty, this entry does not include examinations or testings performed on behalf of producers in advance of the official examinations or testings.
Existing Measures	

20.

Sector	Agriculture, Hunting, Forestry, Fishing and related service activities
Sub-Sector	
Industry Classification	ISIC 01, 05
Type of Reservation	National Treatment (Article 10.3) Performance Requirements (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to services incidental to agriculture, forestry, and livestock, including genetic improvement, artificial insemination, rice and barley polishing, and activities related to a rice processing complex. Korea reserves the right to adopt or maintain any measure with respect to the supply of services incidental to agriculture, hunting, forestry, and fishing by the Agricultural Cooperatives, the Forestry Cooperatives, and the Fisheries Cooperatives.
Existing Measures	

21.

Sector	Fishing
Sub-Sector	Fishing, aquaculture and service activities incidental to fishing
Industry Classification	ISIC 05
Type of Reservation	National Treatment (Articles 10.3)
Description	Korea reserves the right to adopt or maintain any measure with respect to fishing, aquaculture and service activities incidental to fishing.
Existing Measures	Government Policy

22.

Sector	Printing and publishing
Sub-Sector	Publishing of Newspapers
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Senior Management and Boards of Directors (Articles 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to the publishing (including printing and distribution) of newspapers.
Existing Measures	Articles 13, 14 and 26 of the Act on the Guarantee of Freedom and Function of Newspapers, Etc. (Law No. 8852, February 29, 2008) Articles 8, 17, 18, 19 and 20 of its Enforcement Decree (Presidential Decree No. 20676, February 29, 2008)

23.

Sector	Social Services
Sub-Sector	Human Health Services
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Performance Requirements (Articles 10.5) Senior Management and Boards of Directors (Articles 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to human health services. This entry shall not apply to the preferential measures provided in the Act on Designation and Management of Free Economic Zones (Law No. 9071, March. 28, 2008), and the Special Act on Establishment of Jeju Special Self-Governing Province and Creation of Free International City (Law No, 9045, March. 28, 2008) relating to establishment of medical facilities, pharmacies, and similar facilities, and the supply of remote medical services to those geographical areas specified in those Acts.
Existing Measures	None

24.

Sector	Motion picture and video tape production and distribution and projection
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Performance Requirements (Articles 10.5)
Description	Korea reserves the right to adopt or maintain any measure with respect to motion picture projection (including electronic transmission), promotion, advertising, or post-production services.
Existing Measures	Act on Promotion of Motion Pictures and Video Products (Law No. 9004, March 28, 2008) Enforcement Decree of the Act on Promotion of Motion Pictures and Video Products (Presidential Decree No. 20676, February 29, 2008)

25.

Sector	Library, Museum and Other Cultural Services
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Performance Requirements (Articles 10.5) Senior Management and Boards of Directors (Articles 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to the conservation and restoration of cultural heritage and properties, including the excavation, appraisal, or dealing of cultural heritage and properties
Existing Measures	Articles 18, 44 and 61 of the Protection of Cultural Properties Act (Law No. 9002, March 28, 2008)

26.

Sector	Tourism in rural, fishery, and agricultural sites
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3)
Description	Korea reserves the right to adopt or maintain any measure with respect to tourism in rural, fishery, and agricultural sites.
Existing Measures	None

27.

Sector	Gambling and Betting
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Performance Requirements (Articles 10.5) Senior Management and Boards of Directors (Articles 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to gambling and betting services. For great certainty, "gambling and betting" includes such services supplied through electronic transmission and services that use sa-haeng-seong-ge-im-mul. "Sa-haeng-seong-ge-im-mul," as defined in Article 2 of Korea's Game Industry Promotion Act, includes, inter alia, gaming instruments which result in financial loss or gain through betting or by chance.
Existing Measures	Articles 5, 21 and 28 of the Tourism Promotion Act (Law No.9005, Feb. 29, 2008) Article 11 of the Special Act on the Assistance to the Development of Abandoned Mine Areas (Law No. 9037, March. 28, 2008) Articles 24, 25 and 26 of the National Sports Promotion Act (Law No. 8852, Feb. 29, 2008) Articles 4, 19 and 24 of the Bicycle and Motorboat Racing Act (Law No. 8852, Feb. 29, 2008) The Korean Racing Association Act (Law No. 7547, May 31, 2005) The Act on Traditional Bullfighting (Law No. 7428, Mar. 31, 2005) Articles 2, 21 and 22 of Game Industry Promotion Act (Law No. 8852, February 29, 2008) Act on Special Cases concerning the Regulation and Punishment of Speculative Acts, etc (Law No. 8852, February 29, 2008) Articles 246, 247, 248 and 249 of Criminal Law (Law No. 7623, July 29, 2005)

28.

Sector	All Sectors
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Performance Requirements (Articles 10.5) Senior Management and Boards of Directors (Articles 10.6)
Description	Korea reserves the right to adopt or maintain any measure with respect to an investment to supply a service in the exercise of governmental authority, such as law enforcement and correctional services. This entry does not apply to an investor or investment that has entered into an agreement with Korea with respect to the supply of such services.
Existing Measures	

29.

Sector	All Services Sectors
Sub-Sector	
Industry Classification	
Type of Reservation	National Treatment (Articles 10.3) Performance Requirements (Articles 10.5) Senior Management and Boards of Directors (Articles 10.6)
Description	Korea reserves the right to adopt or maintain any measure relating to investments in services sectors subject to the condition that they do not violate the obligations under the Services Chapter.
Existing Measures	

ANNEX II

Schedule of India

Agriculture, hunting and forestry

1.

Sector	Agriculture
Sub-Sector	All agriculture activities like farming and plantation.
Industrial Classification	NIC 00 (Agricultural production); NIC 01 (Plantation)
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure with respect to farming and all agriculture activities except Floriculture, Horticulture, Development of seeds, Animal husbandry, Pisciculture, Aqua-culture and Cultivation of Vegetables and Mushrooms under controlled conditions* and services related to agro and allied sectors**.
Existing Measure	

* 'under controlled conditions' means in a non-natural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include but are not limited to tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding or protection from weather.

** 'services related to agro and allied sectors' includes pest destroying, spraying and pruning of infected stems, operation of irrigation system, animal shearing and livestock services (other than veterinary services), nursery and horticultural services, soil conservation services, soil desalination services, harvesting, threshing, land clearance, land draining services.

Agriculture, hunting and forestry

2.

Sector	Farming of Animals
Sub-Sector	Farming of cattle, sheep goats, horses, asses, mules and hinnies; dairy farming including mixed farming.
Industrial Classification	ISIC 0121, 0122, 013, 0130, 014, 0140, 015, 0150
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure with respect to farming of cattle, sheep goats, horses, asses, mules and hinnies; dairy farming including mixed farming.
Existing Measure	

* hinnies means a breed of ass.

** mixed farming means cultivation and dairying.

Agriculture, hunting and forestry

3.

Sector	Forestry
Sub-Sector	Forestry, logging and related service activities
Industrial Classification	NIC- 05 ISIC 02, 020, 0200
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure with respect to forestry, logging and related service activities
Existing Measure	

Sector	Fishing
Sub-Sector	Fishing, operation of fish hatcheries and fish farms; service activities incidental to fishing
Industrial Classification	NIC- 06 ISIC 05, 050 and 0500
Type of Reservation	National Treatment (Article 10.3)
Description	India reserves the right to adopt or maintain any measure with respect to fishing, operation of fish hatcheries and fish farms; service activities incidental to fishing

Existing Measure

Manufacturing.

5.

Sector	Dairy products
Sub-Sector	Manufacture of milk powder, ice-cream powder, condensed milk, butter, cream, cheese, ghee, khoya etc., pasteurized milk.
Industrial Classification	ISIC 152 & 1520 NIC 201.1, 201.2, 201.3, 201.4, 201.5 and 201.9
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to manufacture of dairy products
Existing Measure	

* Khoya means a derivative of Milk.

Manufacturing

6.

Sector	Canning and preservation of fruits and vegetables.
Sub-Sector	Artificial dehydration of fruits and vegetables, sun-drying of fruits & vegetables, radiation preservation of fruits & vegetables, manufacture of fruits/vegetable juices/concentrates/squashes and powders, manufacture of sauces, jams, jellies and marmalades, manufacture of pickles, canning of fruits and vegetables, fruits and vegetables preservation.
Industrial Classification	NIC 202.1, 202.2, 202.3, 202.4, 202.5, 202.6, 202.7 and 202.9
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to canning and preservation of fruits and vegetables.
Existing Measure	

Manufacturing

7.

Sector	Processing, Canning and preservation of fish, crustacean and similar foods.
Sub-Sector	Sun-drying of fish, radiation preservation of fish and similar foods, processing and canning of fish, manufacture of fish meal, processing and canning of frog legs.
Industrial Classification	ISIC 151 & 1512 NIC 203.1, 203.2, 203.3, 203.4, 203.5, 203.6, and 203.9
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to processing, canning and preservation of fish, crustacean and similar foods.
Existing Measure	

Manufacturing

8.

Sector	Bakery Products.
Sub-Sector	Bread making, manufacture of biscuits, cakes and pastries
Industrial Classification	ISIC 1541 NIC 205.1, 205.2, 205.9.
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to manufacture of bakery products.
Existing Measure	

Manufacturing

9.

Sector	Hydrogenated oils, vanaspati, ghee* etc. and Vegetable oils
Sub-Sector	Manufacture of hydrogenated oils, vanaspati, ghee, vegetable oils and fats.
Industrial Classification	ISIC 1514 NIC 210 and 211- 211.1, 211.2, 211.3.
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to manufacturing hydrogenated oils, vanaspati, ghee and vegetable oils
Existing Measure	

* 'ghee' means clarified butter.

Manufacturing

10.

Sector	Distilling, rectifying and blending of spirits, ethyl alcohol production from fermented materials and manufacture of wines
Sub-Sector	Manufacture of wines, malt liquors, beer
Industrial Classification	ISIC 1551, 1552, 1553 NIC 220, 221 and 222- 222.1, 222.2, 222.3
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure with respect to distilling, rectifying and blending of spirits, ethyl alcohol production from fermented materials and manufacture of wines.
Existing Measure	

Manufacturing

11.

Sector	Wood and Wood Products
Sub-Sector	Sawing and Planing of Wood; manufacture of veneer sheets, plywood, and their products; manufacture of structural wooden goods; manufacture of wooden containers; manufacture of wooden industrial goods; manufacture of cork and cork products; manufacture of wooden furniture and fixtures; manufacture of bamboo and cane furniture and fixtures.
Industrial Classification	ISIC -201, 202, 2021,2022,2023 and 2029 NIC- 270, 271,272, 273,274,275, 276,277,279.
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to manufacture of Wood and Wood Products.
Existing Measure	

Manufacturing

12.

Sector	Leather
Sub-Sector	Tanning, curing, finishing, embossing, japanning of leather; manufacture of leather footwear; manufacture of leather apparel; manufacture of consumer goods of leather; scrapping, currying, tanning, bleaching and dyeing of fur and other pelts for leather trade; manufacture of leather and fur products.
Industrial Classification	ISIC- 182,1820, 19,191,1911,1912, 192,1920 NIC- 290, 291, 292, 293, 294, 295, 296, 299.
Type of Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to manufacture of Leather and Leather Products
Existing Measure	

Manufacturing

13.

Sector	Cement and Asbestos
Sub-Sector	Manufacture of cement, lime and plaster; manufacture of mica products; stone dressing and crushing; manufacture of asbestos cement and other cement products.
Industrial Classification	ISIC- 2694,2695, 2696 NIC- 324, 325, 326.1, 327
Type of Reservation	Performance Requirement (Article 10.5)
Description of Reservation	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to manufacture Cement, lime and plaster, mica products, stone dressing and crushing, asbestos cement and other cement products.
Existing Measure	

Manufacturing

14.

Sector	Air-conditioner, refrigerators and fire fighting equipments
Sub-Sector	Manufacture of refrigerators, air-conditioners and fire-fighting equipments
Industrial Classification	NIC- 355
Type of Reservation	Performance Requirement (Article 10.5)
Description of Reservation	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations on Performance Requirements in the Investment Chapter with respect to manufacture of Air-conditioner, refrigerators and fire fighting equipments.
Existing Measure	

Manufacturing

15.

Sector	Industrial explosives, safety fuse, detonators, fireworks
Sub-Sector	
Industrial Classification	NIC 308
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations with respect to manufacture of industrial explosives, safety fuse, detonators, fireworks sector, including manufacture, use, sale, storage, transport, importation, exportation and possession of arms and explosives
Existing Measure	

Manufacturing

16.

Sector	Manufacture of Hazardous chemicals
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations with respect to regulating the manufacture, use, sale, storage, transport, importation, exportation and possession of hazardous chemicals
Existing Measure	

Manufacturing

17.

Sector	Tobacco stemming, manufacture of bidi, manufacture of cigarettes and cigars of tobacco and tobacco products
Sub-Sector	Stemming of tobacco, redrying and all other operations connected with preparing raw leaf tobacco; manufacture of bidi, cigars, cigarettes, snuff, chewing tobacco.
Industrial Classification	ISIC 16 & 1600 NIC- 225, 226, 227, 228 and 229
Type of	National Treatment (Article 10.3)
Reservation	Performance Requirement (Article 10.5)
Description	India reserves the right to adopt or maintain any measure which is non-conforming to the obligations with respect to regulating the manufacture, sale, use, transportation, import, export of tobacco and tobacco products

Existing Measure

18.

Sector	All Services Sectors
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	India reserves the right to adopt or maintain any measure relating to investments in services sectors subject to the condition that they do not violate the obligations under the Services Chapter.
Existing Measure	

19.

Sector	All Sectors
Sub-Sector	
Industrial Classification	
Type of Reservation	Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	India reserves the right to adopt or maintain any measure relating to investments as per the laws and regulations framed by the State Governments.
Existing Measure	

20.

Sector	All Sectors
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	India reserves the right to adopt or maintain any measure that accords rights or preferences to economically backward regions or groups in the interest of balanced development of the economy and maintenance of social equality.
Existing Measure	

21.

Sector	All Sectors
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3) Performance Requirement (Article 10.5) Senior Management and Boards of Directors (Article 10.6)
Description	India reserves the right to adopt or maintain any measure with regard to transfer or disposition of equity interests or assets held by the State enterprises or Governmental authorities. India reserves the right to adopt or maintain any measure with respect to the transfer of all or any portion of services provided in the exercise of the governmental authority. Such a measure shall be implemented in accordance with the provisions of Article 10.7 (Transparency) in the Investment chapter. For the purposes of this reservation: A state-owned enterprise shall mean any enterprise owned or controlled by the Government of India or any of the State Governments by means of equity ownership and shall include any enterprise created, on or after the effective date of this Agreement, for the sole purpose of selling or disposing of equity interests or assets of an existing state-owned enterprise or government entity.
Existing Measure	

22.

Sector	Acquisition of Land
Sub-Sector	
Industrial Classification	
Type of Reservation	National Treatment (Article 10.3)
Description	India reserves the right to adopt or maintain any measure with respect to the acquisition of agricultural land by non-residents and acquisition of land by non-residents for agriculture or plantation activity.
Existing Measures	

CHAPTER ELEVEN
COMPETITION

ARTICLE 11.1: PURPOSE

The purposes of this Chapter are to contribute to the protection of the benefits of trade liberalisation through cooperation in the promotion of fair competition and to strengthen the Parties' cooperation and coordination on competition law enforcement.

ARTICLE 11.2: DEFINITIONS

For the purposes of this Chapter:

competition law includes:

(a) for Korea, the *Monopoly Regulation and Fair Trade Act* (LAW No. 8863, 29 February 2008), as amended;

(b) for India, the *Competition Act 2002,* as amended; and

(c) any changes that the legislations in subparagraphs (a) and (b) may undergo after the date of entry into force of this Agreement; and

competition authority means:

(a) for Korea, the "Fair Trade Commission"; and

(b) for India, the "Competition Commission of India"; and "Competition Appellate Tribunal."

ARTICLE 11.3: CONSULTATIONS

Upon the request of either Party, the Parties may enter into consultations regarding matters arising under this Chapter, including the elimination, subject to their respective competition laws, of anti-competitive practices that affect trade or investment between the Parties.

ARTICLE 11.4: COOPERATION

1. The Parties recognise the importance of cooperation between them and consultation between their respective competition authorities for effective competition law enforcement.

2. After coming into force of the *Competition Act* of India in its entirety, consultations between the Parties and the respective competition authorities may be undertaken as appropriate on various matters relating to competition, including capacity building, exchange of information, notification procedures and principles of comity.

ARTICLE 11.5: NON-APPLICATION OF DISPUTE SETTLEMENT PROVISIONS

Chapter Fourteen (Dispute Settlement) shall not apply to any matter or dispute arising under this Chapter.

CHAPTER TWELVE
INTELLECTUAL PROPERTY RIGHTS

ARTICLE 12.1: DEFINITIONS

For the purposes of this Chapter:

PCT means the Patent Cooperation Treaty administered by the World Intellectual Property Organization;

CGPDTM means the Office of the Controller General of Patents, Designs and Trademarks of the Republic of India; and

KIPO means the Korean Intellectual Property Office of the Republic of Korea.

ARTICLE 12.2: GENERAL OBLIGATIONS

Each Party reaffirms its rights and obligations under the TRIPS Agreement, and, in accordance with that Agreement, shall provide adequate and effective protection to intellectual property rights of the nationals (natural or juridical persons) of the other Party in its territory.

ARTICLE 12.3: MORE EXTENSIVE PROTECTION

Each Party may provide in its laws more extensive protection of intellectual property rights than is accorded under the TRIPS Agreement, provided that it is not inconsistent with this Agreement.

ARTICLE 12.4: ENFORCEMENT

The Parties shall provide in their respective laws for the enforcement of intellectual property rights consistent with the TRIPS Agreement.

ARTICLE 12.5: COOPERATION IN THE FIELD OF INTELLECTUAL PROPERTY

1. The Parties, recognising the growing importance of intellectual property rights as a factor of social, economic and cultural development, shall endeavour to enhance their cooperation in the field of intellectual property.

2. The Parties, in particular, may cooperate in the following areas:

   (a) education, workshops, fairs, etc., in the field of intellectual property for the purposes of contributing to a better understanding of each other's intellectual property policies and experiences;

   (b) international search and international preliminary examination under PCT, and facilitation of international patenting process;

   (c) joint prior art search, including exchanging prior art search result, comparing search result, and reviewing differences of search result;

   (d) licencing of intellectual property, and market intelligence for intellectual property protection;

   (e) plant variety protection;

(f) personnel interchange, including examiners; and

(g) information systems on intellectual property.

3. The Parties may promote cooperation on intellectual property between the KIPO of Korea on one side and the CGPDTM of India, on the other, through separate arrangements as mutually agreed.

ARTICLE 12.6: NON-APPLICATION OF DISPUTE SETTLEMENT PROVISIONS

Chapter Fourteen (Dispute Settlement) shall not apply to any matter or dispute arising under this Chapter.

CHAPTER THIRTEEN
BILATERAL COOPERATION

ARTICLE 13.1: TRADE AND INVESTMENT PROMOTION

1. The Parties, recognising that the exchange and collaboration between the enterprises of the Parties will act as a catalyst to promote trade and investment, shall cooperate in promoting trade and investment activities by public and private enterprises of the Parties.

2. The Parties shall review the cooperation set forth in paragraph 1 and, where appropriate, recommend ways or areas of further cooperation between the Parties.

ARTICLE 13.2: ENERGY

1. The Parties, recognising the importance of energy in their respective economies, shall develop and promote cooperative activities in the field of energy.

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following forms:

(a) facilitation of cooperation between the public and private sectors of both Parties for the purpose of oil, gas and mineral resources exploration;

(b) facilitation of cooperation between the public and private sectors of both Parties in the field of strategic storage of crude oil, energy conservation and development of alternative fuels; and

(c) facilitation of cooperation between research institutes and universities of both Parties, including joint research and development projects.

ARTICLE 13.3: INFORMATION AND COMMUNICATIONS TECHNOLOGY

1. The Parties, recognising the rapid development of Information and Communications Technology (hereinafter referred to as "ICT") and of business practices concerning ICT-related services both in the domestic and the international contexts, shall cooperate to promote the development of ICT and ICT-related services with a view to obtaining the maximum benefit of the use of ICT for the Parties.

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following forms:

(a) promoting dialogue on policy issues;

(b) promoting cooperation between public and private sectors of the Parties;

(c) enhancing cooperation in international fora relating to ICT; and

(d) undertaking other appropriate cooperative activities.

3. The cooperation pursuant to paragraph 1 may include, but is not limited to the following areas:

(a) development, processing, management, distribution and trade of digital contents;

(b) business opportunities in third markets; and

(c) mutual recognition of professional ICT certification.

ARTICLE 13.4: SCIENCE AND TECHNOLOGY

1. The Parties, recognising the importance of science and technology in their respective economies, shall develop and promote cooperative activities in the field of science and technology.

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following forms:

(a) exchange of scientists, researchers, and experts;

(b) exchange of documentation and information of a scientific and technological nature;

(c) exchange of science and technology policy and research and development systems;

(d) joint organisation of seminars, symposia, conferences and other scientific and technological meetings including Technology Summit;

(e) implementation of joint research and development activities in fields of mutual interest as well as exchange of the results of such research and development activities;

(f) cooperation in the commercialisation of the results of scientific and technological activities; and

(g) any other forms of scientific and technological cooperation agreed upon by the Parties.

3. The cooperation pursuant to paragraph 1 may include, but is not limited to the following areas:

(a) nanoscience and technology;

(b) biotechnology;

(c) information technology;

(d) advanced materials;

(e) high energy physics;

(f) space technology; and

(g) science and technology policy and research and development systems.

ARTICLE 13.5: SMALL AND MEDIUM ENTERPRISES

1. The Parties, recognising the fundamental role of small and medium enterprises (hereinafter referred to as "SMEs") in maintaining the dynamism of their respective

national economies, shall cooperate in promoting close cooperation among SMEs as well as the relevant agencies of the Parties.

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following forms:

(a) establishing networking opportunities for SMEs of the Parties to facilitate collaboration or sharing of best practices, such as in the field of management skill development including training programmes for SME managers, technology transfers, product quality improvements, supply-chain linkages, information technology, access to financing and technical assistance;

(b) facilitating the investment flows by the Parties;

(c) supporting the organisation of fairs and exhibitions; and

(d) encouraging their relevant agencies to discuss, cooperate and share information and experiences in the development of SMEs policy and programmes.

ARTICLE 13.6: INFRASTRUCTURE AND TRANSPORTATION

1. The Parties, acknowledging the importance of infrastructure and transportation in their respective economies, shall develop and promote cooperative activities in these fields.

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following areas:

(a) highways, power plants, ports and airport construction;

(b) infrastructure development and industrial plant construction;

(c) development of infrastructure of roads and railroads;

(d) maritime transportation; and

(e) any other forms of cooperation agreed upon by the Parties.

ARTICLE 13.7: AUDIO-VISUAL CONTENT

1. The Parties, recognising the importance of broadcasting, film, animation, and game [1] as a means of promoting cultural exchange and understanding the rapid development of audio-visual technology, agree to facilitate cooperation in these fields between the Parties.

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following areas:

(a) promoting regular exchange of views on general audio-visual issues;

(b) encouraging cooperation and exchange between audio-visual industries of the Parties;

[1] Game does not include gambling, which means risking something of value in the expectation of receiving prizes upon the outcome of a game of chance.

(c) facilitating cooperation between the Parties in the fields of audio-visual content, (including broadcasting programme, film, animation, game and visual effects); and

(d) encouraging visits and participation in international audio-visual events held in the territory of the other Party.

3. The Parties may promote cooperation on broadcasting, film, animation, and game between the Ministry of Culture, Sports and Tourism of Korea and the Korea Communications Commission on one side and the Ministry of Information and Broadcasting of India, on the other, through separate arrangements as mutually agreed.

ARTICLE 13.8: TEXTILE AND LEATHER

1. The Parties, recognising the fact that both Korea and India are major exporters of textile and leather products, shall promote cooperative activities in these fields.

2. Such cooperative activities pursuant to paragraph 1 may include, but are not limited to the following:

(a) facilitating collaboration, including training for textile and leather products in the areas of product development, quality upgradation, fashion, designing and textile engineering; and

(b) holding of fairs and exhibitions.

ARTICLE 13.9: PHARMACEUTICALS

1. The Parties, acknowledging the importance of human health, agree to facilitate cooperation in fields of pharmaceuticals:

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following forms:

(a) cooperation in the development of traditional medicinal products based on herbs;

(b) collaboration in research and development of pharmaceuticals including generic drugs; and

(c) exchange of information on domestic regulations in the fields of pharmaceuticals, clinical trials, vaccine and blood products.

ARTICLE 13.10: TOURISM

1. The Parties, recognising that enhanced people to people contacts and exchanges are crucial in improving bilateral trade and investment and that tourism plays a very significant role in increasing such exchanges, agree to promote cooperative activities in the field of tourism.

2. Such cooperative activities pursuant to paragraph 1 may include, but are not limited to the following:

(a) facilitating the development of tourism infrastructure and facilities;

(b) promoting cultural tourism;

(c) organising familiarisation trips for leading tour operators and travel agents/agencies, tourism journalists and other media representatives;

(d) encouraging tourist traffic between the Parties for medical treatment, international conferences and conventions, and entertainment; and

(e) exchange of information in areas such as tourism publicity and promotion; legislation related to tourism; sustainable development of tourism, including eco-tourism and research; and education and studies in the field of tourism.

ARTICLE 13.11: HEALTH CARE

1. The Parties, recognising the importance of human health and the capacity of the Parties in the field of modern and traditional health care, agree to promote cooperative activities in the fields of health care.

2. Such cooperative activities pursuant to paragraph 1 may include, but are not limited to the following:

(a) organisation of conferences of health professionals;

(b) exchange of programmes between medical educational institutions;

(c) sharing of information and experience in modern and traditional health care system; and

(d) collaborative research in the fields of preventive and curative medicine and health care.

ARTICLE 13.12: GOVERNMENT PROCUREMENT

1. The Parties, recognising the importance of government procurement in their respective economies, shall endeavour to promote cooperative activities between the Parties in the field of government procurement.

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following areas:

(a) promoting the exchange of information and views on government procurement policies and regulatory framework;

(b) providing each other with accumulated knowledge, experience and information;

(c) facilitating the exchange of knowledge, experience and information on e-Procurement; and

(d) designating contact points for information exchange.

ARTICLE 13.13: RENEWABLE ENERGY RESOURCES

1. The Parties, recognising the importance of development of renewable energy resources in their respective economies, agree to cooperate in research, design and development of various renewable energy technologies, including solar, wind, bioenergy,

and others as mutually agreed.

2. The cooperation pursuant to paragraph 1 may include, but is not limited to the following forms:

(a) exchange of policy and technical information;

(b) exchange of personnel including scientists, policy makers, and other experts;

(c) organisation of joint seminars, workshops, etc.;

(d) promoting joint research and development projects; and

(e) facilitating investments and joint ventures.

3. The sharing of costs and intellectual property rights could be as mutually agreed on a case to case or project to project basis.

ARTICLE 13.14: NON-APPLICATION OF DISPUTE SETTLEMENT PROVISIONS

Chapter Fourteen (Dispute Settlement) shall not apply to any matter or dispute arising under this Chapter.

CHAPTER FOURTEEN
DISPUTE SETTLEMENT

ARTICLE 14.1: COOPERATION

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 14.2: SCOPE AND COVERAGE

1. Unless the Parties otherwise agree elsewhere in this Agreement, 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 whenever 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 Chapters Two (Trade in Goods), Three (Rules of Origins), and Six (Trade in Services) is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. Unless the Parties otherwise agree, the timeframes and procedural rules set out in this Chapter and its Annex 14-A shall apply to all disputes governed by this Chapter.

3. Arbitral award consisting of findings, determinations and recommendations of an arbitral panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

4. This Chapter may be invoked in respect of any measure affecting the observance of this Agreement taken by:

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

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

When an arbitral panel has ruled that a provision of this Agreement has not been observed, the Party concerned shall take such reasonable measures as may be available to it to ensure its observance within its territory.

5. The Parties and the arbitral panel appointed under this Chapter shall interpret and apply this Agreement in the light of the objectives of this Agreement and in accordance with customary rules of interpretation of public international law.

ARTICLE 14.3: CHOICE OF FORUM

1. Disputes regarding any matter covered both by this Agreement and the WTO Agreement or any agreement negotiated thereunder, or any successor agreement thereto, may be settled in the forum selected by the complaining Party.

2. Once dispute settlement procedures are initiated under Article 14.6 or under Article 6 of *the Understanding on Rules and Procedures Governing the Settlement of Disputes* contained in Annex 2 to the WTO Agreement, the forum thus selected shall be used to the exclusion of the other.

ARTICLE 14.4: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any matter described in Article 14.2 by delivering written notification to the other Party.

2. If a request for consultations is made, the Party to which the request is made shall reply to the request within ten days after the date of its receipt and shall enter into consultations within 30 days after the date of receipt of the request with a view to reaching a mutually satisfactory solution.

3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the measure is affecting the operation of this Agreement; and

(b) treat the consultations and the information exchanged therein as confidential.

ARTICLE 14.5: GOOD OFFICES, CONCILIATION OR MEDIATION

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. Proceedings involving good offices, conciliation or mediation and the particular positions taken by the Parties in these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Chapter or any other proceedings before a forum selected by the Parties.

3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral panel established under Article 14.6.

ARTICLE 14.6: REQUEST FOR AN ARBITRAL PANEL

1. A Party may request in writing for the establishment of an arbitral panel, if the matter has not been resolved under Article 14.4 within 45 days after the date of receipt of the request for consultations.

2. A request for arbitration shall give the reasons for the complaint including the identification of the measure at issue and indication of the legal basis of the complaint.

3. Unless the Parties otherwise agree, an arbitral panel shall be established upon delivery of the request and perform its functions in accordance with the provisions of this Chapter.

ARTICLE 14.7: COMPOSITION OF ARBITRAL PANELS

1. The arbitral panel referred to in Article 14.6 shall normally consist of three members. Each Party shall appoint a member within 30 days of the receipt of the request

under Article 14.6. The Parties shall jointly appoint the third member, who shall serve as the chair of the arbitral panel, within 30 days after the appointment of the second member. If either Party fails to appoint its member within such period, the member appointed by the other Party shall act as the sole arbitrator.

2. If the Parties are unable to agree on the chair of the arbitral panel, they shall, within the next ten days, exchange their respective lists comprising four nominees each who shall not be nationals of either Party. The chair shall then be appointed in the presence of both Parties by draw of lot from the lists within 40 days from the date of appointment of the second member. If a Party fails to submit its list of four nominees, the chair shall be appointed by draw of lot from the list already submitted by the other Party.

3. If a member of the arbitral panel appointed under this Article becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original member and the successor shall have all the powers and duties of the original member. In such a case, any time period applicable to the arbitral panel proceedings shall be suspended for a period beginning the date when the original member becomes unable to act and ending on the date when the new member is appointed.

4. If the sole arbitrator or the chair appointed in accordance with paragraph 1 or 2 is replaced, any hearings held previously shall be repeated. If any member of the arbitral panel is replaced, such hearings may be repeated at the discretion of the arbitral panel.

5. Any person appointed as a member of the arbitral panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the basis of impartiality, objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitration proceedings. If a Party believes that a member is in violation of the basis stated above, the Parties shall consult and if they agree, the member shall be replaced by a new member in accordance with this Article. Unless the Parties agree otherwise, the chair shall not have his or her usual place of residence in the territory of, nor be employed by, either Party.

ARTICLE 14.8: TERMINATION OF PROCEEDINGS

The Parties may agree to terminate the proceedings before an arbitral panel at any time by jointly notifying the chair to this effect. The arbitration proceedings may be terminated at any time, but before issuance of the initial report under Article 14.11, if the complaining Party withdraws its complaint.

ARTICLE 14.9: PROCEEDINGS OF ARBITRAL PANELS

1. Unless the Parties otherwise agree, the arbitral panel shall follow the model rules of procedure in the Annex 14-A, which shall ensure:

(a) confidentiality of the proceedings and all written submissions to, and communications with, the panel;

(b) that the arbitral panel meets in closed session;

(c) a right to at least one hearing before the arbitral panel;

(d) an opportunity for each Party to provide initial and rebuttal submissions;

(e) that a Party may make available to the public at any time its own written

submissions, subject to subparagraph (g);

(f) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to Article 14.11.3; and

(g) the protection of confidential information.

2. The arbitral panel may, after consulting the Parties, adopt additional rules of procedure not inconsistent with this Chapter and the model rules of procedure in the Annex 14-A.

ARTICLE 14.10: INFORMATION AND TECHNICAL ADVICE

1. Upon the request of a Party, or on its own initiative, the arbitral panel may seek information or technical advice from any person or body that it deems appropriate, provided that the Parties so agree. Any information or technical advice so obtained shall be made available to the Parties.

2. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral panel may request advisory reports in writing from an expert or experts. The arbitral panel may, at the request of a Party or on its own initiative, select, in consultation with the Parties, scientific or technical experts who shall assist the arbitral panel throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral panel.

ARTICLE 14.11: INITIAL REPORT

1. Unless the Parties otherwise agree, the arbitral panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it, pursuant to Article 14.10.

2. Unless the Parties otherwise agree, the arbitral panel shall, within 90 days after the last member is appointed, present to the Parties an initial report containing:

(a) findings of fact and/or law together with reasons;

(b) its determination as to the implementation, interpretation or application of this Agreement or whether the measure at issue is inconsistent with the provisions of this Agreement or causes nullification or impairment of any benefit accruing to a Party under this Agreement, or any other determination requested in the terms of reference; and

(c) its recommendations, if any, on the means to resolve the dispute.

3. The Parties may submit written comments on the initial report within 14 days of its presentation.

4. In case that such written comments by the Parties are received as provided for in paragraph 3, the arbitral panel, on its own initiative or at the request of a Party, may reconsider its report and make any further examination that it considers appropriate after taking into account written comments.

ARTICLE 14.12: FINAL REPORT

1. The arbitral panel shall present its final report to the Parties, within 30 days of presentation of the initial report, unless the Parties otherwise agree.

2. The final report of the arbitral panel shall be made public within 15 days of its delivery to the Parties.

ARTICLE 14.13: IMPLEMENTATION OF FINAL REPORT

1. The final report of an arbitral panel shall be binding on the Parties and shall not be subject to appeal.

2. On receipt of the final report of an arbitral panel, the Parties shall agree on:

(a) the means to resolve the dispute as per the determinations or recommendations, if any, of the arbitral panel; and

(b) the reasonable period of time necessary to implement the report to resolve the dispute. If the Parties fail to agree on the reasonable period of time, either Party may request the original arbitral panel to determine the length of such period, in the light of the particular circumstances of the case. The arbitral panel shall present its determination within 15 days after submission of the request.

3. If, in its final report, the arbitral panel determines that a Party is not in conformity with its obligations under this Agreement or that a Party's measure has caused nullification or impairment, the means to resolve the dispute shall, wherever possible, be to eliminate the non-conformity or the nullification or impairment.

ARTICLE 14.14: NON-IMPLEMENTATION: COMPENSATION AND SUSPENSION OF BENEFITS

1. If the Parties:

(a) are unable to agree on the means to resolve the dispute pursuant to Article 14.13. 2(a) within 30 days of issuance of the final report; or

(b) have agreed on the means to resolve the dispute pursuant to Article 14.13, but the responding Party fails to implement the aforesaid means within 30 days following the expiration of the reasonable period of time determined in accordance with Article 14.13.2(b);

the responding Party shall, if requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensation is reached within 20 days after the Parties have entered into negotiations on compensatory adjustment, the complaining Party may at any time thereafter serve written notice on the responding Party that it intends to suspend the application to that Party of benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspension of benefits 30 days after the date when it served notice on the responding Party under this paragraph, or the date when the arbitral panel issues the report under paragraph 6, whichever is later.

3. Any suspension of benefits shall be restricted to benefits granted to the responding Party under this Agreement.

4. In considering what benefits to suspend under paragraph 2:

(a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral panel has found to be inconsistent with this Agreement or to have caused nullification or impairment; and/or

(b) the complaining Party may suspend benefits in other sectors, if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement, or to have caused nullification or impairment, has been removed, or a mutually satisfactory solution is reached.

6. If the responding Party considers that:

(a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity, nullification or impairment that the arbitral panel has found;

it may request the original arbitral panel to determine the matter. The original arbitral panel shall present its determination to the Parties within 30 days after it is reconvened.

7. Where there is disagreement as to the existence, or consistency with this Agreement, of measures taken to comply with the determinations or recommendations of the arbitral panel, such dispute shall be decided through recourse to the dispute settlement procedures under this Chapter, including, wherever possible resort to the original arbitral panel. The arbitral panel shall provide its report to the Parties within 60 days after the date of referral of the matter to it.

8. If the arbitral panel cannot be reconvened with its original members, the procedures for appointment of the arbitral panel set out in Article 14.7 shall be applied.

ARTICLE 14.15: OFFICIAL LANGUAGE

1. All proceedings and all documents submitted to the arbitral panel shall be in the English language.

2. When an original document submitted to the arbitral panel by a Party is not in English, that Party shall translate it into English and submit it together with the original document.

ARTICLE 14.16: EXPENSES

1. Unless the Parties otherwise agree, the costs of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

2. Each Party shall bear its own expenses and legal costs in the arbitral proceedings.

ANNEX 14-A
MODEL RULES OF PROCEDURE

Application

1. These Rules are established under Article 14.9 and shall apply to dispute settlement proceedings under this Chapter unless the Parties otherwise agree.

Definitions

2. For the purposes of this Annex:

complaining Party means a Party that requests the establishment of a panel under Article 14.6;
responding Party means a Party complained against; and
arbitral panel means an arbitral panel established under Article 14.7.

3. Any reference made in these Rules to an Article, is a reference to the appropriate Article under this Chapter.

Terms of Reference for Panels

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

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral panel pursuant to Article 14.6, to make findings of fact and/or law together with the reasons thereof as well as recommendations, if any, on the means to resolve the dispute, and to deliver the written reports referred to in Articles 14.11 and 14.12."

5. The Parties shall promptly deliver the agreed terms of reference to the panel, upon the designation of the last member of the panel.

6. If the complaining Party argues that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

Written Submissions and Other Documents

7. Each Party shall deliver no less than four copies of its written submission to the panel and a copy to the other Party.

8. A complaining Party shall deliver its initial written submission to the responding Party no later than 15 days after the date on which the last panelist is appointed. The responding Party shall deliver its written submission to the complaining Party no later than 30 days upon receipt of the initial written submission of the complaining Party.

9. In respect of a request, notice or other documents related to the panel proceedings that is not covered by paragraph 7 or 8, each Party shall deliver copies of the documents to the other Party by facsimile, email or other means of electronic transmission.

10. A Party may at any time correct minor errors of a clerical nature in any request, notice, written submission or other documents related to the panel proceedings by delivering a new document clearly indicating the changes.

Operation of Panels

11. 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.

12. Except as otherwise provided for in these Rules, the panel may conduct its business by any means, including by telephone, facsimile transmission and computer links.

13. Only members of the panel may take part in the deliberations of the panel, but the panel may in consultation with the Parties employ such number of assistants, interpreters or translators, or court reporters (designated note takers) as may be required for the proceedings and permit them to be present during such deliberations. The members of the panel and the persons employed by the panel shall maintain the confidentiality of the panel's proceedings unless such information is already made available to the public.

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

Hearings

15. The chair of the panel shall fix the date and time of the hearing in consultation with the Parties and the other members of the panel, and then notify the Parties in writing of the date, time and location of the hearing.

16. The venue for the proceedings of the panel 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 venue of the first sitting to be in the territory of the complaining Party.

17. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the responding Party are afforded equal time for arguments, replies and counter-replies.

Decisions of the Panel

18. The panel shall take its decisions by consensus, provided that where a panel is unable to reach consensus it may take its decisions by majority vote.

Availability of Information

19. A Party may designate specific information included in its written submissions, or that it has presented in the panel hearing, for confidential treatment, to the extent it considers strictly necessary to protect personal privacy or legitimate commercial interests of particular enterprises, public or private, or to address essential confidentiality concerns.

20. A Party shall treat as confidential any information submitted by the other Party to the panel that the latter Party has designated as confidential pursuant to paragraph 19.

21. Each Party shall take such reasonable steps as are necessary to ensure that its experts, interpreters, translators, court reporters (designated note takers) and other individuals involved in the panel proceedings maintain the confidentiality of the panel proceedings.

Remuneration and Payment of Expenses

22. 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 their assistants, court reporters (designated note takers) or other individuals that it retains in a panel proceeding in consultation with the Parties.

CHAPTER FIFTEEN
ADMINISTRATIVE AND FINAL PROVISIONS

ARTICLE 15.1: FULFILLMENT OF OBLIGATIONS AND COMMITMENTS

Each Party shall ensure, in its territory, the observance and fulfillment of its obligations and commitments under this Agreement.

ARTICLE 15.2: JOINT COMMITTEE AND REVIEW

1. In addition to the provisions for consultations elsewhere in this Agreement, the Parties hereby establish a Joint Committee comprising the Minister for Trade of Korea and the Minister of Commerce and Industry of India or their designated officials.

2. Unless the Parties agree otherwise, the Joint Committee shall meet within a year of the date of entry into force of this Agreement, and thereafter biennially or otherwise as considered mutually appropriate to monitor or review the implementation of this Agreement.

3. Pursuant to paragraphs 1and 2, the Joint Committee may:

(a) review the implementation and application of the provisions of this Agreement including the work of any committees and working groups established under this Agreement;

(b) establish and delegate responsibilities to any ad hoc or standing committees, working groups or any such groups to:

(i) assign them with tasks on specific matters;

(ii) study and recommend to the Ministers of the Parties any appropriate measures to resolve any issues arising from the implementation or application of any part of this Agreement; or

(iii) consider, upon either Party's request, fresh concessions or issues not already dealt with by this Agreement;

(c) modify the rules of origin as agreed under this Agreement and such modification shall come into force in accordance with Article 15.5; and

(d) consider any other matter that may affect the operation of this Agreement.

ARTICLE 15.3: CONTACT POINTS

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. For the purposes of this Article, the contact points of the Parties are:

(a) for Korea, the Free Trade Agreement Policy Bureau of the Ministry of Foreign Affairs and Trade, or its successor; and

(b) for India, the North-East Asia Division of the Department of Commerce, Ministry of Commerce and Industry, or its successor.

3. For the purposes of this Agreement, all communications or notifications to or by a Party shall be made through its contact point.

ARTICLE 15.4: ANNEXES AND APPENDICES

The Annexes and Appendices to this Agreement shall constitute an integral part of this Agreement.

ARTICLE 15.5: AMENDMENTS

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, such a modification or addition under paragraph 1 shall enter into force and constitute an integral part of this Agreement after the Parties have exchanged written notifications certifying that they have completed necessary internal legal procedures and on such date or dates as may be agreed between the Parties.

ARTICLE 15.6: AMENDMENT OF THE WTO AGREEMENT

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall enter into mutual consultation within six months to consider amending the relevant provision of this Agreement, as appropriate, in accordance with Article 15.5.

ARTICLE 15.7: ENTRY INTO FORCE

This Agreement shall enter into force 60 days after an exchange of written notifications, certifying the completion of the necessary legal procedures of each Party or on such other date as the Parties may agree.

ARTICLE 15.8: TERMINATION

Either Party may terminate this Agreement by written notification to the other Party, and such termination shall take effect six months after the date of the notification unless provided for otherwise elsewhere in this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Seoul, on the 7th August 2009, in two originals, in the English, Korean and Hindi languages. All texts being equally authentic, in case of doubt or difference the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA	FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA