PREAMBLE

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

Strengthening the special bonds of friendship and cooperation between them;

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

Considering the importance of creating opportunities for economic development in light of the differences between the Parties in the level of economic and social development;

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

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

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

Recognizing that this Agreement should be implemented with a view to promoting sustainable development in a manner consistent with environmental protection and conservation; and

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

HAVE AGREED as follows:

CHAPTER TWO
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

ARTICLE 2.1: SCOPE

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

SECTION A: NATIONAL TREATMENT

ARTICLE 2.2: NATIONAL TREATMENT

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

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a sub-central level of government or authority, treatment no less favorable than the most favorable treatment that a sub-central level of government or authority accords to any like, directly competitive, or substitutable goods, as the case may be, of the Party.

3. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2.2.

SECTION B: ELIMINATION OF CUSTOMS DUTIES

ARTICLE 2.3: ELIMINATION OF CUSTOMS DUTIES

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

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

3. If at any moment after the date of entry into force of this Agreement a Party reduces its applied most favored nation (hereinafter referred to as "MFN") customs duty, such customs duty shall apply only if it is lower than the customs duty calculated in accordance with its Schedule to Annex 2-A.

4. On request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2-A. An agreement by the Parties to accelerate the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules to Annex 2-A

for that good when approved by each Party in accordance with its applicable legal procedures.

5. For greater certainty, a Party may:

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

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

6. Either Party may adopt or maintain import measures to allocate in-quota imports made pursuant to a tariff rate quota set out in Appendix 2-A-1, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota.

SECTION C: SPECIAL REGIMES

ARTICLE 2.4: WAIVER OF CUSTOMS DUTIES

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

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

ARTICLE 2.5: TEMPORARY ADMISSION OF GOODS

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

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration;

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

(d) goods admitted for sports purposes.

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

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

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

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

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

(d) be capable of identification when exported;

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

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

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

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

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

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

7. Each Party shall provide that its customs authority or other competent authority relieves the importer or another person responsible for a good admitted under this Article of any liability for failure to export the good on presentation of satisfactory proof to the customs authority of the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Neither Party shall:

(a) prevent a vehicle or container used in international traffic that enters its territory from the territory of the other Party from exiting its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

(b) require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;

(c) condition the release of any obligation, including any security, that it imposes in respect of the entry of a container into its territory on its exit through any particular port of departure; and

(d) require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes the container to the territory of the other Party.

ARTICLE 2.6: GOODS RE-ENTERED AFTER REPAIR OR ALTERATION

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

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

(b) has increased the value of the good.

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

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

(a) destroys the essential characteristics of a good or creates a new or commercially different good; or

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

ARTICLE 2.7: DUTY-FREE ENTRY OF COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE AND PRINTED ADVERTISING MATERIALS

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

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

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

SECTION D: NON-TARIFF MEASURES

ARTICLE 2.8: IMPORT AND EXPORT RESTRICTIONS

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

2. Paragraph 1 shall not apply to the measures set out in Annex 2.2.

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

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

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

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

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

5. Nothing in paragraph 4, prevents a Party from requiring the designation of an agent for the purpose of facilitating communications between the regulatory authorities of the Party and a person of the other Party.

6. For purposes of paragraph 4, **distributor** means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.

ARTICLE 2.9: IMPORT LICENSING

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

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

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

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

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

3. Neither Party shall apply an import licensing procedure to a good of the other Party unless it has provided notification in accordance with paragraph 2.

ARTICLE 2.10: ADMINISTRATIVE FEES AND FORMALITIES

1. Each Party shall ensure that all fees and charges imposed in connection with importation and exportation shall be consistent with their obligations under Article VIII:1 of the GATT 1994 and its interpretive notes, which are hereby incorporated into and made a part of this Agreement, *mutatis mutandis.*

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

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

ARTICLE 2.11: EXPORT DUTIES, TAXES, OR OTHER CHARGES

Except as otherwise provided in Annex 2.11, neither Party may adopt or maintain any duty, tax, or other charge on the export of any good to the territory of the other Party, unless the duty, tax, or charge is also adopted or maintained on the good when destined for domestic consumption.

ARTICLE 2.12: STATE TRADING ENTERPRISES

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

SECTION E: OTHER MEASURES

ARTICLE 2.13: AGRICULTURAL SAFEGUARD MEASURES

1. Notwithstanding Article 2.3, a Party may apply a measure in the form of a higher import duty on an originating agricultural good listed in that Party's Schedule set out in Annex 2-B, consistent with this Article, if the aggregate volume of imports of that good in any year exceeds a trigger level as set out in its Schedule included in Annex 2-B.

2. The higher import duty under paragraph 1 shall not exceed the lesser of:

   (a) the prevailing MFN applied rate;

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

   (c) the duty rate set out in its Schedule included in Annex 2-B.

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

   (a) a bilateral safeguard measure under Chapter 7 (Trade Remedies); or

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

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

5. The Committee on Trade in Goods established under Article 2.16 may review and discuss the implementation and operation of this Article.

6. Neither Party shall apply or maintain an agricultural safeguard measure on an originating agricultural good if the period specified in the agricultural safeguard provisions of the Party's Schedule set out in Annex 2-B has expired.

ARTICLE 2.14: AGRICULTURAL EXPORT SUBSIDIES

Neither Party shall introduce or reintroduce an export subsidy on an agricultural good destined for the territory of the other Party[1].

ARTICLE 2.15: ANDEAN PRICE BAND SYSTEM

Colombia may maintain the Andean Price Band System established in 1994 by Decision 371 of the Andean Community and its modifications with respect to the goods listed in Annex 2-C.

SECTION F: INSTITUTIONAL PROVISIONS

ARTICLE 2.16: COMMITTEE ON TRADE IN GOODS

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of each Party.

2. The Committee shall meet on request of a Party or the Joint Commission to consider matters arising under this Chapter and Chapter 7 (Trade Remedies).

3. The Committee's functions shall include, *inter alia*:

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

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

(c) reviewing the amendments to the Harmonized System to ensure that each Party's obligations under this Agreement are not altered, and consulting to resolve any conflicts between:

(i) such amendments to the Harmonized System and Annex 2-A; or

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

(d) consulting on and endeavoring to resolve any difference that may arise among the Parties on matters related to the classification of goods under the Harmonized System.

[1] The Parties confirm that no subsidized agricultural goods are exported to the other Party. The Parties will consult with a view to resolving issues related to agricultural export subsidies upon request of a Party.

4. The Parties hereby establish an *ad-hoc* Working Group on Trade in Agricultural Goods. In order to address any obstacle to the trade of agricultural goods between the Parties, the *ad-hoc* Working Group shall meet upon request of a Party. The *ad-hoc* Working Group shall report to the Committee on Trade in Goods.

SECTION G: DEFINITIONS

ARTICLE 2.17: DEFINITIONS

For purposes of this Chapter:

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

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

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

duty-free means free of customs duty;

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

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

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

performance requirement means a requirement that:

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

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

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

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

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

but does not include a requirement that an imported good be:

(f) subsequently exported;

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

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

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

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

CHAPTER THREE
RULES OF ORIGIN AND ORIGIN PROCEDURES

SECTION A: RULES OF ORIGIN

ARTICLE 3.1: ORIGINATING GOODS

Except as otherwise provided in this Chapter, a good shall be treated as originating under this Agreement where:

(a) the good satisfies one of the following conditions:

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

(ii) the good satisfies all applicable requirements set out in Annex 3-A, as a result of processes performed entirely in the territory of one or both of the Parties; or

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

(b) the good satisfies all other applicable requirements under this Chapter.

ARTICLE 3.2: WHOLLY OBTAINED OR PRODUCED GOODS

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

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

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

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

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

(e) goods obtained from hunting or trapping within the land territory, or fishing or aquaculture conducted within the territory of one or both of the Parties[1];

[1] Notwithstanding subparagraph (e), goods of sea-fishing and other goods taken from the sea within the territories of the Parties by vessels registered or recorded with a non-Party and flying its flag shall not be

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

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

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

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

(j) waste and scrap derived from:

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

(ii) used goods collected in the territory of one or both of the Parties,

provided that such waste and scrap is fit only for the recovery of raw materials;

and

(k) goods produced entirely in the territory of one or both of the Parties exclusively from goods referred to in this Article or from their derivatives.

ARTICLE 3.3: REGIONAL VALUE CONTENT

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

(a) Build-down Method

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

regarded as wholly obtained or produced entirely in the territory of one or both of the Parties under Article 3.2.

(b) Build-up Method

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

where,

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

AV is the adjusted value of the good;

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

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

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

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

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

Net Cost Method (for Automotive Goods)

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

where,

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

NC is the net cost of the good; and

[2] Paragraph 4 applies solely to goods classified under the following HS headings: 87.01 through 87.05 (motor vehicles) and 87.06 (chassis).

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

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

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

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

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

ARTICLE 3.4: VALUE OF MATERIALS

1. Subject to paragraphs 2 and 3, the value of a material referred to in Article 3.3 shall be:

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

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

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

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

(a) the costs of freight[3], insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of the Parties to the location of the producer;

[3] For greater certainty and for purposes of Articles 3.4.2(a) and 3.4.3(a), "costs of freight" includes the costs of all types of freight, including in-land freight, incurred within a Party's territory, regardless of the mode of transportation.

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

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

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

3. For purposes of paragraph 1, the following, where not included under paragraph 1, may be added to the value of the originating materials:

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

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

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

ARTICLE 3.5: INTERMEDIATE GOODS

1. When an originating good is used in the subsequent production of another good, no account shall be taken of the non-originating materials contained in the originating good for the purpose of determining the originating status of the subsequently produced good.[4]

2. When a non-originating good is used in the subsequent production of another good, notwithstanding Article 3.4, an account shall be taken only of the non-originating materials contained in the non-originating good for the purpose of determining the originating status of the subsequently produced good.

[4] The requirements set out in Annex 3-A shall apply only to non-originating materials used in the production of a good. Accordingly, if a good has acquired originating status by satisfying the requirements set out in Annex 3-A and is used as a material in the production of another good, the requirements applicable to such other good do not apply to the good that is used as a material, and therefore no account shall be taken of any non-originating materials incorporated into such a good used as a material in the production of another good.

ARTICLE 3.6: ACCUMULATION

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

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

ARTICLE 3.7: DE MINIMIS

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3-A is nonetheless originating if the value of all non-originating materials that have been used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good, provided that:

(a) the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement; and

(b) the good meets all other applicable requirements in this Chapter.

2. Paragraph 1 shall not apply to non-originating materials used in the production of goods classified in Chapters 1 through 24 of the HS, unless they are classified in a different subheading from that of the goods for which the origin is being determined under this Article.

3. Notwithstanding paragraph 2, paragraph 1 shall not apply to non-originating materials classified in Chapter 15 of the HS that are used in the production of goods classified under headings 15.01 through 15.08 or 15.11 through 15.15 of the HS.

4. Paragraph 1 shall not apply to goods classified in Chapters 50 through 63 of the HS. A good classified in Chapters 50 through 63 of the HS, produced in the territory of a Party, shall be considered to be an originating good if the total weight of all non-originating fibers or yarns used in the production of the component that determines the tariff classification of the good, that do not undergo the applicable change in tariff classification, does not exceed ten percent of the weight of the good.

ARTICLE 3.8: FUNGIBLE GOODS

1. In determining whether a good is originating for the purpose of preferential tariff treatment, any fungible goods shall be distinguished by:

(a) physical segregation of the goods; or

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

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

ARTICLE 3.9: ACCESSORIES, SPARE PARTS, AND TOOLS

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

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

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

provided that:

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

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

ARTICLE 3.10: SETS OF GOODS

Notwithstanding the rules set out in Annex 3-A, a set or assortment of goods, as referred to in General Rule 3 of the HS, shall be regarded as originating, provided that:

(a) all the component goods, including packaging materials and containers, are originating; or

(b) where the set or assortment of goods contains non-originating component goods, including packaging materials and containers, the value of the non-originating goods, including any non-originating packaging materials and containers for the set or assortment of goods, does not exceed 15 percent of the adjusted value of the set or assortment of goods.

ARTICLE 3.11: PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE

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

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

3. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether the good is wholly obtained or produced entirely in the territory of one or both of the Parties within the meaning of Article 3.2.

ARTICLE 3.12: PACKING MATERIALS AND CONTAINERS FOR SHIPMENT

The packing materials and containers for transportation and shipment shall not be taken into account when determining the origin of the good.

ARTICLE 3.13: INDIRECT MATERIALS

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

ARTICLE 3.14: NON-QUALIFYING OPERATION

Notwithstanding other provisions of this Chapter, a good shall not be considered to be originating merely by reason of going through one or a combination of the following operations or processes:

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

(b) change of packaging, or breaking-up or assembly of packages;

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

(d) ironing or pressing of textiles;

(e) simple[5] painting and polishing operations;

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

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

(h) affixing marks, labels, logos, and other like distinguishing signs on the good or its packaging;

(i) simple mixing of products, whether or not of different kinds; mixing of sugar with any material; operations to color or flavor sugar or form sugar lumps; partial or total milling of crystal sugar;

(j) simple assembly of parts of goods to constitute a complete good or disassembly of goods into parts;

(k) slaughter of animals;

(l) peeling, stoning, and shelling of fruits, nuts, and vegetables;

(m) sharpening, simple grinding, or simple cutting; or

(n) sifting, screening, sorting, classifying, grading, or matching (including the making-up of sets of articles).

ARTICLE 3.15: DIRECT TRANSPORT

1. An originating good that is transported through the territory of a non-Party shall be considered to be non-originating unless it can be demonstrated that the good:

(a) undergoes no further production or other operation in the territory of that non-Party, other than unloading, splitting up of loads for transport reasons, reloading, or any other operation necessary to preserve it in good condition;

[5] **Simple** means 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 intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule. The following are not considered to be chemical reactions for purposes of this definition:
(a) dissolving in water or other solvents;
(b) the elimination of solvents, including solvent water; or
(c) the addition or elimination of water of crystallization.

(b) remains under the customs control while outside the territory of one or both of the Parties; and

(c) does not enter into trade or consumption in the territory of that non-Party.

2. Evidence that the conditions set out in paragraph 1 have been fulfilled shall be supplied, upon request, to the customs authority, in accordance with the procedures applicable in the importing Party, by producing:

(a) evidence of the circumstances connected with the transshipment or the storage of the goods in the territory of the non-Party; or

(b) a document issued by the customs authority or other competent authorities of the non-Party that indicates that the conditions set out in paragraph 1 have been fulfilled.

ARTICLE 3.16: PRINCIPLE OF TERRITORIALITY

1. The conditions for acquiring originating status set out in Articles 3.1 through 3.15 shall be fulfilled without interruption in the territory of one or both of the Parties.

2. Notwithstanding paragraph 1, an originating good exported from a Party to a non-Party shall, when returned, be considered to be non-originating unless it is demonstrated to the satisfaction of the customs authorities in accordance with the laws and regulations of the importing Party concerned that the returning good:

(a) is the same as that exported; and

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

3. Notwithstanding paragraphs 1 and 2, goods listed in Annex 3-B shall be considered to be originating in accordance with Annex 3-B, even if such goods have undergone operations and processes outside the territories of the Parties.

ARTICLE 3.17: CONSULTATION AND MODIFICATION

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

2. The Parties shall consult regularly pursuant to Article 19.1 (Joint Commission) to discuss possible amendments or modifications to this Chapter and its Annexes, taking into account developments in technology, production processes, or other related matters.

SECTION B: ORIGIN PROCEDURES

ARTICLE 3.18: CERTIFICATE OF ORIGIN

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

2. The certificate of origin shall be completed and signed by the exporter or the producer and shall:

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

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

(c) be completed in English in conformity with the specimen and the instructions contained therein as set out in Annex 3-C, which may be amended by agreement between the Parties. Nonetheless, if necessary for the review procedures according to Article 4.10 (Review and Appeal), each Party may require the importer to submit a translation of the certificate of origin in a language required by its law.

3. Where an exporter in its territory is not the producer of the good, the exporter may complete and sign a certificate of origin on the basis of:

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

(b) a certificate of origin, or a written declaration that the good qualifies as an originating good, provided by the producer.

4. Nothing in paragraph 3 shall be construed to require a producer who is not the exporter of the good to provide a certificate of origin, or written declaration that the good qualifies as an originating good.

5. A certificate of origin shall be applicable to:

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

(b) multiple importations of the goods described therein that occur within a specified period, not exceeding 12 months, set out therein.

6. A certificate of origin shall remain valid for one year, or for such longer period specified by the laws and regulations of the importing Party, after the date on which the certificate of origin was signed.

7. Notwithstanding paragraph 6, the customs authority in the importing Party may accept such certificate of origin, provided that the goods have been imported into the territory of a Party before the expiration date of the said certificate of origin.

8. For any originating good of which import declaration is made on or after the date of entry into force of this Agreement, each Party shall accept a certificate of origin that has been completed and signed no more than six months prior to that date.

ARTICLE 3.19: CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

1. Except as otherwise provided 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, in accordance with the procedures applicable in the importing Party;

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

(c) have the certificate of origin in its possession at the time the claim referred to in subparagraph (a) is made; and

(d) provide, on the request of that Party's customs authority, a copy of the certificate of origin and such other documentation related to the importation of the good in accordance with the laws and regulations of the importing Party.

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

ARTICLE 3.20: POST-IMPORTATION CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

Where a good was originating when it was imported into the territory of a Party, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer of the good may, within a period of at least one year or for such longer period specified by the laws and regulations of the importing Party after the date on which the good was imported, make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the importing Party of:

(a) a certificate of origin and, where appropriate, other evidence that the good qualifies as an originating good; and

(b) such other documentation in relation to the importation of the good as the importing Party may require.

ARTICLE 3.21: WAIVER OF CERTIFICATE OF ORIGIN

Notwithstanding Article 3.19, a certificate of origin shall not be required where:

(a) the customs value of the importation does not exceed US$1,000 or its equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party; or

(b) the importing Party has waived the requirement for a certificate of origin in accordance with its laws and regulations;

provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of Articles 3.18 and 3.19.

ARTICLE 3.22: OBLIGATIONS REGARDING EXPORTATIONS

1. Each Party shall provide that an exporter or a producer in its territory that has provided a certificate of origin shall provide a copy of the certificate of origin, or such other documentation to its customs authority on request.

2. Each Party shall provide that an exporter or a producer in its territory that has provided a certificate of origin, and that has reason to believe that the certificate of origin contains information that is not correct, shall promptly notify, in writing, all persons to whom the certificate of origin was given by the exporter or producer of any change that could affect the accuracy or validity of the certificate of origin.

3. Each Party shall provide that a false certification by an exporter or a producer in its territory specifying that a good to be exported to the territory of the other Party qualifies as an originating good shall be subject to penalties for a contravention of its customs laws and regulations regarding the making of a false certification or declaration. Furthermore, each Party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

ARTICLE 3.23: RECORD KEEPING REQUIREMENTS

1. Each Party shall provide that the exporter or the producer in its territory that has provided a certificate of origin shall maintain in its territory, for five years after the date on which the certificate of origin was issued or for such longer period as the exporting Party may specify, all records necessary to demonstrate that the good for which the

producer or exporter provided the certificate of origin was an originating good, which may consist of, *inter alia*, the following:

(a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal bookkeeping;

(b) documents proving the originating status of materials used, issued or made out in a Party where these documents are used, as provided for in its law;

(c) documents proving the working or processing of materials in a Party, issued or made out in a Party where these documents are used, as provided for in its law; and

(d) certificate of origin proving the originating status of materials used, completed in a Party.

2. Each Party shall provide that the importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for five years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the certificate of origin, as the Party may require relating to the importation of the good.

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

ARTICLE 3.24: DISCREPANCIES AND FORMAL ERRORS

1. The discovery of slight discrepancies between the statements made in the certificate of origin and those made in the documents submitted to the customs authority for the purpose of carrying out the formalities for importing goods shall not *ipso facto* render the certificate of origin null and void if it is duly established that such document does correspond to the goods submitted.

2. Obvious formal errors such as typing errors in a certificate of origin should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

ARTICLE 3.25: ORIGIN VERIFICATION

1. For the purpose of determining whether a good imported into one Party from the other Party qualifies as an originating good, the customs authority of the importing Party may conduct a verification process by means of:

(a) written requests for additional information from the importer;

(b) written requests for additional information from the exporter or producer;

(c) requests to the customs authority of the exporting Party for assistance in verifying the origin of the good;

(d) verification visits to the premises of an exporter or a producer in the territory of the other Party, along with the customs authority of the exporting Party to observe the facilities and the production processes of the good and to review the records referring to origin, including accounting files. Officials of the customs authority of the exporting Party should come along as observers to the verification visit when requested by the importing Party; or

(e) any other procedures to which the Parties may agree.

2. For purposes of paragraph 1(a) and 1(b),

(a) the written request for additional information made by the importing Party will indicate that the time period the importer, exporter, or producer has to provide the information and documentation required will be 30 days from the date of the receipt of the written request or for such longer period as the Parties may agree; and

(b) where an exporter or producer fails to provide the information and documentation required within the period referred to in subparagraph (a), the importing Party may deny preferential tariff treatment to the good in question after providing at least a 30-day written notice to the importer, exporter or producer to provide written comments or additional information that will be taken into account prior to completing the verification.

3. For purposes of paragraph 1(c):

(a) the customs authority of the importing Party shall provide the customs authority of the exporting Party with:

(i) the reasons why such assistance for verification is requested;

(ii) the certificate of origin of the good, or a copy thereof; and

(iii) any information and documents as may be necessary for the purpose of such request;

(b) the customs authority of the exporting Party shall provide the customs authority of the importing Party with a written statement in English,

including findings and facts, and any supporting documents made available by the exporter or producer. Nonetheless, the exporting Party may issue the above mentioned written statement both in English and in the language required by its law. This statement shall indicate clearly whether the documents are authentic and whether the goods concerned can be considered an originating good and fulfill the other requirements of this Chapter. If the good can be considered an originating good, the statement shall include a detailed explanation of how the good obtained the originating status; and

(c) in the cases where the customs authority of the exporting Party does not provide the written statement within 150 days of the date of request or where the written statement does not contain sufficient information, the importing Party may deny the preferential tariff treatment to the relevant good.

4. For purposes of paragraph 1(d):

(a) prior to conducting a verification visit, the importing Party shall, through its customs authority:

(i) deliver a written notification of its intention to conduct the visit to the exporter or producer whose premises are to be visited and the customs authority of the other Party; and

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

(b) where an exporter or producer has not given its written consent to a proposed verification visit within 30 days of the receipt of notification pursuant to subparagraph (a), the notifying Party may deny preferential tariff treatment to the relevant good;

(c) upon receipt of notification pursuant to subparagraph (a), such an exporter or producer may, within 15 days of receiving the notification, have one opportunity to request to the Party conducting the verification for a postponement of the proposed verification visit, for a period not exceeding 60 days. This extension shall be notified to the customs authority of the importing and exporting Parties; and

(d) after the conclusion of a verification visit, the Party conducting the verification, shall provide the exporter or producer whose good was verified, with a written determination of whether the good is eligible for preferential tariff treatment, based on the relevant law and findings of fact.

5. For purposes of paragraphs 1(b) and 1(c), all the information requested by the customs authority of the importing Party and responded by the customs authority of the

exporting Party shall be communicated in English. Nonetheless, the customs authority of each Party may issue the above mentioned information both in English and in the language required by its law.

ARTICLE 3.26: DENIAL OF PREFERENTIAL TARIFF TREATMENT

Except as otherwise provided in this Chapter, the importing Party may deny a claim for preferential tariff treatment or recover unpaid duties, in accordance with its laws and regulations, where:

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

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

ARTICLE 3.27: NON-PARTY INVOICES

The customs authority in the importing Party shall not reject a certificate of origin only for the reason that the invoice is issued either by a company located in a non-Party or by an exporter for the account of the said company.

ARTICLE 3.28: UNIFORM REGULATIONS

1. The Parties may jointly establish and implement, through their respective laws, regulations, or administrative policies, uniform regulations regarding the interpretation, application and administration of this Chapter.

2. The Parties shall simultaneously implement the agreed uniform regulations in accordance with their respective internal procedures.

ARTICLE 3.29: PENALTIES

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

ARTICLE 3.30: DEFINITIONS

For purposes of this Chapter:

adjusted value means the FOB value of the good determined pursuant to the Customs Valuation Agreement, inclusive of the cost of transport and insurance to the port or site

of final shipment abroad. If there is no FOB value of the good or it is unknown and cannot be ascertained, the value determined pursuant to the Customs Valuation Agreement, *mutatis mutandis*;

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

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

CIF 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;

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

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

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

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

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

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

FOB 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 goods means goods that are interchangeable for commercial purposes and whose properties are essentially identical;

Generally Accepted Accounting Principles means recognized consensus or substantial authoritative support given in the territory of a Party with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. Generally Accepted

Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

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

importer means a person located in the territory of a Party where a good is imported by such a person;

indirect materials means articles used in the production of a good, which are neither physically incorporated into, nor form part of it, including:

(a) fuel and energy;

(b) tools, dies, and molds;

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

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

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

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

(g) catalysts and solvents; and

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

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

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

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

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

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

(a) by calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing, and after-

sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the good;

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

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

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

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

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

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

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

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

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

total cost means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include

profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes; and

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

CHAPTER FOUR
CUSTOMS ADMINISTRATION AND TRADE FACILITATION

SECTION A: TRADE FACILITATION

ARTICLE 4.1: OBJECTIVES AND PRINCIPLES

With the objectives of facilitating trade under this Agreement and cooperating in pursuing trade facilitation initiatives between the Parties, the Parties agree to administer their import, export and transit procedures for goods traded under this Agreement in accordance with the following principles:

(a) procedures shall be simplified and harmonized on the basis of international standards, while recognizing 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 shall be consistent and transparent to ensure predictability for importers and exporters;

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

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

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

ARTICLE 4.2: TRANSPARENCY

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

2. Each Party shall publish, including on the Internet, all customs laws and any administrative procedures which it applies or enforces in relation to exportation, importation, or transit.

3. Each customs authority shall designate one or more inquiry points to deal with inquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement. Information concerning the procedures for making such inquiries shall be easily accessible by the public.

ARTICLE 4.3: HARMONIZATION AND FACILITATION

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

2. The Parties shall 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 on behalf of that agency by the customs authority. In furtherance of this objective, each Party shall take steps to harmonize the data requirements of its respective agencies with the objective of allowing importers and exporters to present all required data before one agency.

ARTICLE 4.4: USE OF AUTOMATED SYSTEMS

1. Each customs authority shall apply information and communication technology to support customs operations, particularly in the paperless trading context, taking into account developments in this area within the WCO.

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

ARTICLE 4.5: RISK MANAGEMENT

In administering customs procedures, each customs authority shall focus resources on high-risk shipments of goods and facilitate the clearance, including release, of low-risk goods. In addition, the customs authority shall exchange information related to applied techniques on risk management, while ensuring the confidentiality of the information.

ARTICLE 4.6: AUTHORIZED ECONOMIC OPERATOR

The Parties shall promote the implementation of the Authorized Economic Operator (hereinafter referred to as “AEO”) concept according to the WCO SAFE Framework of Standards. Acknowledgment of the AEO security status shall be taken into account by the Parties in order to secure the international trade supply chains. In this respect, trade facilitation benefits shall be provided by the customs authority of an importing Party to operators meeting customs security standards and having AEO status granted by the customs authority of any Party.

ARTICLE 4.7: 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 and other competent authorities adopt or maintain procedures that:

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

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

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

(d) allow importers to withdraw goods from customs before the final determination by its customs authority of the applicable customs duties, taxes, and fees. Before releasing the goods, a Party may require an importer, according to its legislation, to provide sufficient guarantee covering the ultimate payment of the customs duties, taxes, or fees in connection with the importation of the goods.

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

4. Each Party shall endeavor to ensure, in accordance with its laws and regulations, that all competent administrative authorities, intervening in the control and physical inspection of goods subject to either import or export procedures, perform their activities in a simultaneous manner and in a single place.

ARTICLE 4.8: EXPRESS SHIPMENTS

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

(a) provide a separate and expedited customs procedure for express shipment, and where applicable, use the WCO Guidelines for the Immediate Release of Consignment;

(b) provide for the electronic submission and processing of information necessary for the release of an express shipment before the express shipment arrives;

(c) to the extent possible, provide for clearance of certain goods with minimum documentation;

(d) provide for expeditious release of express shipments, within a period no greater than that required to ensure compliance with its legislation; and

(e) under normal circumstances, provide that no customs duties will be assessed on, nor will formal entry documents be required for express shipments valued at US$100 or less.

ARTICLE 4.9: ADVANCE RULINGS

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

(a) tariff classification;

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

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

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

2. Each Party shall adopt or maintain procedures for the issuance of such advance rulings, including the details of the information required to process an application for a ruling. Each Party shall issue an advance ruling expeditiously, and no later than 90 days or such longer period exceptionally specified in the laws of the Party after a request, provided that the requester has submitted all information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling.

3. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. The Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting forth the relevant facts and the basis for its decision to decline to issue the advance ruling.

4. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling. Subject to paragraphs 1 and 5, an advance ruling shall remain in force, provided that the facts or circumstances on which the ruling is based remain unchanged, or for the period specified in the laws, regulations or administrative rulings of the importing Party.

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

(a) there is a change in the relevant laws or regulations;

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

(c) there is a change in the material fact or circumstances on which the ruling was based, including the change of the main functions of the good by the development of science, technology and the production method.

6. The issuing Party may modify or revoke a ruling in a retroactive manner, in accordance with its laws and regulations, if the requester provided incorrect information or withheld relevant information.

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

ARTICLE 4.10: REVIEW AND APPEAL

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

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

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

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

(a) completes and signs a certificate of origin for a good that has been the subject of a determination of origin; or

(b) has received an advance ruling pursuant to Article 4.9.

3. Each Party shall allow an exporter or producer of the other Party to provide information directly to the Party conducting the review and to request that Party to treat that information as confidential in accordance with Article 4.20.

SECTION B: CUSTOMS COOPERATION AND MUTUAL ASSISTANCE

ARTICLE 4.11: CUSTOMS COOPERATION

1. The Parties shall cooperate in order to ensure compliance with their respective laws and regulations on:

(a) the implementation and operation of the provisions of this Agreement governing importations or exportations;

(b) preferential tariff treatment and claims procedures;

(c) verification procedures;

(d) customs valuation and tariff classification of a good; and

(e) restrictions or prohibitions on imports and/or exports.

2. The Parties shall cooperate in order to ensure that training and technical assistance programs related to the provisions of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) are organized jointly, for purposes of:

(a) enhancing institutional cooperation between the Parties;

(b) providing expertise and capacity building on legislative and technical matters to develop and enforce customs legislation;

(c) the application of modern customs techniques; and

(d) the simplification, harmonization and automation of customs procedures.

3. The Parties shall cooperate in order to ensure that the documents provided under this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) shall not need further certification, authentication, notarization, or other types of solemnity, other than those provided by the competent administrative authority, which shall be held as authentic.

ARTICLE 4.12: MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

1. The Parties shall assist each other, in the areas within their competence, in accordance with the conditions laid down in this Chapter, to ensure the correct application of customs law, in particular by preventing, investigating, and combating operations in breach of customs law.

2. Assistance in customs matters, as provided for in this Section, shall not prejudice the rules governing mutual assistance in criminal matters, nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorized by that authority. Assistance to recover duties, taxes, or fines is not covered by this Section.

3. Upon request of the applicant authority, the requested authority shall inform it:

(a) whether goods exported from the territory of the applicant Party have been properly imported into the territory of the requested Party,

specifying, where appropriate, the customs procedure applied to the goods; or

(b) whether goods imported into the territory of the applicant Party have been properly exported from the territory of the requested Party, specifying, where appropriate, the customs procedure applied to the goods.

4. Upon request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

(a) persons in respect of whom there are reasonable grounds for believing that they are or have been in breach of customs law;

(b) places where stocks of goods have been or may be assembled or transformed in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs law;

(c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs law; and

(d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs law.

5. The Parties shall assist each other, at their own initiative and in accordance with their laws, rules, and other legal instruments, if they consider that to be necessary for the correct application of customs law, in particular, by providing information obtained pertaining to:

(a) activities which are or appear to be operations in breach of customs law and which may be of interest to the other Party;

(b) new means or methods employed in carrying out operations in breach of customs law;

(c) goods known to be subject to operations in breach of customs law;

(d) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs law; and

(e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs law.

6. Upon request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order to deliver any document or to notify any decision, emanating from the applicant authority and falling within the scope of this Article, to an addressee residing or established in the territory of the requested authority. Requests for delivery of documents or notification of decisions shall be made in a written form in English.

ARTICLE 4.13: FORM AND SUBSTANCE OF REQUESTS FOR ASSISTANCE

1. Requests for assistance in accordance with Article 4.12 shall be made in writing or through an official secure electronic means as agreed upon by authorities of the Parties, in accordance with their laws. They shall be accompanied by the documents necessary to enable compliance with the request. In urgent situations, oral requests may be accepted but must be confirmed in writing immediately.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Requests for assistance in accordance with paragraph 1 shall include the following information:

(a) the applicant authority;

(b) the measures requested;

(c) the object of and the reason for the request;

(d) the legal or regulatory provisions and other legal instruments involved;

(e) indications as exact and comprehensive as possible on the persons who are the target of the investigations; and

(f) a summary of the relevant facts and of the inquiries already carried out.

4. Requests shall be submitted in English. Where documents are made in a language other than English, the requested authority may require the applicant authority to submit a translation of the documents in English.

5. If a request does not meet the formal requirements set out above, its correction or completion may be requested.

ARTICLE 4.14: EXECUTION OF ASSISTANCE REQUESTS

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence, as though it were acting on its own account or upon request of other authorities of that same Party, by supplying

information already possessed, by carrying out appropriate inquiries, or by arranging for them to be carried out. This paragraph shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Duly authorized officials of a Party, may be present at the offices of the requested authority or any other concerned authority in accordance with paragraph 1 and subject to the conditions, laws, rules, and other legal instruments laid down by the latter in order to obtain information related to activities that are or may be operations in breach of customs law which the applicant authority needs for the purpose of investigation on the case referred to in paragraph 1.

3. Duly authorized officials of a Party involved may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present at inquiries carried out in the latter's territory.

ARTICLE 4.15: EXCEPTIONS TO THE OBLIGATION TO PROVIDE ASSISTANCE

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Section would:

(a) be likely to prejudice the sovereignty of a Party which has been requested to provide assistance under this Section;

(b) be likely to prejudice public policy, security, or other essential interests, in particular in the cases referred to under Article 4.16.2;

(c) violate an industrial, commercial, or professional secret; or

(d) be unconstitutional or contrary to its law, rules, or other legal instruments.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution, or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons thereof must be communicated to the applicant authority without delay.

ARTICLE 4.16: INFORMATION EXCHANGE AND CONFIDENTIALITY

1. Any information communicated in whatsoever form pursuant to this Section shall be of a confidential or restricted nature, depending on the rules applicable in each Party. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it.

2. Personal data may be exchanged only where the Party which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs law, of information obtained under this Section, is considered to be for purposes of this Section. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with this Section. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for purposes of this Section. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

ARTICLE 4.17: EXPERTS AND WITNESSES

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings of the requesting Party regarding the matters covered by this Section, and produce such objects, documents, or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

ARTICLE 4.18: ASSISTANCE EXPENSES

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Section except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

ARTICLE 4.19: BILATERAL CUSTOMS CONSULTATION

1. Without prejudice to Article 4.21, each customs authority may at any time request consultations with the customs authority of the other Party on any matter arising

from the operation or implementation of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) including tariff classification, customs valuation, and origin determination. Such consultations shall be conducted through the relevant contact points, and shall take place within 30 days of the request, unless the customs authorities of the Parties agree otherwise.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Customs Committee established in Article 4.21 for consideration.

3. Each customs authority shall designate one or more contact points for purposes of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) and provide details of such contact points to the other Party. The customs authorities of the Parties shall notify each other promptly of any amendment to the details of their contact points.

4. The request for consultations and any response thereto shall be written in English and sent by electronic means. A physical copy of the request or response for consultations shall also be sent by courier or fax. Nonetheless, each Party may request or respond to the above mentioned consultations both in English and in the language required by its law.

ARTICLE 4.20: CONFIDENTIALITY

1. A Party shall maintain the confidentiality of the information provided by the other Party pursuant to this Chapter and Chapter 3 (Rules of Origin and Origin Procedures), and protect it from disclosure that could prejudice the competitive position of the person providing the information. Any violation of the confidentiality shall be treated in accordance with the legislation of each Party.

2. The information referred to paragraph 1 shall not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed for law enforcement purposes or in the course of judicial proceedings.

ARTICLE 4.21: CUSTOMS COMMITTEE

1. The Parties hereby establish a customs committee (hereinafter referred to as the "Customs Committee"), composed of the customs authorities of the Parties and other competent authorities, if the Parties deem it necessary. The Customs Committee shall be responsible for addressing rules of origin, origin procedures, trade facilitation, and customs matters.

2. The Customs Committee shall ensure the proper functioning of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) and examine all issues arising from their application.

3. The functions of the Customs Committee shall include:

(a) ensuring the effective, uniform, and consistent administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures);

(b) revising Annex 3-A (Product Specific Rules of Origin) on the basis of the transposition of the HS;

(c) advising the Joint Commission of proposed solutions to address issues related to:

(i) interpretation, application, and administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures);

(ii) tariff classification and customs valuation;

(iii) calculation of the regional value content; and

(iv) issues arising from the adoption by either Party of operational practices not in conformity with this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) which may adversely affect the flow of trade between the Parties;

(d) adopting customs practices and standards which facilitate commercial exchange between the Parties, according to the international standards;

(e) resolving any issues related to interpretation, application, and administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures), including tariff classification. If the Customs Committee does not reach a decision on the tariff classification, the Parties shall hold the appropriate consultations at the WCO. The recommendations of the WCO HS Committee or the Council shall be binding between the Parties;

(f) presenting proposals for the Joint Commission's approval on modifications under Article 3.17 (Consultation and Modification), in the event a consensus is reached between the Parties; and

(g) working on the development of an electronic certification and verification system.

4. The Customs Committee may formulate resolutions, recommendations or opinions which it considers necessary for the attainment of the common objectives and the functioning of the mechanisms established in this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

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

6. The Customs Committee shall report to the Joint Commission on the results of each of its meetings.

ARTICLE 4.22: IMPLEMENTATION

1. The Parties commit to undertake further understandings, under the framework of this Chapter, in order to facilitate the implementation of the obligations and duties mentioned above in this Chapter.

2. The customs authorities of the Parties shall decide on all practical measures and arrangements necessary for the application of this Chapter, taking into consideration the rules in force, in particular in the field of data protection. They may recommend to the competent bodies the developing of complementary instruments for the application of this Chapter.

3. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Chapter.

SECTION C: DEFINITIONS

ARTICLE 4.23: DEFINITIONS

For purposes of this Chapter:

applicant authority means a competent administrative authority which has been appointed by a Party to make a request for assistance;

customs authority means:

(a) for Colombia, the *Directorate of National Taxes and Customs* (*Dirección de Impuestos y Aduanas Nacionales*) or its successor notified in writing to the other Party; and

(b) for Korea, the *Ministry of Strategy and Finance*, or the *Korea Customs Service*, or their successors;

customs law means such laws and regulations administered and enforced by the customs administration of each Party concerning the importation, exportation, and transit/transhipment of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;

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

goods means all goods falling within Chapters 1 through 97 of the HS, irrespective of the scope of this Agreement;

means of transport means various types of vessels, vehicles, aircraft, and pack-animals which enter or leave the territory carrying persons, goods, or articles;

operation in breach of customs law means any violation or attempted violation of customs legislation of any of the Parties;

personal data means all information related to an identified or identifiable person; and

requested authority means a competent administrative authority which has been appointed by a Party to receive a request for assistance.

CHAPTER FIVE
SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 5.1: OBJECTIVE

The objective of this Chapter is to protect human, animal, or plant life or health in the Parties' territories while minimizing the negative effects of sanitary and phytosanitary measures on trade between the Parties.

ARTICLE 5.2: SCOPE

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

ARTICLE 5.3: RIGHTS AND OBLIGATIONS

The Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement, taking into account guidelines, procedures, and information from the Codex Alimentarius Commission, the *International Plant Protection Convention* (IPPC), and the World Organization for Animal Health (OIE).

ARTICLE 5.4: RISK ASSESSMENT

Risk assessment on a Party's sanitary and phytosanitary measures shall be conducted and evaluated by the relevant regulatory agencies of each Party. A Party shall endeavor to give due consideration to a request for risk assessment of the other Party.

ARTICLE 5.5: COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

1. The Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as the "Committee") comprising representatives of each Party's competent authorities who have responsibility for sanitary and phytosanitary matters.

2. The objective of the Committee is to discuss matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties. For this purpose, the Committee shall:

   (a) monitor the implementation of the SPS Agreement;

   (b) enhance mutual understanding of each Party's sanitary and phytosanitary measures;

(c) strengthen communication and cooperation between the Parties' competent authorities responsible for the matters covered by this Chapter;

(d) facilitate the exchange of information on regulations, procedures, or any change in sanitary status that may affect trade between the Parties;

(e) encourage expeditious notification for the approval of exporting establishments in order to pursue transparency regarding sanitary and phytosanitary measures;

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

(g) provide channels for discussion of problems arising from the application of certain sanitary and phytosanitary measures and the application of this Chapter with a view to seeking mutually acceptable ideas.

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

4. The Committee shall meet every two years unless the Parties otherwise agree. The Committee may meet in person or by any technological means available to the Parties.

5. The Committee shall be coordinated by:

(a) for Colombia, the *Colombian Agriculture and Livestock Institute* (*Instituto Colombiano Agropecuario* – ICA) under the *Ministry of Agriculture and Rural Development*, and the *National Institute for the Surveillance of Foods and Drugs* (*Instituto Nacional de Vigilancia de Medicamentos y Alimentos*– INVIMA) under the *Ministry of Health and Social Protection*, or their respective successors; and

(b) for Korea, the *Ministry for Food, Agriculture, Forestry and Fisheries*, or its successor.

CHAPTER SIX
TECHNICAL BARRIERS TO TRADE

ARTICLE 6.1: OBJECTIVES

The objectives of this Chapter are:

(a) to increase and facilitate trade between the Parties, through the improvement of the implementation of the TBT Agreement;

(b) to ensure that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade; and

(c) to enhance joint cooperation between the Parties.

ARTICLE 6.2: GENERAL PROVISION

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, and to this end the TBT Agreement is incorporated into and made part of this Agreement, *mutatis mutandis.*

ARTICLE 6.3: SCOPE OF APPLICATION

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of the Parties that may affect the trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter shall not apply to sanitary and phytosanitary measures covered by Chapter 5 (Sanitary and Phytosanitary Measures) or to technical specifications prepared by governmental bodies for production or consumption requirements of such bodies covered by Chapter 14 (Government Procurement).

ARTICLE 6.4: INTERNATIONAL STANDARDS

1. As a basis for its technical regulations and conformity assessment procedures, each Party shall use relevant international standards, guides, and recommendations to the extent provided in Articles 2.4 and 5.4 of the TBT Agreement.

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2, 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement* adopted since January 1, 1995[1] by the WTO Committee on Technical Barriers to Trade (hereinafter referred to as the "TBT Committee").

[1] G/TBT/1/Rev.9, 8 September 2008 Annex B to part I

ARTICLE 6.5: EQUIVALENCE OF TECHNICAL REGULATIONS

1. Each Party shall, upon written request of the other Party, give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that these regulations adequately fulfill the objectives of its own regulations.

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

ARTICLE 6.6: CONFORMITY ASSESSMENT PROCEDURES

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. Accordingly, the Parties may agree on the following:

(a) the acceptance of a supplier's declaration of conformity;

(b) the acceptance of the results of conformity assessment procedures by bodies located in the other Party's territory, including those regarding specific technical regulations;

(c) that a conformity assessment body located in a Party's territory may enter into voluntary recognition agreements for the acceptance of the results of its conformity assessment procedures, with a conformity assessment body located in the other Party's territory; and

(d) the adoption of accreditation procedures to qualify the conformity assessment bodies located in the other Party's territory.

The Parties shall exchange information on the range of the mechanisms used in their territories.

2. The Parties shall accept, whenever possible, the results of conformity assessment procedures conducted in the territory of the other Party, even when those procedures differ from its own, provided that those procedures offer a satisfactory assurance of applicable technical regulations or standards equivalent to its own procedures. Where a Party does not accept the results of conformity assessment procedures conducted in the territory of the other Party, it shall, upon request of the other Party, explain in writing the reasons for its decision.

3. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 2, and in order to enhance confidence in the permanent reliability of each one of the conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved. Where a Party

considers that a conformity assessment body of the other Party does not fulfill its requirements, it shall explain to the other Party in writing the reasons for its decision.

4. A Party shall give positive consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures. Where a Party declines such request, it shall, upon request of the other Party, explain in writing the reasons for its decision. The Parties shall work together to implement the mutual recognition agreements to which both Parties are party.

ARTICLE 6.7: TRANSPARENCY

1. At the same time a Party submits its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement, such Party shall make electronically the same notification to the other Party's Coordinator referenced in Annex 6-A.

2. Where possible, each Party should notify with the following documents to the other Party through the other Party's Coordinator referenced in Annex 6-A:

(a) new technical regulations and amendments to existing technical regulations that are based on relevant international standards;

(b) new conformity assessment procedures and amendments to existing conformity assessment procedures that are based on relevant international standards;

(c) proposed new technical regulations and amendments to existing technical regulations in a case there is doubt about whether the effect on trade is significant; and

(d) proposed new conformity assessment procedures and amendments to existing conformity assessment procedures in a case there is doubt about whether the effect on trade is significant.

3. The notification of technical regulations and conformity assessment procedures shall include an on-line link to, or a copy of, the complete text of the notified document. Where possible, the Parties shall provide an on-line link to, or a copy of, the complete text or a summary of the notified document in English.

4. Each Party shall allow at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. A Party shall give positive consideration to a reasonable request of the other Party for extending the period for comments.

5. Each Party shall publish or otherwise make available to the public, in print or electronically, its responses, or a summary of its responses, to comments received from

the other Party, no later than the date it publishes the final technical regulation or conformity assessment procedure.

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

7. A Party shall give positive consideration to a reasonable request of the other Party, received prior to the end of the period for comments following the notification of a proposed technical regulation, for extending the period of time between the adoption of the technical regulation and its entry into force, except where this would be ineffective in fulfilling the legitimate objectives pursued.

8. Except in urgent circumstances, the Parties shall allow a reasonable interval[2] between the publication of technical regulations and their entry into force in order to allow time for producers in the exporting Party to adapt their products or methods of production to the requirements of the importing Party.

9. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are available on an official website that is freely accessible and publicly available.

ARTICLE 6.8: JOINT COOPERATION

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

2. These initiatives may include:

(a) cooperation on regulatory issues, such as transparency, promotion of good regulatory practices, harmonization with international standards, and use of accreditation to qualify conformity assessment bodies;

(b) technical assistance directed at reaching effective and full compliance with metrology demands arising from this Chapter and the TBT Agreement;

(c) initiatives to develop common views on good regulatory practices such as transparency, use of equivalency, and regulatory impact assessment; and

[2] **Reasonable interval** shall be understood to normally mean a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued, in accordance with paragraph 5 of the *Implementation–Related Issues and Concerns*, Decision of 14 November 2001(WT/MIN(01)/17).

(d) use of mechanisms to facilitate the acceptance of results of conformity assessment procedures conducted in the other Party's territory.

3. The cooperation described on this article may be preferably focused on fields such as: (i) auto parts, (ii) textiles, clothing, and design, (iii) cosmetics and hygienic products, and (iv) pharmaceutical products and medical devices. However, upon request, a Party shall give favorable consideration to any sector-specific proposal that the other Party makes for further cooperation under this Chapter.

ARTICLE 6.9: COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hererinafter referred to as the "Committee"), composed of representatives of each Party.

2. The Committee's functions shall include:

(a) working to facilitate the implementation of this Chapter and cooperation between the Parties in all matters pertaining to this Chapter;

(b) monitoring the implementation, enforcement, and administration of this Chapter;

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

(d) enhancing joint cooperation between the Parties in the areas set out in Article 6.8;

(e) facilitating the process for the negotiation of a mutual recognition agreement;

(f) exchanging information, upon request of a Party, on standards, technical regulations, and conformity assessment procedures, including the Parties' respective views regarding non-party issues;

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

(h) upon written request of a Party, consulting with the aim of solving any matter arising under this Chapter within a reasonable period of time;

(i) reviewing this Chapter in light of any development under the TBT Committee and, if necessary, developing recommendations for amendments to this Chapter;

(j) establishing, if necessary to achieve the objectives of this Chapter, issue-specific or sector-specific *ad-hoc* working groups;

(k) as it considers appropriate, reporting to the Joint Commission on the implementation of this Chapter; and

(l) taking any other step that the Parties consider will assist them in implementing this Chapter.

3. The Committee shall meet upon request of a Party. Meetings may be conducted in person, or via teleconference, videoconference, or any other means as mutually agreed by the Parties.

4. Where the Parties have had recourse to consultations under paragraph 2(h), the consultations shall, if the Parties agree, constitute consultations under Article 20.4 (Consultations).

5. The authorities set out in paragraph 1 of Annex 6-A shall be responsible for coordinating with the relevant institutions and persons in their respective territories as well as for ensuring that such institutions and persons are engaged. The Committee shall carry out its work through the communication channels agreed by the Parties, which may include electronic mail, teleconferencing, videoconferencing, or other means.

ARTICLE 6.10: INFORMATION EXCHANGE

1. Any information or explanation that a Party provides upon request of the other Party pursuant to this Chapter shall be communicated within a reasonable period, in written form through regular mail or any other means accepted by the Parties, including electronic mail. A Party shall endeavor to respond to each such request within 60 days.

2. Nothing in this Chapter shall be construed to require a Party to furnish any information the disclosure of which it considers is contrary to its essential security interests.

ARTICLE 6.11: DEFINITIONS

For purposes of this Chapter, the terms and definitions of Annex 1 of the TBT Agreement shall apply.

ARTICLE 6.12: BORDER CONTROL AND MARKET SURVEILLANCE

The Parties undertake to:

(a) exchange information and experiences on their border control and market surveillance activities, except in those cases in which the documentation is confidential; and

(b) ensure that border control and market surveillance activities are undertaken by the competent authorities, to which end these authorities may use accredited, designated, or delegated bodies, avoiding conflicts of interest between those bodies and the economic agents subject to control or supervision.

ANNEX 6-A
COMMITTEE AND COORDINATOR ON TECHNICAL BARRIERS TO TRADE

1. For purposes of Article 6.9, the Committee on Technical Barriers to Trade shall be coordinated by:

(a) for Colombia, the *Ministry of Trade, Industry and Tourism* (*Ministerio de Comercio, Industria y Turismo*), or its successor; and

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

Depending on the issue, responsible ministries or regulatory agencies shall participate in the Committee meetings.

2. For purposes of Article 6.7, the Coordinator on Technical Barriers to Trade shall be:

(a) for Colombia, the enquiry point at the Central Registry of Notifications in accordance with the TBT Agreement; and

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

CHAPTER SEVEN
TRADE REMEDIES

SECTION A: SAFEGUARD MEASURES

ARTICLE 7.1: APPLICATION OF A SAFEGUARD MEASURE

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

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

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

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

(ii) the base rate as specified in the Schedule to Annex 2-A (Elimination of Customs Duties).

ARTICLE 7.2: STANDARDS FOR A SAFEGUARD MEASURE

1. A Party shall notify immediately the other Party in writing upon initiation of an investigation described in paragraph 2 and shall consult with the other Party within 30 days after the initiation of the investigation**,** with a view to reviewing the information arising from the investigation and exchanging views on the measure.

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

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

4. Neither Party shall apply a safeguard measure:

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

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

(c) beyond the expiration of the transition period.

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

6. Where the expected duration of the safeguard measure is over one year, the Party applying a measure shall progressively liberalize it at regular intervals during the period of application.

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

ARTICLE 7.3: PROVISIONAL MEASURES

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

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

3. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Article 7.2.2.

4. The Party shall promptly refund any tariff increase if the investigation described in Article 7.2.2 does not result in a finding that the requirements of Article 7.1 are met. The duration of any provisional measure shall be counted as part of the period described in Article 7.2.4(b).

ARTICLE 7.4: COMPENSATION

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

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

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first two years during which a bilateral safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such measure conforms to this Agreement.

ARTICLE 7.5: GLOBAL SAFEGUARD MEASURES

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

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

(a) a safeguard measure; and

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

3. The provisions of this Article shall not be subject to Chapter 20 (Dispute Settlement), except for paragraph 2.

ARTICLE 7.6: DEFINITIONS

For purposes of Section A:

competent authority means

(a) for Colombia, the *Ministry of Trade, Industry and Tourism (Ministerio de Comercio, Industria y Turismo)*, or its successor; and

(b) for Korea, the *Korea Trade Commission*, or its successor;

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

global safeguard measure means a measure applied under Article XIX of the GATT 1994 and the Safeguards Agreement;

safeguard measure means a measure described in Article 7.1;

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

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

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

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

SECTION B: ANTI-DUMPING AND COUNTERVAILING MEASURES

ARTICLE 7.7: ANTI-DUMPING AND COUNTERVAILING MEASURES

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

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

(a) when anti-dumping margins are established, assessed, or reviewed under Articles 2, 9.3, 9.5, and 11 of the AD Agreement regardless of the comparison bases under Article 2.4.2 of the AD Agreement, all individual margins, whether positive or negative, should be counted toward the average; and

(b) if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the AD Agreement, the Party taking such a decision should apply the ‘lesser duty’ rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry.

ARTICLE 7.8: NOTIFICATION AND CONSULTATIONS

1. (a) Upon receipt by a Party's competent authorities of a properly documented anti-dumping application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other Party a meeting or other similar opportunities regarding the application, consistent with the laws of the Party. Such a meeting or similar opportunities shall not interfere with a Party's procedures towards the initiation of an anti-dumping investigation.

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

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

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

ARTICLE 7.9: DISPUTE SETTLEMENT

The provisions of this Section shall not be subject to Chapter 20 (Dispute Settlement), except for Article 7.7.2 and Article 7.8.

CHAPTER EIGHT
INVESTMENT

SECTION A: INVESTMENT

ARTICLE 8.1: SCOPE[1]

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

   (a) investors of the other Party;

   (b) covered investments; and

   (c) with respect to Articles 8.9 and 8.11, all investments in the territory of the Party.

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

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

   (a) central or local governments and authorities; and

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

4. This Chapter shall not apply to measures adopted or maintained by a Party related to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory.

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

ARTICLE 8.2: RELATION TO OTHER CHAPTERS

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

[1] For greater certainty, nothing in this Chapter shall be construed to impose an obligation on a Party to privatize any investment that it owns or controls or to prevent a Party from designating a monopoly.

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

ARTICLE 8.3: NATIONAL TREATMENT

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

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

ARTICLE 8.4: MOST-FAVORED-NATION TREATMENT[2]

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

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

ARTICLE 8.5: MINIMUM STANDARD OF TREATMENT[3]

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

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that

[2] For greater certainty, Article 8.4 shall not apply to investor-state dispute settlement mechanisms such as those set out in Section B (Investor-State Dispute Settlement).

[3] Article 8.5 shall be interpreted in accordance with Annex 8-A.

which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

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

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

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

ARTICLE 8.6: LOSSES AND COMPENSATION

1. Notwithstanding Article 8.13.5(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains related to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

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

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

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with Articles 8.7.2 through 8.7.4, *mutatis mutandis*.

3. Paragraph 1 shall not apply to existing measures related to subsidies or grants that would be inconsistent with Article 8.3 but for Article 8.13.5(b).

ARTICLE 8.7: EXPROPRIATION AND COMPENSATION[4]

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

[4] Article 8.7 shall be interpreted in accordance with Annexes 8-A and 8-B.

(a) for a public purpose[5];

(b) in a non-discriminatory manner;

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

(d) in accordance with the principle of due process of law embodied in the principal legal systems of the world.

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

(a) be paid without undue delay;

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

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

(d) be fully realizable and freely transferable.

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

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

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

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

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 15 (Intellectual Property Rights).

[5] The term "public purpose" is a concept of public international law and shall be interpreted in accordance with international law. Domestic law may express this or a similar concept using different terms, such as "social interest," "public necessity," or "public use."

ARTICLE 8.8: TRANSFERS[6]

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

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

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

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

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

(e) payments made pursuant to Articles 8.6.1 and 8.6.2 and Article 8.7; and

(f) payments arising out of a dispute.

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

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

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

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

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

(c) criminal or penal offenses;

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

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

ARTICLE 8.9: PERFORMANCE REQUIREMENTS

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its

[6] For greater certainty, Annex 8-C shall apply to Article 8.8.

territory of an investor of a Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking[7]:

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

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

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

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

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

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

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

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

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

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

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

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

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or

[7] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for purposes of paragraph 1.

of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory[8].

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

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

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws[9].

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

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

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

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

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), shall not apply to government procurement.

(f) Paragraphs 2(a) and (b) shall not apply to requirements imposed by an importing Party related to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

---

[8] For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided that such activity is consistent with paragraph 1(f).

[9] The Parties recognize that a patent does not necessarily confer market power.

4. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article shall not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement. For purposes of this Article, private parties include designated monopolies or state enterprises, where such entities are not exercising delegated governmental authority.

ARTICLE 8.10: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

ARTICLE 8.11: INVESTMENT AND ENVIRONMENT

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

ARTICLE 8.12: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if:

(a) persons of a non-Party own or control the enterprise; and

(b) the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party

shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the request of the other Party.

ARTICLE 8.13: NON-CONFORMING MEASURES

1. Articles 8.3, 8.4, 8.9, and 8.10 shall not apply to:

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

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

(ii) a local level of government[10] [11];

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 8.3, 8.4, 8.9, or 8.10.

2. Articles 8.3, 8.4, 8.9, and 8.10 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 8.3 and 8.4 shall not apply to any measure that is an exception to, or derogation from, the obligations under Article 15.4.2 (Basic Principles) as specifically provided in that Article.

5. Articles 8.3, 8.4, and 8.10 shall not apply to:

(a) government procurement; or

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

ARTICLE 8.14: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

[10] For Korea, **local level of government** means a local government as defined in the *Local Autonomy Act*.
[11] For greater certainty, for Colombia the *Departamentos* are part of the local level of government.

1. Nothing in Article 8.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 8.3 and 8.4, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

ARTICLE 8.15: SUBROGATION

1. Where a Party or a designated agency of a Party makes a payment to any of its investors under a guarantee, a contract of insurance, or other form of indemnity, against non-commercial risks it has granted in respect of an investment of an investor of that Party, the other Party shall recognize the subrogation of any right or claim in respect of such investment.

2. Where a Party or the agency authorized by that Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Party or agency authorized by the Party making the payment, pursue those rights and claims against the other Party.

SECTION B: INVESTOR-STATE DISPUTE SETTLEMENT

ARTICLE 8.16: SETTLEMENT OF INVESTMENT DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

1. This Section shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach by the former Party of an obligation under Section A, provided that such breach causes loss or damage to the investor or its investments.

2. An investor of a Party may not, under this Section, submit a claim to arbitration, concerning the breach of the other Party's obligations under Articles 8.2, 8.11, and 8.14.1.

3. The Parties shall refrain from pursuing through diplomatic channels matters related to disputes between a Party and an investor of the other Party, submitted to court proceedings or international arbitration in accordance with the provisions of this Section, unless one of the disputing parties has failed to comply with the court decision or arbitral award, under the terms established in the respective decision or arbitral award.

ARTICLE 8.17: CONSULTATION AND NEGOTIATION

1. Any dispute arising in accordance with Article 8.16.1 shall be settled, to the extent possible, by consultation and negotiation and shall be notified by submitting a notice of the dispute (notice of dispute) in writing, including detailed information of the factual and legal basis, by the investor to the Party receiving the investment. The claimant must deliver evidence, establishing that he or she is an investor of the other Party with its notice of dispute.

2. Nothing in this Section shall be construed as to prevent the disputing parties from referring their dispute, by mutual agreement, to *ad hoc* or institutional mediation or conciliation before or during an arbitral proceeding.

ARTICLE 8.18: SUBMISSION OF A CLAIM

1. If the dispute has not been settled within eight months from the date of notice of dispute, a claim may be submitted, at the discretion of the investor, to:

(a) any competent court or administrative tribunal of the Party to the dispute; or

(b) arbitration in accordance with this Section under:

(i) the ICSID Convention, if the ICSID Convention is available;

(ii) the ICSID Additional Facility Rules, if the ICSID Additional Facility Rules are available;

(iii) the UNCITRAL Arbitration Rules; or

(iv) if agreed by both parties to the dispute, any other arbitration institution or any other arbitration rules.

2. The respondent may require the claimant to initiate the domestic non-judicial administrative review procedure, in accordance with applicable laws and regulations of the respondent before submission of a claim for settlement under paragraph 1(b)[12].

3. The claimant may only submit a claim to arbitration if the term established in paragraph 1 has elapsed, and if the claimant has delivered to the respondent, at least 90 days before the claim to arbitration is submitted, a written notice of its intention to submit a claim to arbitration (notice of intent). Such a notice shall specify:

(a) the name and address of the claimant and its investment;

[12] Such procedure shall normally not exceed three months from the date of its initiation by the claimant and any decision made under the domestic administrative review procedure shall not prevent the claimant from submitting the investment dispute to the arbitration set out in paragraph 1.

(b) the provisions of this Chapter alleged to have been breached and any other related provisions;

(c) the legal and factual basis for the claim; and

(d) the relief sought, including the approximate amount of any damages claimed.

4. Once the investor has submitted the dispute to either a competent court or administrative tribunal of the Party, in whose territory the investment has been admitted, or any of the arbitration mechanisms set out in paragraph 1, the choice of the procedure shall be final and the investor shall not submit the same dispute to a different forum.

ARTICLE 8.19: CONSENT OF EACH PARTY TO ARBITRATION

Each Party hereby gives irrevocable consent to the submission of a dispute to international arbitration established in Article 8.18.1(b), in accordance with the procedures set out in this Agreement. The consent and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules with regards to the written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing."

ARTICLE 8.20: CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY

1. No claim may be submitted to arbitration under this Section if more than three years and six months have elapsed from the date the claimant first acquired, or should have first acquired, knowledge of the events which gave rise to the dispute and of the alleged losses and damages incurred by the claimant or its investment.

2. The seeking of interim injunctive relief not involving the payment of monetary damages, before judicial or administrative tribunals of the respondent, by the claimant for the preservation of its rights and interests pending resolution of the dispute, is not deemed to be a submission of the dispute for resolution for purposes of Article 8.18.4, and is permissible in arbitration under any of the provisions of Article 8.18.1(b).

ARTICLE 8.21: CONSTITUTION OF AN ARBITRAL TRIBUNAL

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If a tribunal has not been constituted within the terms established under the applicable arbitration rules from the date a claim is submitted to arbitration under this Section, the

Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, after consulting the disputing parties, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator.

2. The arbitrators shall:

(a) have experience or expertise in public international law, international investment rules, or in dispute settlement derived from international investment agreements; and

(b) be independent from the Parties and the claimant, and not be affiliated with or receive instructions from any of them.

3. The decision on any proposal by a disputing party to disqualify an arbitrator shall be taken by the Secretary-General. If it is decided that the disqualification proposal is well-founded the arbitrator shall be replaced.

4. The disputing parties may agree on the fees to be paid to the arbitrators. If the disputing parties do not reach an agreement on the fees to be paid to the arbitrators before the constitution of the tribunal, the fees established for arbitrators by ICSID shall apply.

ARTICLE 8.22: CONDUCT OF THE ARBITRATION

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 8.18.1(b). If the disputing parties fail to reach an agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. Before ruling on the merits, the tribunal shall address and decide the preliminary questions that a dispute is not within the tribunal's competence or jurisdiction, or that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 8.26. When deciding on the objection of the respondent, the tribunal shall rule on the costs and attorney's fees incurred during the proceedings, considering whether or not the objection prevailed. The tribunal shall consider whether either the claim of the claimant or the objection of the respondent was frivolous, and shall provide the disputing parties a reasonable opportunity to comment. In the event of a frivolous claim or objection, the tribunal shall award costs and attorney's fees to the prevailing disputing party.

3. A respondent shall not assert as a defense, counter-claim, or right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an indemnity, guarantee, or insurance contract, except with respect to any subrogation as provided for under Article 8.15.

4. In any arbitration conducted under this Section, at the request of a disputing party, the tribunal shall, before issuing a decision or award on liability, provide its draft decision or award to the disputing parties. Within 60 days thereafter, the disputing parties may submit written comments to the tribunal concerning any aspect of the draft decision or award. The tribunal shall consider any such comments and issue its decision or award no later than 45 days after the 60-day comment period expires.

ARTICLE 8.23: GOVERNING LAW

The dispute settlement mechanisms provided in this Section will be based on the provisions of this Agreement and applicable rules of international law.

ARTICLE 8.24: EXPERT REPORTS

Without prejudice to the designation of other kinds of experts as authorized by the applicable arbitration rule, a tribunal, at the request of a disputing party or on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to the terms and conditions agreed by the disputing parties.

ARTICLE 8.25: CONSOLIDATION

1. Where two or more claims have been submitted separately to arbitration under this Section, and the claims raised have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order, in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms set forth in paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order, specifying:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request in conformity with paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the consolidation order otherwise agree, the tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the respondent, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration in accordance with Article 8.18 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more claims, the determination of which it considers would assist in the resolution of the other claims; or

(c) instruct a tribunal previously established under Article 8.21 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4 (a) and 5; and

(ii) that tribunal shall decide whether any previous hearing must be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration pursuant to Article 8.18 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order issued under paragraph 6, specifying:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall provide the Secretary-General and the respondent with a copy of its request.

8. A tribunal established pursuant to this Article shall conduct the proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 8.21 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established pursuant to this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 8.21 be stayed, unless the latter tribunal has already adjourned its proceedings.

ARTICLE 8.26: AWARDS

1. A tribunal, in its award, shall set out its findings of law and fact, together with the reasons for its ruling, and may, at the request of the claimant, award the following forms of relief:

(a) a declaration that the respondent has failed to comply with its obligations under this Agreement;

(b) pecuniary compensation, which shall include applicable interest from the time the loss or damage was incurred until the payment was made;

(c) restitution in kind as appropriate, in which case the award shall provide that the respondent may pay pecuniary compensation in lieu of restitution where the restitution is not practicable; and

(d) with the agreement of the disputing parties, any other form of relief.

2. A tribunal may not award punitive damages.

3. A tribunal shall not be competent to rule on the legality of the measure as a matter of domestic law.

4. A tribunal shall be competent to rule on the consistency of the measures at issue with this Agreement and international law. For greater certainty, this shall not preclude any disputing party from submitting, as a matter of fact, evidence related to the legality of a measure under domestic law.

5. Arbitration awards shall be final and binding for the disputing parties, and each Party shall provide for the enforcement of an award in its territory. An award made by a

tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

6. A disputing party may not request enforcement of the final award until:

(a) in the case the final award was issued under the ICSID Convention,

(i) 120 days have elapsed since the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) the proceedings of revision or annulment have been completed; and

(b) in the case the final award was issued under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected in accordance with Article 8.18.1.(b)(iv),

(i) 90 days have elapsed since the date the award was rendered and no disputing party has commenced a proceeding to revise, set-aside, or annul the award; or

(ii) a court has dismissed or admitted an application to revise, set-aside, or annul the award, and there is no further appeal.

ARTICLE 8.27: SERVICE OF DOCUMENTS

Delivery of the notice of intent and other documents to a Party shall be made in the place designated by that Party in Annex 8-D.

SECTION C: DEFINITIONS

ARTICLE 8.28: DEFINITIONS

For purposes of this Chapter:

claimant means an investor of a Party that is a party to an investment dispute with the other Party;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.3 (Definitions), and a branch of an enterprise;

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

ICSID means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

ICSID Additional Facility Rules means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington, March 18, 1965;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments, and loans[13];

(d) futures, options, and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law[14] [15]; and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges[16].

---

[13] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

[14] Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

[15] The term "investment" does not include an order or judgment entered in a judicial or administrative action.

[16] For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

But **investment** does **not** mean:

(a) public debt operations[17];

(b) claims to money that arise solely from:

(i) 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;

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

(iii) an order entered in a judicial or administrative action;

investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make[18], is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

New York Convention means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York, June 10, 1958;

non-disputing Party means the Party that is not a party to an investment dispute;

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

---

[17] Notwithstanding, public debt operations are subject to Articles 8.3 and 8.4. No award may be made in favor of a claimant for a claim under Article 8.18 with respect to default or non-payment of public debt operations, unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of obligation under Article 8.3 or 8.4.
For greater certainty, a claim under Article 8.18 for breach of obligations under Article 8.3 or 8.4 with respect to default or non-payment of public debt operations shall be solely based in breach of obligations under such articles and shall not be based in breach of obligations under any other article of Section A such as Article 8.7.

[18] For greater certainty, it is understood that an investor "attempts to make an investment" only when the investor has taken concrete steps necessary to make the said investment, such as when the investor has duly filed an application for a permit or a license required to make an investment or has obtained the financing providing it with the funds to set up the investment.

ANNEX 8-A
CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law", generally and as specifically referenced in Article 8.5, results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 8.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

ANNEX 8-B
EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.

2. Article 8.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 8.7.1 is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or a series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors related to the investment, including:

(i) the economic impact of the government action, although the fact that an action or a series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations[19]; and

(iii) the character of the government action, including its objectives and context. Relevant considerations could include whether the investor bears a disproportionate burden[20] that exceeds what the investor or investment should be expected to endure for the public interest.

(b) Except in rare circumstances, such as, for example, when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilization (through, for example, measures to improve the housing

[19] 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 or whether at the time the investment was made the host Party had particular regulatory power over the relevant sector can be considered.

[20] In the case of the government action taken by Korea, whether a special sacrifice has been imposed on the particular investor or investment will be put into consideration.

conditions for low-income households), do not constitute indirect expropriations[21].

[21] For greater certainty, the list of "legitimate public welfare objectives" in subparagraph (b) is not exhaustive.

ANNEX 8-C
TRANSFERS

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures pursuant to the Party's laws and regulations with regard to payments and capital movements:

(a) in the event of serious balance of payments or external financial difficulties or threat thereof; or

(b) where, in exceptional circumstances, payments and capital movements 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 shall:

(a) not exceed a period of one year; however, under exceptional circumstances and for justified reasons a Party may extend the period for application of such measures for an additional year. The Party seeking an extension shall notify in advance to the other Party of such extension;

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

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

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

(e) not be confiscatory;

(f) promptly be notified to the other Party;

(g) be applied on a national treatment basis;

(h) ensure that the other Party is treated as favorably as any non-Party;

(i) not constitute a dual or multiple exchange rate practice;

(j) not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the *Articles of Agreement of the International Monetary Fund*; and

(k) not restrict outward payments or transfers associated with foreign direct investment[22].

[22] For greater certainty, the Parties may exercise any controls on inward capital transfers as are necessary to regulate international capital movements in accordance with the *Articles of Agreement of the*

3. For the purpose of the present Annex, **foreign direct investment** means an investment of an investor of a Party other than a foreign credit, made in order to:

(a) establish an enterprise in or increase the capital of an existing enterprise of the other Party; or

(b) acquire equity of an existing enterprise of the other Party, but excludes such an investment that is of a purely financial character and is designed only to gain indirect access to the financial market of the other Party.

International Monetary Fund. Such measures may include controls, such as an obligation to deposit part of the amount of such transactions.

ANNEX 8-D
SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B

Colombia

Notices and other documents in disputes under Section B shall be served on Colombia by delivery to:

Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C., Colombia

Korea

Notices and other documents in disputes under Section B shall be served on Korea by delivery to:

International Legal Affairs Division
Ministry of Justice of the Republic of Korea
Government Complex-Gwacheon
Gwacheon-City, Gyeonggi-Do
427-720, Korea

CHAPTER NINE
CROSS-BORDER TRADE IN SERVICES

ARTICLE 9.1: SCOPE

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

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

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

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

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

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

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

(a) central or local governments and authorities; and

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

3. Notwithstanding paragraph 1, Articles 9.4, 9.7, and 9.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment[1].

4. Notwithstanding paragraph 1, this Chapter shall not apply to:

(a) financial services as defined in Article 9.13, except that paragraph 3 shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 1.3 (Definitions) in the Party's territory;

(b) government procurement;

[1] For greater certainty, the scope of application of Articles 9.4, 9.7, and 9.8 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope specified in Article 9.1, subject to any applicable non-conforming measures and exceptions. Nothing in this Chapter, including paragraph 3, is subject to investor-state dispute settlement under Section B of Chapter 8 (Investment).

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

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

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

(iii) computer reservation system (CRS) services; or

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

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

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

ARTICLE 9.2: NATIONAL TREATMENT

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

ARTICLE 9.3: MOST-FAVORED-NATION TREATMENT[2]

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

ARTICLE 9.4: MARKET ACCESS

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

(a) impose limitations on:

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

[2] For greater certainty, nothing in Article 9.3 shall be interpreted as extending the scope of this Chapter.

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

(iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test[3]; or

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

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

ARTICLE 9.5: LOCAL PRESENCE

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

ARTICLE 9.6: NON-CONFORMING MEASURES

1. Articles 9.2 through 9.5 shall not apply to:

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

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

(ii) a local level of government[4] [5];

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.2, 9.3, 9.4, or 9.5.

[3] Sub-subparagraph (iii) does not cover measures of a Party which limit inputs for the supply of services.
[4] For Korea, **local level of government** means a local government as defined in the *Local Autonomy Act*.
[5] For greater certainty, for Colombia the *Departamentos* are part of the local level of government.

2. Articles 9.2 through 9.5 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

ARTICLE 9.7: DOMESTIC REGULATION

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

2. With a view to ensuring that measures related to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, while recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are:

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

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

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

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

ARTICLE 9.8: TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS[6]

Further to Chapter 18 (Transparency):

(a) Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding its regulations related to the subject matter of this Chapter.

[6] For greater certainty, "regulations" includes regulations establishing or applying to licensing authorization or criteria at the central and local levels of government.

(b) If, consistent with Article 18.1 (Publication), a Party does not provide advance notice of and opportunity for comment on regulations it proposes to adopt related to the subject matter of this Chapter, it shall, to the extent possible, address in writing the reasons for not doing so.

(c) To the extent possible, each Party shall allow reasonable time between publication of final regulations related to the subject matter of this Chapter and their effective date.

ARTICLE 9.9: RECOGNITION

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

2. Where a Party recognizes, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, nothing in Article 9.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. On request of the other Party, a Party shall promptly provide information, including appropriate descriptions, concerning any recognition agreement or arrangement that the Party or relevant bodies in its territory have concluded.

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

5. Neither Party may accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing, or certification of services suppliers, or a disguised restriction on trade in services.

6. Annex 9-A shall apply to measures adopted or maintained by a Party related to the licensing or certification of professional service suppliers as set out in that Annex.

ARTICLE 9.10: PAYMENTS AND TRANSFERS[7]

[7] For greater certainty, Annex 8-C (Transfers) shall apply to Article 9.10.

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

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

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

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

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

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

(d) criminal or penal offences; or

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

ARTICLE 9.11: DENIAL OF BENEFITS

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

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantial business activities in the territory of the other Party. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

ARTICLE 9.12: WORK PROGRAM ON FINANCIAL SERVICES

Unless otherwise agreed by the Parties, the authorities responsible for financial services will meet four years after the date of entry into force of this Agreement to discuss the viability and convenience of incorporating financial services into this Agreement.

ARTICLE 9.13: DEFINITIONS

For purposes of this Chapter:

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

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

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

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

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

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

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

enterprise means an "enterprise" as defined in Article 1.3 (Definitions), and a branch of an enterprise;

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

financial service means any service of a financial nature including those defined in paragraph 5(a) of the Annex on Financial Services of GATS;

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

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

service supplier of a Party means a person of that Party that seeks to supply or supplies a service[8].

[8] For purposes of Articles 9.2 and 9.3, "service suppliers" has the same meaning as "services and service suppliers" as used in Articles II and XVII of GATS.

ANNEX 9-A
PROFESSIONAL SERVICES

Development of Professional Services Standards

1. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers of the other Party and to provide recommendations on mutual recognition to the Joint Commission.

2. The standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:

(a) education – accreditation of schools or academic programs;

(b) examinations – qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;

(c) experience – length and nature of experience required for licensing;

(d) conduct and ethics – standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;

(e) professional development and re-certification – continuing education and ongoing requirements to maintain professional certification;

(f) scope of practice – extent of, or limitations on, permissible activities;

(g) local knowledge – requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; or

(h) consumer protection – including alternatives to residency requirements, such as bonding, professional liability insurance, and client restitution funds, to provide protection of consumers.

3. On receipt of a recommendation referred to in paragraph 1, the Joint Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the result of the Joint Commission's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

Temporary Licensing

4. For mutually agreed individual professional services, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of the other Party.

Recognition

5. For professional services generally and when the Parties so agree, each Party shall consider, as appropriate, the following matters:

(a) procedures for fostering the development of mutual recognition agreements or arrangements among relevant professional bodies;

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

(c) other issues of mutual interest related to the supply of professional services.

Review

6. The Joint Commission shall review the implementation of this Annex at least once every three years.

CHAPTER TEN
TEMPORARY ENTRY FOR BUSINESS PERSONS

ARTICLE 10.1: GENERAL PRINCIPLES

1. This Chapter reflects the preferential trading relationship between the Parties, the Parties' mutual desire to facilitate temporary entry for business persons on a reciprocal basis and to establish transparent criteria and procedures for temporary entry in accordance with Annex 10-A, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

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

ARTICLE 10.2: GENERAL OBLIGATIONS

1. Each Party shall apply its measures related to the provisions of this Chapter in accordance with Article 10.1 and, in particular, shall expeditiously apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. Notwithstanding paragraph 1, nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of business persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of its borders, and to ensure the orderly movement of business persons across its borders, provided that such measures are not applied in such a manner as to nullify, delay, or impair the commitments made by a Party under this Agreement. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying, delaying, or impairing the commitments made by a Party under this Agreement.

ARTICLE 10.3: GRANT OF TEMPORARY ENTRY

1. Each Party shall grant temporary entry to business persons who comply with immigration measures applicable to temporary entry such as those related to public health and safety and national security in accordance with this Chapter, including Annex 10-A and Appendix 10-A-2.

2. Temporary entry granted pursuant to this Chapter shall not replace the requirements needed to carry out a profession or an activity in accordance with the specific laws and regulations in force in the territory of the Party authorizing the temporary entry.

3. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might adversely affect:

(a) the settlement of any labor 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.

4. When a Party refuses, pursuant to paragraph 3, to issue an immigration document authorizing employment, it shall:

(a) take measures to allow the business person to be informed in writing of the reasons for the refusal; and

(b) promptly notify the other Party in writing of the reasons for the refusal.

5. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

ARTICLE 10.4: PROVISION OF INFORMATION

1. Further to Article 18.1 (Publication), each Party shall:

(a) provide the other Party with relevant materials that will enable the other Party to become acquainted with its measures related to this Chapter; and

(b) no later than six months after the date of entry into force of this Agreement, prepare and publish or otherwise make available in its own territory, and in the territory of the other Party, explanatory material regarding the requirements for temporary entry under this Chapter, in such a manner that will enable business persons of the other Party to become acquainted with those requirements.

2. Each Party shall collect, maintain and, upon request, make available to the other Party, in accordance with its laws, data regarding the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each occupation, profession, or activity.

ARTICLE 10.5: WORKING GROUP

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials and contact points.

2. The Working Group shall meet, when necessary, to consider matters pertaining to this Chapter, such as:

(a) the implementation and administration of this Chapter;

(b) the development and adoption of common criteria and interpretations for the implementation of this Chapter;

(c) the development and implementation of measures to further facilitate temporary entry of business persons on a reciprocal basis; and

(d) any other measures of mutual interest.

ARTICLE 10.6: CONTACT POINTS

1. The Parties hereby establish contact points who shall exchange information as described in Article 10.4 and shall receive and analyze the information mentioned under Article 10.5.

2. The contact points are:

(a) for Colombia,
Coordinator
Coordination of Visas and Immigration
Ministry of Foreign Affairs or its successor

(b) for Korea,
Coordinator
Border Control Division
Korea Immigration Service
Ministry of Justice or its successor

ARTICLE 10.7: DISPUTE SETTLEMENT

1. A Party may not initiate proceedings under Chapter 20 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

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

(b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) 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 an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

ARTICLE 10.8: RELATION TO OTHER CHAPTERS

1. Nothing in this Agreement shall be construed to impose any obligation[1] on a Party regarding its immigration measures, except for this Chapter, Chapters 1 (Initial Provisions and General Definitions), 19 (Institutional Provisions), 20 (Dispute Settlement), and 22 (Final Provisions), and Articles 18.1 (Publication), 18.2 (Notification and Provision of Information), and 18.3 (Administrative Proceedings).

2. Nothing in this Chapter shall be construed to impose any obligations or commitments on a Party with respect to other Chapters of this Agreement.

ARTICLE 10.9: TRANSPARENCY IN DEVELOPMENT AND APPLICATION OF REGULATIONS

1. Further to Chapter 18 (Transparency), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding regulations related to the temporary entry of business persons.

2. Each Party shall, within a reasonable period after an application requesting temporary entry is considered complete under its laws and regulations, inform the applicant of the decision concerning the application. On request of the applicant, the Party shall provide, without undue delay, information concerning the status of the application.

ARTICLE 10.10: DEFINITIONS

For purposes of this Chapter:

business person means a national[2] of a Party who is engaged in trade in goods, the supply of services, or the conduct of investment activities in the other Party;

immigration measure means any law, rule, regulation, decision, procedure, or any other administrative action affecting the entry and sojourn of aliens;

national has the same meaning as the term "national" as defined in Chapter 1 (Initial Provisions and General Definitions);

pattern of practice means a practice carried out by the immigration authorities of a Party in a repetitive manner during a representative period immediately before the execution of the practice at issue; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

[1] For greater certainty, "any obligation" in Article 10.8 includes Articles 9.2 (National Treatment), 9.3 (Most-Favored-Nation Treatment) and 9.4 (Market Access).
[2] For greater certainty, "national" does not include a permanent resident.

ANNEX 10-A
TEMPORARY ENTRY FOR BUSINESS PERSONS

SECTION A: BUSINESS VISITORS

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 10-A-1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with immigration measures applicable to temporary entry, on presentation of:

(a) proof of nationality of the other Party;

(b) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix 10-A-1 and describing the purpose of entry; and

(c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of subparagraph 1(c) by demonstrating that:

(a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and

(b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.

The proof that a Party may require to demonstrate the matters mentioned in subparagraph (b) shall be reasonable and not more burdensome than necessary. Each Party shall include in the explanatory material described in Article 10.4.1(b) a non-exclusive list of examples of such proof.

3. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labor market tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction related to temporary entry under paragraph 1.

SECTION B: TRADERS AND INVESTORS

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

(a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought; or

(b) establish, develop, administer, or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory or executive, or involves essential skills, provided that the business person otherwise complies with immigration measures applicable to temporary entry.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labor market tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction related to temporary entry under paragraph 1.

SECTION C: INTRA-COMPANY TRANSFEREES

1. Each Party shall grant temporary entry and provide confirming documentation to an intra-company transferee, who otherwise complies with immigration measures applicable to temporary entry.

2. **Intra-company transferee** means an employee of a firm that supplies services through subsidiaries, branches, or designated affiliates established in the territory of the other Party and who has been so employed for a period not less than one year immediately preceding the date of the application for temporary entry, and who is an executive, manager, or specialist as defined below:

(a) **executive** means a natural person within an organization who primarily directs the management of the organization, 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 directly perform tasks related to the actual supply of a service or services of the organization;

(b) **manager** means a natural person within an organization who primarily directs the organization or a department of the organization, supervises, and controls the work of other supervisory, professional, or managerial employees; has the authority to hire and fire or recommend hiring, firing, or other personnel actions; and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the supply of the service; and

(c) **specialist** means a natural person within an organization who possesses knowledge at an advanced level of continued expertise and proprietary knowledge on the services, research, equipment, techniques, or management of the organization.

3. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labor market tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction related to temporary entry under paragraph 1.

SECTION D: CONTRACTUAL SERVICE SUPPLIERS

1. Each Party shall grant temporary entry and provide confirming documentation to a business person who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 10-A-3, provided that the business person otherwise complies with immigration measures applicable to temporary entry, on presentation of:

(a) proof of nationality of the other Party;

(b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and

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

2. **Contractual service supplier** means a business person of a Party who:

(a) is engaged in a specialized occupation that requires theoretical and practical application of specialized knowledge;

(b) has attained a bachelor's degree relevant to the service to be provided as a minimum for entry into the occupation;

(c) 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 for a period not exceeding one year from a juridical person of the other Party, who is the final consumer of the services supplied. The contract shall comply with the laws and regulations of that Party;

(d) has been an employee of the juridical person for a period not less than one year immediately preceding the date of application for admission; and

(e) is required to receive no remuneration from the juridical person located in the other Party.

3. Each Party may impose numerical restriction related to temporary entry for contractual service suppliers. Neither Party may, however, as a condition for temporary entry under paragraph 1, require prior approval procedures, labor market tests, or other procedures of similar effect.

SECTION E: SPOUSES AND DEPENDANTS

1. Each Party shall grant temporary entry and employment authorization to a spouse and dependants of a business person qualifying for temporary entry under Section B, Section C, or Section D, if the spouse and dependants otherwise comply with respective immigration measures applicable to temporary entry and meet the relevant employment qualifications, if necessary.

2. Neither Party may:

(a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labor market tests, or other procedures of similar effect; or

(b) impose or maintain any numerical restriction related to temporary entry under paragraph 1.

SECTION F: MANAGEMENT TRAINEE

1. Each Party shall grant temporary entry and provide confirming documentation to a management trainee in professional development who has been employed by a juridical person of a Party for at least one year and who possesses a university degree and is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company[3] in preparation for a senior leadership position within the company, provided that the management trainee complies with respective immigration measures applicable to temporary entry.

2. Each Party may impose numerical restriction related to temporary entry for management trainees. Neither Party may, however, as a condition for temporary entry under paragraph 1, require prior approval procedures, labor market tests, or other procedures of similar effect.

[3] For greater certainty, "company" is confined to subsidiaries, branches, or designated affiliates established in the territory of the other Party.

APPENDIX 10-A-1
BUSINESS VISITORS

A business person of a Party who enters the territory of the other Party for the purpose of engaging in the following activities: market, technical, statistical, and scientific research; business liason; on-site visit; meeting and consultations; negotiating contracts; installing or repairing imported/exported machinery; attending seminars or conferences; loading and transporting goods or persons; and other similar business purposes.

APPENDIX 10-A-2
DURATION OF STAY

In the case of Korea:

1. Business visitors who enter Korea under Section A of Annex 10-A will be granted a period of stay of up to 90 days.

2. Traders and investors who enter Korea under Section B of Annex 10-A will be granted a period of stay of up to two years. The period of stay may be extended provided that the conditions on which they are based remain in effect.

3. Intra-company transferees who enter Korea under Section C of Annex 10-A will be granted a period of stay of up to two years. The period of stay may be extended provided that the conditions on which they are based remain in effect.

4. Contractual service suppliers who enter Korea under Section D of Annex 10-A will be granted a period of stay of up to one year or the period of the contract, whichever is shorter.

5. Management trainees who enter Korea under Section F of Annex 10-A will be granted a period of stay of up to one year.

6. Business persons of Colombia who intend to stay over 90 days in Korea shall register as aliens at the competent immigration office.

In the case of Colombia:

1. Business visitors who enter Colombia under Section A of Annex 10-A will be granted a period of stay of up to 90 days.

2. Traders and investors who enter Colombia under Section B of Annex 10-A will be granted a period of stay of up to two years. The period of stay may be extended provided that the conditions on which they are based remain in effect.

3. Intra-company transferees who enter Colombia under Section C of Annex 10-A will be granted a period of stay of up to two years. The period of stay may be extended provided that the conditions on which they are based remain in effect.

4. Contractual service suppliers who enter Colombia under Section D of Annex 10-A will be granted a period of stay of up to one year or the period of the contract, whichever is shorter.

5. Management trainees who enter Colombia under Section F of Annex 10-A will be granted a period of stay of up to one year.

6. Business persons of Korea who received a visa with duration longer than three months and who intend to stay over 15 business days in Colombia shall register as aliens at the competent immigration office.

APPENDIX 10-A-3
CONTRACTUAL SERVICE SUPPLIERS[4]

1 Computer Hardware[5] Design Engineers
2 Computer network products developer
3 Recorder developer
4 Hard disk developer
5 Controller developer
6 Computer products Engineers
7 Computer control system developer
8 Disk drive developer
9 Computer main board developer
10 Input/output products developer
11 Telecommunication Machinery Engineers and Researchers
12 Telecommunication Equipment Engineers and Researchers
13 Telecommunication Technology Engineers and Researchers
14 Telecommunication Network Operation Engineers and Researchers
15 Mobile circuit developer
16 Modem development Design Engineers
17 Interphone or phone developer
18 DMB receiver developer
19 HFC network operating Engineers
20 SMS products operator
21 Wireless communication network manager
22 Electrical circuit manager
23 Switchboard developer
24 Fiber optic node-products developer
25 VMS products developer
26 RF communication research developer
27 Wire communication network planner
28 Communication line Design Engineers
29 Artificial satellite TV receiver development Design Engineers
30 Optical communication products Design developer
31 Letters service products operator
32 Transmission developer
33 Wireless phone developer
34 Digital receiver developer
35 DMB phone developer
36 ADSL products developer
37 VMS products operator
38 Communication network operation Engineers
39 Internet network operation Engineers
40 Communication construction manager
41 Wireless relay equipment development Design Engineers
42 Communication application service equipment developer

[4] This list is based on the International Standard Classification of Occupations (ISCO) and the Korean Standard Classification of Occupations (KSCO).

[5] "Computer hardware" includes computer chips, circuit boards, computer systems, and related equipment such as keyboards, modems, and printers.

43 CDMA technology research developer
44 Wireless data network developer
45 Communication intelligent network research developer
46 Network communication equipment development Design Engineers
47 Communication equipment development Design Engineers
48 Switchboard development Design Engineers
49 Digital broadcasting equipment developer
50 Communication network Design Engineers
51 IT Consultants
52 Computer System Supervision Professionals
53 Computer System Designers and Analysts
54 Network Consultants
55 Database Consultants
56 Information security Consultants
57 Information system Consultants
58 System Software Designers and Analysts
59 System Software Programmers
60 EMBEDED program developer
61 Linux developer
62 MICOM control Engineers
63 OS developer
64 FIRMWARE developer
65 Application Software Designers and Analysts
66 Network Programmers
67 Application Software Programmers n.e.c.
68 Data management application programmer
69 Financing management application programmer
70 Information process application programmer
71 Protocol Developers
72 Database Designers and Analysts
73 Database Programmers
74 Database Managers
75 Database professional
76 Network Engineers
77 Network system analysts
78 Intranet Engineers
79 LAN Engineers
80 VAN Engineers
81 WAN Engineers
82 Network server building operation Engineers
83 Web Masters
84 Web Engineers and Programmers
85 Information System Operators
86 General management consultant[6]
87 Financial management consultant
88 Marketing management consultant
89 Human resources management consultant[7]

[6] For greater certainty, consulting services on law are not included.

90 Production management consultant
91 Public relations consultant
92 Distribution and Transmission Engineers and Researchers
93 Electrical Measurement and Control Engineers and Researchers
94 Electrical Supervisors and Researchers
95 Cement Engineers and Researchers
96 Press mold Design Engineers
97 Plastic Molding Design Engineers
98 Cast Mold Design Engineers
99 Aircraft Engineers
100 Diesel machine Engineers
101 Gas turbine Engineers
102 Aircraft machine Engineers
103 Satellite Engineers
104 Injection molding Design Engineers
105 Ventilation equipment Engineers
106 Ventilation machine Engineers
107 Refrigerator Engineers
108 Heat exchanger designer
109 Clean room air conditioning equipment Design Engineers
110 GHP developer
111 Heat exchanger developer
112 Air conditioning purgation Design Engineers
113 Public works construction machine design development Engineers
114 Pavement of a road construction machine design development Engineers
115 Transportation construction machine design development Engineers
116 Crusher, drill piledrivers and pile-extractors design development Engineers
117 Farming machine(design) Engineers
118 Mining machine(design) Engineers
119 Fiber machine(design) Engineers
120 Food machine(design) Engineers
121 Machine tool (design) Engineers
122 Oil pressure machine(design) Engineers
123 Industrial robot design Engineers
124 Special Engineering Design Service for automobile (automobile designer)
125 Aircraft designer
126 Automobile machine Engineers
127 Car electronics Engineers
128 Automobile engine design Engineers
129 Petroleum and Chemical Engineers and Researchers
130 Rubber and Plastic Engineers and Researchers
131 Pesticide and Fertilizer Engineers and Researchers
132 Paint Products Engineers and Researchers
133 Cosmetics and Soap Engineers and Researchers
134 Natural gas Chemical Engineers
135 Tire production Engineers
136 Gasoline Engineers

[7] For Korea, the consulting services included in the scope of duties of Certified Labor Affairs Consultants under the *Certified Labor Affairs Consultant Act* are not included. The duties of Certified Labor Affairs Consultants include consulting on labor-management relations and remuneration strategies.

137 Natural gas production and distribution Engineers
138 Brewage production Engineers
139 Metal Engineers and Researchers
140 Electrical Products Development Engineers and Researchers
141 Power Plant Engineers and Researchers
142 Electronic equipment Engineers
143 Mold Making Engineers and Researchers
144 Plant Engineers and Researchers
145 Cooling, Heating and Air-Conditioning Engineers and Researchers
146 Construction Machine Engineers and Researchers
147 Industrial Machine Engineers and Researchers
148 Automobile Engineers and Researchers
149 Ship Engineers and Researchers
150 Aircraft and Railroad Vehicle Engineers and Researchers
151 Marine engineering Engineers
152 Exploration Engineers
153 Oil Engineers
154 Market and Public Opinion Survey Manager
155 Survey Specialists
156 Biologist[8]
157 Biochemist[9]
158 Construction Work Engineers
159 Civil Construction Engineers
160 Advertising Professionals
161 Computer Game Programmers
162 Game Graphic Designers
163 Architects[10]

[8] Doctoral degree or equivalent is required.
[9] Doctoral degree or equivalent is required.
[10] For Korea, architectural services are subject to collaboration with architects registered under the Korean law in the form of joint contracts.

APPENDIX 10-A-4
PRIMARY IMMIGRATION MEASURES

For Colombia:

- *Decree 4000 of 2004*, *Decree 2622 of 2009*, *Resolution 5707 of 2008*, and *Resolution 4700 of 2009*, or those that modify them.

For Korea:

- *Immigration Control Act, Enforcement Decree of the Immigration Control Act, Enforcement Regulations of the Immigration Control Act, Guidelines for the Issuance of Visa, etc.*, or those that modify them, if any.

CHAPTER ELEVEN
TELECOMMUNICATIONS

ARTICLE 11.1: SCOPE AND COVERAGE

1. This Chapter shall apply to:

   (a) measures related to access to and use of public telecommunications transport networks and services;

   (b) measures related to obligations of suppliers of public telecommunications transport networks and services;

   (c) other measures related to public telecommunications transport networks and services; and

   (d) measures related to the supply of value-added services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, as set out in Article 11.2, this Chapter shall not apply to any measure related to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

   (a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate, or provide telecommunications networks and services not offered to the public generally;

   (b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications transport network;

   (c) require a Party to authorize an enterprise of the other Party to establish, construct, acquire, lease, operate, or supply telecommunications networks or services, other than as specifically provided in this Agreement; or

   (d) prevent a Party from prohibiting persons operating private networks from using their networks to supply public telecommunications transport networks and services to third persons.

SECTION A: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES

ARTICLE 11.2: ACCESS TO AND USE OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES[1]

1. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport networks and services, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that enterprises of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications transport network;

(b) provide services to individual or multiple end-users over any leased or owned circuits;

(c) connect owned or leased circuits with public telecommunications transport networks and services in the territory of that Party or with circuits leased or owned by another enterprise;

(d) perform switching, signaling, and processing functions; and

(e) use operating protocols of their choice, other than as necessary to ensure the availability of telecommunications networks and services to the public generally.

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

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their

[1] For greater certainty, Article 11.2 shall not prohibit a Party from requiring an enterprise to obtain a license, concession, or other type of authorization to supply any public telecommunications transport network or service within its territory. For purposes of Article 11.2, the term "enterprise" shall be interpreted as "service supplier" for Korea.

ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks and services.

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

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

(b) requirements, where necessary, for the inter-operability of such networks and services;

(c) type approval of terminal or other equipment which interfaces with the network and technical requirements related to the attachment of that equipment to such networks; or

(d) notification, registration, and licensing.

SECTION B: ADDITIONAL OBLIGATIONS RELATING TO MAJOR SUPPLIERS OF PUBLIC TELECOMMUNICATIONS TRANSPORT NETWORKS AND SERVICES

ARTICLE 11.3: TREATMENT BY MAJOR SUPPLIERS

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

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

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

ARTICLE 11.4: COMPETITIVE SAFEGUARDS

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

2. The anti-competitive practices referred to in paragraph 1 include in particular:

(a) engaging in anti-competitive cross-subsidization[2];

(b) using information obtained from competitors with anti-competitive results; and

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

ARTICLE 11.5: INTERCONNECTION

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory is required to provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

(b) of a quality no less favorable than that provided for its own like services, for like services of non-affiliated service suppliers, or for like services of its subsidiaries or other affiliates;

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

(d) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

Public Availability of the Procedures for Interconnection Negotiations

2. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

Transparency of Interconnection Arrangements

[2] For Colombia, the term "anticompetitive cross-subsidization" shall be interpreted as including margin squeeze.

3. Each Party shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or a reference interconnection offer.

ARTICLE 11.6: RESALE

Each Party shall ensure that a major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications transport networks and services[3].

ARTICLE 11.7: UNBUNDLING OF NETWORK ELEMENTS

1. Each Party shall provide its telecommunications regulatory body or other relevant body with the authority to require major suppliers in its territory to offer access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications transport networks and services.

2. Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain such elements, in accordance with its laws or regulations.

SECTION C: OTHER MEASURES

ARTICLE 11.8: CONDITIONS FOR THE SUPPLY OF VALUE-ADDED SERVICES

1. Neither Party shall require an enterprise in its territory that it classifies as a supplier of value-added services and that supplies those services over facilities that the enterprise does not own to:

(a) supply those services to the public generally;

(b) cost-justify its rates for those services;

(c) file a tariff for those services;

(d) connect its networks with any particular customer for the supply of those services; or

(e) conform with any particular standard or technical regulation of the telecommunications regulatory body for connecting to any other network, other than a public telecommunications transport network.

2. Notwithstanding paragraph 1, a Party may take the actions described in paragraph 1 to remedy a practice of a supplier of value-added services that the Party has

[3] Each Party will implement this obligation in accordance with its laws and regulations.

found in a particular case to be anti-competitive under its laws or regulations, or to otherwise promote competition or safeguard the interests of consumers.

ARTICLE 11.9: INDEPENDENT REGULATORY BODIES

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

2. Each Party shall ensure that its regulatory decisions and procedures are impartial with respect to all market participants.

ARTICLE 11.10: UNIVERSAL SERVICE

1. Each Party has the right to define the kind of universal service obligations it wishes to adopt or maintain.

2. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral[4] 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 11.11: LICENSING PROCESS

1. When a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration, or other type of authorization, the Party shall make publicly available:

(a) all the licensing or authorization criteria and procedures it applies;

(b) the period of time it normally requires to reach a decision concerning an application for a license, concession, permit, registration, or other type of authorization; and

(c) the terms and conditions of all licenses or authorizations.

2. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a license, concession, permit, registration, or other type of authorization.

ARTICLE 11.12: ALLOCATION AND USE OF SCARCE RESOURCES

[4] For Colombia, the term "competitively neutral" includes both competitively and technologically neutral.

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but retains the right not to provide detailed identification of frequencies allocated or assigned for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article 9.4 (Market Access), as it applies to either Chapters 8 (Investment) or 9 (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may limit the number of suppliers of public telecommunications transport networks and services. Each Party also retains the right to allocate frequency bands, taking into account present and future needs and spectrum availability.

ARTICLE 11.13: RESOLUTION OF TELECOMMUNICATIONS DISPUTES[5]

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (Review and Appeal), each Party shall ensure the following:

Recourse

(a) (i) enterprises of the other Party may have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures related to matters set out in Articles 11.2 through 11.5; and

(ii) suppliers of public telecommunications transport networks and services as well as suppliers of value-added services[6] of the other Party that have requested interconnection with a major supplier in the Party's territory may have recourse, within a reasonable and publicly specified period after the supplier requests interconnection, to its telecommunications regulatory body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier;

Reconsideration[7]

[5] The Parties understand that for purposes of Article 11.13, the term "enterprise" shall apply only to natural persons or juridical persons organized under the laws of each Party.

[6] Regarding value-added services, each Party will implement this obligation in accordance with its relevant laws or regulations.

[7] For Korea, subparagraph (b) does not apply to a determination or decision of the telecommunications regulatory body with respect to disputes between telecommunications service suppliers or between telecommunications service suppliers and users.

(b) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may petition the body to reconsider that determination or decision[8]. Neither Party shall permit such a petition to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless an appropriate authority stays such determination or decision[9]; and

Judicial Review

(c) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party shall permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless the relevant judicial body stays such determination or decision.

ARTICLE 11.14: TRANSPARENCY

Further to Articles 18.1 (Publication) and 18.2 (Notification and Provision of Information), each Party shall ensure that:

(a) rulemakings, including the basis for such rulemakings, of its telecommunications regulatory body and tariffs filed with its telecommunications regulatory body are promptly published or otherwise made publicly available;

(b) interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any rulemaking that its telecommunications regulatory body proposes; and

(c) its measures related to public telecommunications transport networks and services or value-added services[10] are made publicly available, including measures related to:

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

(ii) procedures related to judicial and other adjudicatory proceedings;

[8] For Colombia, as to subparagraph (b), enterprises may not petition for reconsideration of rulings of general application, as defined in Article 11.17, unless otherwise provided under its laws and regulations.

[9] Notwithstanding this subparagraph, for Colombia, if a petition for reconsideration is filed, the determination or decision of the telecommunications regulatory body will not become effective, while the outcome of the reconsideration is pending. Petitions for reconsideration shall be ruled upon promptly.

[10] Regarding value-added services, each Party will implement this obligation in accordance with its relevant laws or regulations.

(iii) specifications of technical interfaces;

(iv) information on bodies responsible for preparing, amending, and adopting standard-related measures;

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

(vi) notification, permit, registration, or licensing requirements, if any.

ARTICLE 11.15: RELATIONSHIP TO OTHER CHAPTERS

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

ARTICLE 11.16: TECHNICAL COOPERATION

To encourage the access to and use of technologies related to public telecommunications transport networks and services as well as value-added services, the Parties shall promote collaboration between the private sectors of the Parties and cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall establish a Committee on Telecommunications Cooperation and give special emphasis to existing exchange and technical cooperation programs.

ARTICLE 11.17: DEFINITIONS

For purposes of this Chapter:

cost-oriented means 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 network and service, including a service supplier other than a supplier of public telecommunications transport networks and services;

enterprise means an "enterprise" as defined in Article 1.3 (Definitions) and includes its branch;

enterprise of the other Party means both an enterprise constituted or organized under the laws of the other Party and an enterprise owned or controlled by a person of the other Party;

essential facilities means facilities of a public telecommunications transport network and service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to supply a service;

interconnection means linking with suppliers providing public telecommunications transport networks and 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;

intra-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party's laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Party. "Intra-corporate communications" excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user;

major supplier means a supplier of public telecommunications transport networks and services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications transport networks and 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 favorable than that accorded to any other similar user of public telecommunications transport networks and services in like circumstances;

public telecommunications transport network means telecommunications infrastructure used to provide public telecommunications services;

public telecommunications transport service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. Such services may include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with or approved by a telecommunications regulatory body that sufficiently details the terms, rates, and conditions for interconnection such that a supplier of public telecommunications transport networks and services that is willing to accept it may obtain interconnection with the major supplier on that basis;

service supplier of the other Party means a person of the other Party that seeks to supply or supplies a service, including a supplier of public telecommunications transport networks and services;

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

telecommunications regulatory body means a national body responsible for the regulation of telecommunications;

user means an end-user of or a supplier of public telecommunications transport networks and services; and

value-added services means those services that add value to telecommunications services through enhanced functionality, and specifically means those services as respectively defined in the relevant laws or regulations of each Party. Each Party may classify which services in its territory are value-added services.

CHAPTER TWELVE
ELECTRONIC COMMERCE

ARTICLE 12.1: OBJECTIVES AND PRINCIPLES

1. The Parties, recognizing the economic growth and trade opportunities that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce, agree to promote the development of electronic commerce between them, in particular by cooperating on issues arising from electronic commerce under this Chapter.

2. The Parties agree that the development of electronic commerce shall be fully compatible with international standards of data protection, in order to ensure the confidence of users of electronic commerce.

ARTICLE 12.2: CUSTOMS DUTIES

1. Neither Party may apply customs duties, fees, or charges on or in connection with the importation or exportation of products by electronic means.

2. For greater certainty, this Chapter does not preclude a Party from imposing internal taxes or other internal charges on products delivered electronically, provided that such taxes or charges are imposed in a manner that is consistent with this Agreement.

ARTICLE 12.3: ONLINE PERSONAL DATA PROTECTION

Each Party shall adopt or maintain measures which ensure the protection of the personal data of the users of electronic commerce. In the development of personal data protection standards, each Party shall take into account international standards and the criteria of relevant international organizations.

ARTICLE 12.4: PAPERLESS TRADE ADMINISTRATION

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.

2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

ARTICLE 12.5: CONSUMER PROTECTION

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and misleading commercial practices when they engage in electronic commerce.

2. The Parties recognize the importance of cooperation between their respective national consumer agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

ARTICLE 12.6: COOPERATION

1. The Parties shall endeavor to establish cooperation mechanisms on issues arising from electronic commerce, which will, *inter alia*, address the following:

(a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;

(b) the protection of personal data;

(c) the liability of providers with respect to the transmission or storage of information;

(d) the treatment of unsolicited commercial electronic messages;

(e) the security of electronic commerce;

(f) the protection of consumers in the field of electronic commerce; and

(g) any other issue relevant for the development of electronic commerce.

2. The Parties shall endeavor to share information and experiences on laws and regulations related to electronic commerce and shall cooperate to help micro, small, and medium-sized enterprises overcome the obstacles they face in the use of electronic commerce.

3. Recognizing the global nature of electronic commerce, the Parties agree to actively participate in regional and multilateral fora to promote the development of electronic commerce and to exchange views, as necessary, within the framework of such fora on issues related to electronic commerce.

ARTICLE 12.7: RELATION TO OTHER CHAPTERS

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

ARTICLE 12.8: DEFINITIONS

For purposes of this Chapter:

personal data means any information about an identified or identifiable natural person;

trade administration documents means forms that a Party issues or controls and that must be completed by or for an importer or exporter in connection with the importation or exportation of goods; and

unsolicited commercial electronic messages means an electronic message including a voice or fax message which is sent for commercial purposes to a consumer without the consent of the recipient, or against the explicit rejection of the recipient, using an internet carriage service or other telecommunications services.

CHAPTER THIRTEEN
COMPETITION AND CONSUMER POLICY

ARTICLE 13.1: OBJECTIVES

Recognizing the importance of free competition in trade relations, the Parties understand that proscribing anti-competitive practices, implementing competition policies, and cooperating on matters covered by this Chapter will help prevent the benefits of trade liberalization from being undermined.

ARTICLE 13.2: IMPLEMENTATION

1. Each Party shall maintain competition laws that promote and protect the competitive process in its market by proscribing anti-competitive practices. Each Party shall take appropriate actions with respect to anti-competitive practices with the objective of promoting economic efficiency and consumer welfare.

2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.

3. The enforcement policy of the Parties' competition authorities shall be consistent with the principles of transparency, timeliness, non-discrimination, and procedural fairness.

4. Each Party shall ensure that any exemption provided under its competition laws shall be transparent and undertaken on the grounds of public policy or public interest.

ARTICLE 13.3: COOPERATION

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to promote the effective enforcement of their competition laws and to fulfill the objectives of this Agreement.

2. Accordingly, the Parties shall cooperate in relation to the enforcement of their respective competition laws and policies, including through notification, consultation, technical assistance, and exchange of information.

3. The competition authority of a Party may request coordination from the competition authority of the other Party with respect to a specific case, when important interests of the requesting Party are substantially affected. This coordination shall not prevent the competition authority concerned from taking independent decisions.

ARTICLE 13.4: NOTIFICATIONS

1. Each Party, through its competition authority, shall notify in English the competition authority of the other Party of an enforcement activity regarding an anti-

competitive practice if it considers that such enforcement activity may substantially affect important interests of the other Party.

2. Provided that it is not contrary to the Parties' competition laws and does not affect any investigation being carried out, the notification shall take place at an early stage of the enforcement activity.

ARTICLE 13.5: CONSULTATIONS

1. To foster mutual understanding between the Parties, or to address specific matters that arise under this Chapter and without prejudice to the autonomy of each Party to develop, maintain, and enforce its competition laws and policies, each Party shall, upon request of the other Party, enter into consultations on issues raised by the other Party.

2. The Party to which a request for consultations has been addressed shall give full and sympathetic consideration to the concerns of the other Party.

ARTICLE 13.6: TECHNICAL ASSISTANCE

The Parties may provide each other with technical assistance in any area they consider appropriate, including exchange of experiences, capacity building for the implementation of their competition laws and policies, and promotion of competition culture.

ARTICLE 13.7: CONFIDENTIALITY

1. The competition authority of a Party shall, upon request of the competition authority of the other Party, endeavor to provide information to facilitate effective enforcement of the Parties' respective competition laws, provided that it does not affect any ongoing investigation and is compatible with the rules and standards of confidentiality of each Party.

2. The competition authority of a Party shall maintain the confidentiality of any information provided in confidence by the competition authority of the other Party and shall not disclose such information to any entity that is not authorized by the competition authority providing the information.

ARTICLE 13.8: COOPERATION ON CONSUMER PROTECTION

1. The Parties recognize the importance of cooperation and coordination on matters related to their consumer protection laws in order to enhance consumer welfare. Accordingly, the Parties shall cooperate, through their competent authorities, in appropriate cases where significant interests of either Party are affected, including through consultation, technical assistance, and exchange of information related to the enforcement of their consumer protection laws.

2. Nothing in this Article shall limit the discretion of the competent authority of a Party to decide whether to take action in response to a request by the competent authority of the other Party, nor shall it preclude any of these authorities from taking action with respect to any particular matter.

3. Each Party shall endeavor to identify, in areas of mutual concern and consistent with its own important interests, obstacles to effective cooperation with the other Party in the enforcement of its consumer protection laws.

ARTICLE 13.9: STATE ENTERPRISES AND DESIGNATED MONOPOLIES

1. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state enterprises and/or designated monopolies.

2. The Parties shall ensure that state enterprises and designated monopolies are subject to their respective competition laws and do not adopt or maintain any anti-competitive practice that affects trade between the Parties, insofar as the application of this provision does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

ARTICLE 13.10: DISPUTE SETTLEMENT

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

ARTICLE 13.11: DEFINITIONS

For purposes of this Chapter:

competition law means:

(a) for Colombia, *Law 155 of 1959*, *Law 1340 of 2009*, and *Decree 2153 of 1992* and their implementing regulations, and amendments thereto; and

(b) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations, and amendments thereto;

consumer protection law means:

(a) for Colombia, Articles 78 and 333 of the Colombian Constitution (*Constitución Política de Colombia*), *Decree 3466 of 1982* (*Consumer Protection Statute*), and their implementing regulations, and amendments thereto; and

(b) for Korea, the *Framework Act on Consumer*, the *Fair Labelling and Advertising Act*, and their implementing regulations, and amendments thereto;

anti-competitive practice means business conduct or transactions that adversely affect competition in the territory of a Party, such as:

(a) agreements between enterprises and decisions by associations of enterprises, which have the purpose or effect to impede, restrict, or distort competition;

(b) any abuse of a dominant position by one or more enterprises; and

(c) mergers or other structural combinations of enterprises which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position; and

competition authority means:

(a) for Colombia, the *Superintendency of Industry and Commerce* (*Superintendencia de Industria y Comercio* - SIC), the *Superintendency of Finance* (*Superintendencia Financiera de Colombia*), and the *Civil Aviation Authority* (*Aeronáutica Civil*) for specific matters, or their successors; and

(b) for Korea, the *Korea Fair Trade Commission*, or its successor.

CHAPTER FOURTEEN
GOVERNMENT PROCUREMENT

ARTICLE 14.1: SCOPE OF APPLICATION

1. This Chapter shall apply to any measure of a Party regarding covered procurement.

2. For purposes of this Chapter, **covered procurement** means a government procurement of goods, services, or any combination thereof:

(a) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) by any contractual means, including: purchase; lease; rental or hire purchase, with or without an option to buy; and build-operate-transfer contracts and public works concessions contracts;

(c) for which the value, as estimated in accordance with paragraphs 5 and 6, equals or exceeds the relevant threshold specified in Annex 14-A at the time of publication of a notice in accordance with Article 14.5;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage by this Chapter or Annex 14-A.

3. This Chapter shall not apply to:

(a) the acquisition or rental of land, existing buildings, or other immovable property or rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, fiscal incentives, and subsidies;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the public debt, including loans and government bonds, notes, and other securities. For greater certainty, this Chapter shall not apply to procurement of banking, financial, or specialized services related to the following activities:

(i) the incurring of public indebtedness; or

(ii) public debt management;

(d) public employment contracts and related measures;

(e) procurement conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project, or under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;

(f) procurement for the direct purpose of providing foreign assistance; and

(g) purchases for a procuring entity from another procuring entity.

4. Where a procuring entity, in the context of covered procurement, requires persons not listed in Annex 14-A to procure in accordance with particular requirements, Article 14.3 shall apply *mutatis mutandis* to such requirements.

Valuation

5. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions, interest and other revenue streams that may be provided for in the procurements; and

(ii) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases; and

(c) where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation on the maximum total value of the procurement over its entire duration.

6. Where the estimated maximum total value of a procurement over its entire duration is not known, the procurement shall be covered by this Chapter.

ARTICLE 14.2: EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect public morals, order, or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labor.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal, or plant life or health.

ARTICLE 14.3: GENERAL PRINCIPLES

National Treatment and Non-Discrimination

1. With respect to any measure covered by this Chapter, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favorable than that accorded to domestic goods, services, and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favorably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Use of Electronic Means

3. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable

with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Measures Not Specific to Procurement

4. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Prohibition of Offsets

5. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets at any stage of a covered procurement.

Rules of Origin

6. For purposes of covered procurement, each Party shall apply to covered procurement of goods or services imported from or supplied from the other Party the rules of origin that it applies in the normal course of trade to those goods or services.

Conduct of Procurement

7. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

ARTICLE 14.4: INFORMATION ON THE PROCUREMENT SYSTEM

1. Each Party shall promptly publish its procurement laws, regulations, procedures, policy guidelines, judicial decisions, and administrative rulings of general application, relating to covered procurement, and any change or addition thereof, in an electronic or paper medium that is widely disseminated and remains accessible to the public.

2. Each Party shall promptly reply to any request from the other Party for an explanation of any matter relating to its procurement laws, regulations, procedures, policy guidelines, judicial decisions, and administrative rulings of general application.

ARTICLE 14.5: PUBLICATION OF NOTICES

Notice of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 14.10, a procuring entity shall publish a notice inviting interested suppliers to submit tenders or, where appropriate, applications for participation in the procurement. Any such notice shall be published in an electronic or paper medium that is widely disseminated and readily accessible to the public free of charge for the entire period established for tendering. Each Party shall encourage procuring entities to publish notices of intended procurement by electronic means in a single point of entry that is accessible through the Internet or a comparable network.

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) the time-frame for delivery of goods or services or the duration of the contract;

(d) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(e) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(f) the address and the final date for the submission of tenders;

(g) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(h) where, pursuant to Article 14.7, a procuring entity intends to select a

limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(i) an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

3. Each Party shall encourage its procuring entities to publish, prior to or as early as possible in each fiscal year, a notice regarding their procurement plans for that fiscal year. The notice should, at a minimum, include the subject-matter of the procurement and the planned date of the publication of the notice of the intended procurement.

ARTICLE 14.6: CONDITIONS FOR PARTICIPATION

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial abilities to undertake the relevant procurement.

2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial, commercial, and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;

(b) shall base its evaluation solely on the conditions that a procuring entity has specified in advance in notices or tender documentation;

(c) shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party; and

(d) may require prior experience where essential to meet the requirements of the procurement.

3. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

ARTICLE 14.7: REGISTRATION AND QUALIFICATION OF SUPPLIERS

Registration Systems and Qualification Procedures

1. Where a Party, including its procuring entities, requires suppliers to register or pre-qualify before being permitted to participate in a covered procurement, that Party, including its procuring entities, shall ensure that a notice inviting suppliers to apply for registration or pre-qualification is published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with the efficient operation of the procurement process, complete the registration and/or qualification procedures.

Selective Tendering

2. Where a Party's law allows the use of selective tendering procedures, a procuring entity shall, for each intended procurement:

(a) publish a notice inviting suppliers to apply for participation in the procurement sufficiently in advance to provide interested suppliers with time to prepare and submit applications and to enable the entity to evaluate, and make its determinations based on, such applications; and

(b) allow all domestic suppliers and suppliers of the other Party that the entity has determined satisfy the conditions for participation to submit a tender, unless the entity has stated in the notice of intended procurement or, where publicly available, the tender documentation a limitation on the number of suppliers that will be permitted to tender and the criteria for such a limitation.

Multi-Use Lists

3. A procuring entity may establish a multi-use list, provided that the entity annually publishes or otherwise makes available continuously in an electronic form a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion

on the list and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

(e) an indication that the list may be used for procurement covered by this Chapter.

4. A procuring entity shall allow suppliers to apply for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

ARTICLE 14.8: TIME-PERIOD

1. A procuring entity shall provide suppliers with sufficient time to submit applications to participate in a procurement, and to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement.

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering set out in paragraph 3 to not less than 10 days where:

(a) the procuring entity has published a notice in an electronic medium listed in Section K of Annex 14-A, containing the information specified in Article 14.5.3 at least 40 days and not more than 12 months in advance;

(b) in the case of the second or subsequent publication of notices for

procurement of a recurring nature; or

(c) a state of urgency duly substantiated by the procuring entity renders such time-period impracticable.

5. A procuring entity may reduce the time-period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the tenders can be received by electronic means by the procuring entity.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering set out in paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other time-period in this Article, where a procuring entity purchases commercial goods or services, it may reduce the time-period for tendering set out in paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period set out in paragraph 3 to not less than 10 days.

8. Where a procuring entity in Annex 14-A has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

ARTICLE 14.9: INFORMATION ON INTENDED PROCUREMENT

Tender Documentation

1. A procuring entity shall promptly provide, upon request, to any supplier interested in participating in a procurement tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders.

2. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;

(b) any conditions for participation of suppliers, including any financial guarantees, information, and documents that suppliers are required to submit;

(c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(e) where there will be a public opening of tenders, the date, time, and place for the opening of tenders and, where appropriate, the persons authorized to be present;

(f) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(g) any dates for the delivery of goods or the supply of services.

3. A procuring entity shall promptly reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

4. If, in tendering procedures, a procuring entity allows tenders to be submitted in several languages, one of those languages shall be English.

Technical Specifications

5. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

6. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist and are applicable to the procuring entity, except where the use of an international standard would fail to meet the entity's program requirements or would impose a greater burden than the use of a recognized national standard.

7. Where design or descriptive characteristics are used in the technical specifications, a procuring entity shall indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfill the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

8. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

9. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

10. For greater certainty, a procuring entity may, in accordance with this Article, prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment.

Modifications

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all the suppliers that are participating at the time of the modification, amendment, or re-issuance, if the identities of such suppliers are known, and, in all other cases, in the same manner that the original information was transmitted; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

ARTICLE 14.10: LIMITED TENDERING

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 14.5, 14.6, 14.7, 14.8, 14.9.1 through 14.9.4, 14.11, and 14.12 only under any of the following circumstances:

(a) provided that the requirements of the tender documentation are not substantially modified, where:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights, or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement, where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. When such a contract has been fulfilled, subsequent procurements of goods or services shall be subject to a procedure consistent with this Chapter;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers;

(h) where a contract is awarded to a winner of a design contest, provided that:

(i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner; or

(i) where additional construction services, which were not included in the initial contract but were within the objectives of the original tender documentation have, due to unforeseen circumstances, become necessary to complete the construction services described therein. In such cases, the total value of contracts awarded for additional construction services may not exceed 50 percent of the amount of the initial contract.

2. For each contract awarded under paragraph 1, a procuring entity shall prepare a written report that includes:

(a) the name of the procuring entity;

(b) the value and kind of goods or services procured; and

(c) a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

ARTICLE 14.11: ELECTRONIC AUCTIONS

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

ARTICLE 14.12: TREATMENT OF TENDERS AND AWARDING OF CONTRACTS

Receipt and Opening of Tenders

1. A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process.

2. A procuring entity shall treat all tenders in confidence until at least the opening of the tenders. In particular, the procuring entity shall not provide information to particular suppliers that might prejudice fair competition between suppliers.

3. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

4. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

5. A procuring entity shall require that, in order to be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

6. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

7. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

8. A procuring entity may not cancel a procurement, or terminate or modify awarded contracts in a manner that circumvents this Chapter.

ARTICLE 14.13: POST-AWARD INFORMATION

1. A procuring entity shall promptly inform suppliers that have submitted tenders of its contract award decisions. A procuring entity shall, upon request, provide an unsuccessful supplier with the reasons that the entity did not select that supplier's tender and the relative advantages of the successful supplier's tender.

2. No later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium

listed in Section K of Annex 14-A. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the successful tender;

(e) the date of award or the contract date; and

(f) the type of procurement method used, and, in cases where limited tendering was used in accordance with Article 14.10, a description of the circumstances justifying the use of limited tendering.

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 14.10; and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

ARTICLE 14.14: DOMESTIC REVIEW PROCEDURES

1. Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

(a) a breach of the Chapter; or

(b) where the supplier does not have a right to challenge directly a breach of the Chapter under the laws of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall maintain at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review, in a timely, effective, transparent, and non-discriminatory manner, a challenge that a supplier of a Party submits, in accordance with the Party's law relating to a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) decisions or recommendations by the review body relating to supplier challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the

challenge, or both.

ARTICLE 14.15: RECTIFICATIONS AND MODIFICATIONS TO COVERAGE

1. A Party may make a rectification of a purely formal nature to its coverage under this Chapter, or a minor amendment to its Schedules in Annex 14-A, provided that it notifies the other Party in writing and the other Party does not object in writing within 30 days of the receipt of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Party.

2. A Party may otherwise modify its coverage under this Chapter, provided that:

   (a) it notifies the other Party in writing and simultaneously offers acceptable compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification, where necessary; and

   (b) the other Party does not object in writing within 30 days of the receipt of the notification.

3. A Party need not provide compensatory adjustments in those circumstances where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. Where a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

ARTICLE 14.16: MICRO, SMALL, AND MEDIUM ENTERPRISES' PARTICIPATION

1. The Parties recognize the importance of the participation of micro, small, and medium-sized enterprises (SMEs) in government procurement.

2. The Parties also recognize the importance of business alliances between suppliers of each Party, and in particular of SMEs, including the joint participation in tendering procedures.

3. The Parties shall endeavor to work jointly towards exchanging information and facilitating access of SMEs to government procurement procedures, methods, and contracting requirements, focusing on their special needs.

ARTICLE 14.17: COOPERATION

1. The Parties recognize the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets, in particular for SMEs.

2. The Parties shall endeavor to cooperate in matters such as:

(a) exchange of experiences and information, such as regulatory frameworks, best practices, and statistics;

(b) development and use of electronic communications in government procurement systems;

(c) capacity building and technical assistance to suppliers with respect to access to the government procurement market; and

(d) institutional strengthening for the fulfillment of this Chapter, including training of government personnel.

ARTICLE 14.18: COMMITTEE ON GOVERNMENT PROCUREMENT

1. The Parties hereby establish a Committee on Government Procurement (hereinafter referred to as the "Committee") comprising representatives of each Party.

2. The Committee shall:

(a) evaluate the implementation of this Chapter, including its application, and recommend to the Parties the appropriate activities;

(b) coordinate the cooperation activities;

(c) evaluate and follow up the activities related to cooperation that the Parties present; and

(d) consider further negotiations aimed at broadening the coverage of this Chapter.

3. The Committee shall meet upon request of a Party or as mutually agreed by the Parties. The meetings may also be held, as necessary, via telephone, video conference, or other means as mutually agreed by the Parties.

ARTICLE 14.19: FURTHER NEGOTIATIONS

In a case that a Party offers, after the entry into force of this Agreement, to a non-Party additional advantages with regard to its government procurement market access coverage agreed under this Chapter, it shall agree, upon request of the other Party, to enter into negotiations with a view to extending coverage under this Chapter on a reciprocal basis.

ARTICLE 14.20: DEFINITIONS

For purposes of this Chapter:

build-operate-transfer contract and **public works concession contract** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

conditions for participation means any registration, qualification, or other pre-requisites for participation in a procurement;

electronic auction means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

in writing or **written** means any worded or numbered expression that can be read, reproduced, and later communicated. It may include electronically transmitted and stored information;

limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

measure means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

offset means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar action or requirement;

open tendering means a procurement method whereby all interested suppliers may submit a tender;

person means a natural person or a juridical person;

procuring entity means an entity covered under a Party's Annex 14-A;

qualified supplier means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;

selective tendering means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

services includes construction services, unless otherwise specified;

standard means a document approved by a recognized body that provides for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a good, service, process, or production method;

supplier means a person or group of persons that provides or could provide goods or services; and

technical specification means a tendering requirement that:

(a) lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or

(b) addresses terminology, symbols, packaging, marking, or labeling requirements, as they apply to a good or service.

CHAPTER FIFTEEN
INTELLECTUAL PROPERTY RIGHTS

ARTICLE 15.1: OBJECTIVES

The objectives of this Chapter are:

(a) to increase the benefits from trade and investment;

(b) to promote innovation and creativity;

(c) to facilitate production and commercialization of innovative and creative products; and

(d) to contribute to the transfer and dissemination of technology, in a manner conducive to social and economic welfare, and to the balance between the rights of the right holders and the public interest.

ARTICLE 15.2: OBSERVANCE OF INTERNATIONAL OBLIGATIONS

The Parties affirm their rights and obligations under the TRIPS Agreement, as well as any other multilateral agreement related to intellectual property and the agreements administered by the World Intellectual Property Organization (hereinafter referred to as "WIPO"), that are in force between the Parties.

ARTICLE 15.3: MORE EXTENSIVE PROTECTION

The Parties may, but shall not be obliged to, provide more extensive protection for, and enforcement of, intellectual property rights under their laws than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

ARTICLE 15.4: BASIC PRINCIPLES

1. The Parties shall grant and ensure adequate, effective, and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights.

2. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals[1] of the other Party treatment no less favorable than it

[1] For purposes of paragraph 2, a **national** of a Party shall include, in respect of the relevant right, any person (as defined in Article 1.3 (Definitions)) of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 15.7.1 and the TRIPS Agreement.

accords to its own nationals with regard to the protection[2] and enjoyment of such intellectual property rights and any benefit derived from such rights.

ARTICLE 15.5: GENERAL PROVISIONS

1. The Parties recognize the need to maintain a balance between the rights of the right holders and the public interest.

2. The Parties recognize the importance of the principles established in the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2), adopted on November 14, 2001 by the WTO at its Fourth Ministerial Conference, held in Doha, Qatar, and in the Decision of the WTO General Council on the *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, adopted on August 30, 2003. The Parties also recognize the importance of promoting the implementation and full use of Resolution WHA61.21, *Global Strategy and Plan of Action on Public Health, Innovation, and Intellectual Property*, adopted on May 24, 2008 by the Assembly of the World Health Organization.

3. Each Party may, in formulating or amending its laws and regulations, adopt measures necessary, and make use of the exceptions and flexibilities, to protect public health and nutrition, and to promote the public interest in sectors of vital importance to its socio-economic and technological development.

4. The Parties recognize the impact of information and communication technologies on the use of literary and artistic works, artistic performances, phonogram productions, and broadcasts and, therefore, the need to provide adequate protection of copyright and related rights in the digital environment.

5. The Parties may take appropriate measures, if needed to prevent the abuse of intellectual property rights by right holders, or the resort to practices which unreasonably restrain trade or adversely affect international transfer of technology.

6. The Parties recognize that technology transfer contributes to the strengthening of national capabilities with the aim of establishing a sound and viable technological base.

7. The Parties shall be free to establish their own regime for exhaustion of intellectual property rights.

ARTICLE 15.6: TRADEMARKS

Trademarks Protection

[2] For purposes of paragraph 2, **protection** includes: (i) matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter, (ii) the prohibition on circumvention of effective technological measures set out in Article 15.7, and (iii) the rights and obligations concerning rights management information and encrypted program-carrying satellite signals set out in Article 15.7.

1. Neither Party shall require, as a condition of registration, that signs be visually perceptible, nor shall either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or a scent[3].

2. Each Party shall provide that trademarks shall include collective marks and certification marks.

3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, at least for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, for identical goods or services, a likelihood of confusion shall be presumed.

Exceptions to Trademarks Rights

4. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Well-Known Trademarks

5. Neither Party shall require, as a condition for determining that a mark is a well-known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Additionally, neither Party shall deny remedies or relief with respect to well-known marks solely because of the lack of:

(a) a registration;

(b) inclusion on a list of well-known marks; or

(c) prior recognition of the mark as well-known.

6. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) (the Paris Convention) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark[4], whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

[3] A Party may require an adequate description, which can be represented graphically, of the sign.

[4] For the purpose of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.

Registration and Applications of Trademarks

8. Each Party shall provide a system for the registration of trademarks, in which the reasons for a refusal to register a trademark shall be communicated in writing and may be provided electronically to the applicant, who will have the opportunity to contest such refusal and to judicially appeal a final refusal.

9. Each Party shall also introduce the possibility to oppose trademark applications.

10. Each party shall provide a publicly available electronic database of trademark applications and trademark registrations.

11. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than 10 years.

Judicial and Administrative Means

12. Each Party shall provide a system that permits owners to assert their rights in trademarks, and interested parties to challenge such rights in trademarks, through administrative or judicial means, or both.

ARTICLE 15.7: COPYRIGHT AND RELATED RIGHTS

Protection Granted

1. Each Party shall comply with:

(a) the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (the Berne Convention);

(b) the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (1961) (the Rome Convention);

(c) the *WIPO Copyright Treaty* (1996); and

(d) the *WIPO Performances and Phonograms Treaty* (1996).

Rights of Performers and Producers of Phonograms

2. Each Party shall provide to performers and producers of phonograms the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public, in accordance with its legislation.

Collective Management Organizations

3. The Parties recognize the importance of collective management societies for copyright and related rights, in order to ensure an effective management of the rights entrusted to them, and an equitable distribution of the collected remunerations, which are proportional to the utilization of the works, performances, or phonograms, in a context of transparency and good management practices, according to the legislation of each Party.

Rights of Broadcasting Organization

4. Each Party shall provide broadcasting organizations with the exclusive right to authorize or prohibit:

(a) the re-broadcasting of their broadcasts[5];

(b) the fixation of their broadcasts;

(c) the reproduction of fixations; and

(d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. It shall be a matter for the law of the Party where protection of this right is claimed to determine the conditions under which it may be exercised.

Protection of Technological Measures

5. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of any effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, committed by a person knowing, or having reasonable grounds to know, that such person is pursuing that objective.

[5] With respect to the protection of broadcasts, a Party may protect broadcasts only if the headquarters of the broadcasting organization is situated in the other Party's territory and the broadcast was transmitted from a transmitter situated in the other Party's territory.

6. Each Party shall provide adequate legal protection and effective legal remedies against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes, of devices, products, or components, or the provision of services which:

(a) are promoted, advertised, or marketed, for the purpose of circumvention of;

(b) have only a limited commercially significant purpose or use, other than to circumvent; or

(c) are primarily designed, produced, adapted, or performed, for the purpose of enabling or facilitating the circumvention of,

any effective technological measure.

7. For purposes of this Chapter, **technological measure** means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances, or phonograms, which are not authorized by the right holder of any copyright or any right related to copyright, as provided for by each Party's legislation. Technological measures shall be deemed effective when the use of a protected work, performance, or phonogram is controlled by the right holders through the application of an access control or protection process, such as encryption, scrambling, or other transformation of the work, performance, or phonogram, or a copy control mechanism, which achieves the objective of protection.

8. Each Party may provide for exceptions and limitations to measures implementing paragraphs 5 and 6 in accordance with its legislation and the relevant international agreements it is a party to.

Protection of Rights Management Information

9. Each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts:

(a) the removal or alteration of any rights management information; or

(b) the distribution, importation for distribution, broadcasting, communication, or making available to the public, of works, performances, or phonograms, protected under this Chapter, from which rights management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by doing so it is inducing, enabling, facilitating, or concealing an infringement of any copyright or any right related to copyright as provided by the law of the relevant Party.

10. For purposes of this Chapter, **rights management information** means any information provided by right holders, which identifies the work, performance, or

phonogram referred to in this Chapter, the author, the performer, or the producer of the phonogram, or information about the terms and conditions of use of the work, performance, or phonogram, and any numbers or codes that represent such information.

11. Paragraph 10 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work, performance, or phonogram referred to in this Chapter.

Protection of Encrypted Program-Carrying Satellite Signals

12. Each Party shall provide adequate legal protection and effective legal remedies against the:

(a) manufacturing, assembling, modification, importation, exportation, sale, leasing, or any other distribution of a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) willful reception[6] or further distribution of a program-carrying signal that originated as an encrypted satellite signal, knowing that it has been decoded without the authorization of the lawful distributor of the signal.

ARTICLE 15.8: ENFORCEMENT

General Obligations

1. The Parties shall establish provisions for the enforcement of intellectual property rights in their laws, of the same level as that provided in the TRIPS Agreement, in particular Articles 41 through 61.

Presumption of Authorship or Ownership

2. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner is the right holder in the work, performance, phonogram, or broadcast as designated.

Special Measures against Repetitive Copyright Infringers on the Internet

[6] For greater certainty, each Party may determine that **reception** includes viewing of the signal, whether private or commercial.

3. Each Party shall endeavor to take effective measures to curtail repetitive infringements of copyright and related rights on the Internet.

ARTICLE 15.9: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

1. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods[7], into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

2. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

3. Each Party shall provide that its competent authorities may initiate border measures *ex officio* with respect to imported, exported, or in-transit merchandise, without the need for a formal complaint from a private party or right holder. Such measures shall be used when there is a reason to believe or suspect that such merchandise is counterfeit or pirated.

ARTICLE 15.10: TECHNOLOGY TRANSFER AND COOPERATION

Technology Transfer

1. The Parties recognize the importance of technological innovation as well as transfer of technology and dissemination of scientific and technological information to the mutual advantage of technology producers and users. Accordingly, the Parties will seek to develop and encourage cooperation programs, through collaborations in science, technology, and innovation. The Parties shall take into account the cooperation issues and activities developed under the *Agreement on Scientific and Technical Cooperation* between the Parties, signed in 1981, with the purpose of encouraging and strengthening the cooperative activities on research, innovation, and technology transfer.

---

[7] For purposes of Article 15.9:

(a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and

(b) **pirated copyright goods** means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

2. The Parties agree to exchange views and information on their practices and policies affecting transfer of technology both within their respective territories and with third countries. This shall in particular include measures to facilitate information flows, business partnerships, licensing, and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host country, including, *inter alia*, issues such as development of human capital and legal framework.

3. Each Party shall take measures, as appropriate, to prevent or control licensing practices or conditions, pertaining to intellectual property rights, which may adversely affect the international transfer of technology and which constitute an abuse of intellectual property rights by right holders.

Cooperation

4. The Parties shall cooperate and collaborate with a view to ensuring effective protection of intellectual property rights and the prevention of trade in goods or services infringing intellectual property rights, subject to their respective legislation, rules, regulations, and government policies. Such cooperation may include:

(a) the exchange, between relevant agencies responsible for the enforcement of intellectual property rights, of information concerning infringement of intellectual property rights;

(b) the encouragement of public awareness regarding the importance of intellectual property protection and the function of intellectual property protection systems to their respective nationals;

(c) the improvement of intellectual property protection systems and their operation; or

(d) the promotion of the development of contacts and cooperation among their respective agencies, including enforcement agencies, educational institutions and other organizations with an interest in the field of intellectual property rights.

5. A Party shall, upon request of the other Party, give proper consideration to any specific cooperation proposal made by the other Party related to the protection and/or enforcement of intellectual property rights.

CHAPTER SIXTEEN
TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 16.1: CONTEXT AND OBJECTIVES

1. The Parties reaffirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.

2. The Parties recognize that economic development, social development, and environmental protection are interdependent and mutually reinforcing components of sustainable development. They underline the benefits of cooperation on trade-related social and environmental issues as part of a global approach to trade and sustainable development.

3. The Parties recognize that it is not their intention in this Chapter to harmonize the environmental or labor standards of the Parties, but to strengthen their trade relations and cooperation in a way that promotes sustainable development in the context of paragraphs 1 and 2.

4. In this regard, the Parties:

   (a) recognize their commitments to promote compliance and effective implementation of each Party's environmental and labor legislation;

   (b) will strive to promote the conservation and sustainable use of biodiversity, and the preservation of traditional knowledge relevant to the conservation of biological diversity and the sustainable use of its components; and

   (c) recognize their commitments towards labor principles and rights included in Article 16.6.

ARTICLE 16.2: SCOPE

Except as otherwise provided in this Chapter, this Chapter applies to measures adopted or maintained by the Parties affecting trade-related aspects of environmental and labor[1] issues in the context of Articles 16.1.1 and 16.1.2.

SECTION A: ENVIRONMENT

[1] When labor is referred to in this Chapter, it includes the issues relevant to the *Decent Work Agenda* as agreed on in the International Labor Organization (hereinafter referred to as the "ILO") and in the *2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work*.

ARTICLE 16.3: GENERAL PRINCIPLES

1. The Parties shall endeavor to ensure that environmental and commercial policies mutually support each other towards the conservation and sustainable use of biodiversity and all natural resources in general.

2. The Parties reaffirm each other's sovereign right over its natural resources, reiterate its sovereign right to establish its own levels of environmental protection and its own environmental development priorities, and to adopt or modify accordingly its environmental laws and policies.

3. The Parties reaffirm their willingness to comply with their commitments under this Chapter, bearing in mind their own capabilities.

ARTICLE 16.4: SPECIFIC COMMITMENTS

1. Each Party shall endeavor to ensure that its laws and policies provide for and encourage high levels of environmental protection and of sustainable use and conservation of its natural resources. Each Party shall also strive to continue improving its protection levels on those matters.

2. Each Party shall endeavor to maintain its laws, regulations, and policies consistent and in compliance with multilateral environmental agreements (hereinafter referred to as "MEAs") to which it is a party, as well as with international efforts towards achieving sustainable development.

3. The Parties recognize that it is inappropriate to promote trade or investments by weakening or reducing the protections afforded in their environmental laws. Accordingly, neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an incentive to promote trade or investment between the Parties. The Parties recognize that it is inappropriate to use their own laws, regulations and policies in a manner that constitutes a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade or investment.

4. The Parties recognize the importance that their environmental legislations provide for a fair and transparent public participation mechanism, and therefore the Parties will promote public participation during the whole process of designing, implementing, and evaluating, environmental projects, policies, and programs, in accordance with their national legislations towards that end.

ARTICLE 16.5: BIOLOGICAL DIVERSITY

1. The Parties acknowledge paragraph 19 of the Ministerial Declaration (WT/MIN/(01)DEC/1), adopted on November 14, 2001 by the WTO Ministerial Conference, on the relationship between the TRIPS Agreement and the *Convention on*

Biological Diversity (hereinafter referred to as "CBD") and the protection of genetic resources, traditional knowledge[2], and folklore.

2. The Parties recognize the value and importance of biological diversity, traditional knowledge as well as the contribution of knowledge, innovations, and practices of indigenous and local communities to the conservation and sustainable use of biological diversity. Recognizing the sovereign rights of States over their natural resources, each Party shall have the authority to determine access to genetic resources in accordance with its legislation and endeavor to create conditions to facilitate transparent access to genetic resources for environmentally sound uses.

3. Subject to their legislations and the CBD, the Parties respect knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations, and practices.

4. Each Party shall endeavor to seek ways to share information on patent applications based on genetic resources or traditional knowledge by providing:

(a) publicly accessible database that contains relevant information; and

(b) opportunities to file prior art to the appropriate examining authority in writing.

5. The Parties agree to share views and information on discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, the WTO TRIPS Council, and any other relevant fora in addressing matters related to genetic resources and traditional knowledge.

6. The Parties acknowledge the adoption of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* and agree to further discuss relevant issues on genetic resources subject to future developments of multilateral agreements or their respective legislations.

SECTION B: LABOR

ARTICLE 16.6: GENERAL PRINCIPLES

The Parties reaffirm their obligations as members of the ILO and their commitments in regards with *the ILO Declaration on Fundamental Principles and Rights at Work and its Follow–Up (1998*) (hereinafter referred to as "ILO Declaration"). Each Party shall strive to adopt and maintain in its laws and regulations, and practices thereunder, the following rights as stated in the ILO Declaration:

[2] For greater certainty, "traditional knowledge" in this Chapter refers to traditional knowledge associated with genetic resources.

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labor;

(c) the effective abolition of child labor; and

(d) the elimination of discrimination in respect of employment and occupation.

ARTICLE 16.7: SPECIFIC COMMITMENTS

1. The Parties reaffirm each other's sovereign right to establish their own labor legislation, and to adopt and modify accordingly their labor laws and policies. Each Party shall strive to assure that its labor legislation complies with internationally recognized labor rights.

2. Despite each Party's sovereign right to establish its own labor legislation and national priorities, and to establish, manage, and enforce its own labor laws and regulations, each Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

3. The Parties recognize that it is inappropriate to promote trade or investment by weakening or reducing the level of protection afforded in their labor legislation.

SECTION C: GENERAL PROVISIONS

ARTICLE 16.8: ENFORCEMENT OF LAWS

Nothing in this Chapter shall be construed to empower a Party's competent authorities to carry out activities oriented towards the enforcement of environmental and/or labor legislation in the territory of the other Party.

ARTICLE 16.9: PROCEDURAL GUARANTEE

1. Each Party shall ensure that persons with a recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's environmental and labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or other relevant tribunals.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its environmental and labor laws are fair, equitable, and transparent. Each Party shall provide that parties to such proceedings may seek remedies to ensure the enforcement of their rights under its laws.

ARTICLE 16.10: TRANSPARENCY

The Parties, in accordance with their respective laws, agree to develop, introduce, and implement, any measures aimed at protecting the environmental and labor conditions that affect trade or investment between the Parties in a transparent manner, with due notice and public consultation, and with appropriate and timely communication to and consultation of non-state actors including the private sector.

ARTICLE 16.11: COUNCIL ON SUSTAINABLE DEVELOPMENT

1. The Parties hereby establish a Council on Sustainable Development.

2. The Council on Sustainable Development shall comprise senior officials responsible for environmental and labor matters. If the Council so agrees, the senior officials responsible for environmental and labor matters may meet on separate council meetings taking into consideration the issues to be consulted.

3. The Council shall meet within the first year of the date of entry into force of this Agreement, and thereafter as necessary to discuss matters of common interest.

4. The Council may consider any other issues within the scope of this Chapter, and may also identify possible new areas of cooperation, and take any other action under its duties whenever the Parties so agree.

5. The Council shall review the implementation and effectiveness of this Chapter, including any progress achieved in the implementation of this Agreement within the appropriate period of time to be determined at the first Council meeting after the date of entry into force of this Agreement. Thereafter, the Council will establish a new period of time for such review.

6. The Parties shall strive to resolve any issue that may affect the implementation of this Chapter, until the dialogue and consultations procedures among them are exhausted.

ARTICLE 16.12: CONTACT POINT

1. Each Party shall designate the contact points[3] in the relevant ministries through whom all matters arising from this Chapter will be channeled.

2. The contact point's duties will include:

(a) coordinating cooperation programs and other activities;

[3] The contact points shall be the relevant Ministries of the Parties, in charge of environmental and labor matters.

(b) acting as liaison between the Parties;

(c) providing information to the other Party and to the general public where appropriate; and

(d) any other duty agreed by the Parties or by the Council on Sustainable Development.

ARTICLE 16.13: CONSULTATIONS

1. Any matter arising related to the interpretation or implementation of this Chapter shall be resolved amicably and *bona fide* by the Parties through direct dialogue, consultations, and cooperation.

2. A Party may request consultations with the other Party by delivering a written request to the contact point designated under Article 16.12.1.

3. If the Parties fail to resolve the issue through their contact points, such issue may be discussed by the Council on Sustainable Development.

SECTION D: COOPERATION

ARTICLE 16.14: COOPERATION

1. Recognizing that cooperation is essential to increase the levels of compliance on environmental and labor matters, the Parties hereby agree to promote cooperation activities on mutual interest, as set out in Annex 16-A.

2. The Parties shall endeavor to assure that cooperation activities:

(a) are consistent with the programs, strategies of development, and national priorities of each Party;

(b) would create opportunities for the public to take part in the development and implementation of such activities; and

(c) would take into consideration the economy, the culture, and the legal system of each Party.

ANNEX 16-A
COOPERATION

1. Areas of cooperation between the Parties in respect of this Chapter may include, but shall not be limited to:

ENVIRONMENT

(a) impact of environmental regulations on trade;

(b) trade-related aspects of the international climate change regime;

(c) trade-related environmental issues; and

(d) trade-related aspects of biodiversity.

LABOR

(a) labor-management relations;

(b) working conditions;

(c) occupational safety and health;

(d) vocational training and human resources development; and

(e) labor market statistics.

2. Cooperative activities may include, but shall not be limited to:

ENVIRONMENT

(a) cooperation in international fora responsible for social or environmental aspects of trade and sustainable development, including in particular WTO, United Nation Environment Programme, and MEAs;

(b) information exchange and joint work on corporate social responsibility and accountability, including on the effective implementation and follow-up of internationally agreed guidelines, fair and ethical trade, private and public certification and labeling schemes, including eco-labeling, and green public procurement;

(c) exchange of views on the impact on trade by environmental regulations, norms, and standards;

(d) joint work on trade-related aspects of MEAs, including customs cooperation; and

(e) exchange of views on the relationship between MEAs and international trade rules, and on the liberalization of environmental goods and services.

LABOR

(a) exchange of information, particularly on labor law and policy, labor market statistics and best working practices of the other Party;

(b) exchange of missions composed of officials, professionals, technicians and/or experts, through public institutions, universities, private companies and organizations devoted to labor issues;

(c) organization and participation in conferences, seminars, workshops, meetings, and outreach programs, as well as training sessions;

(d) joint research and publications;

(e) activities related to promoting fundamental principles and rights at work as stated in the ILO Declaration;

(f) studies related to levels and standards of labor protection and mechanisms to monitor those levels; and

(g) all other activities that contribute to the proper implementation of this Chapter.

CHAPTER SEVENTEEN
COOPERATION

ARTICLE 17.1: SCOPE AND OBJECTIVES

1. The Parties agree to strengthen mutual cooperation that contributes to the implementation and better use of this Agreement, in order to optimize its results, expand opportunities, and maximize the benefits for the Parties, according to their national strategies and policy goals.

2. The Parties shall cooperate with the objective of identifying and employing the most effective methods and means for the implementation of this Chapter. To this end, the Parties shall generate synergies with other forms of bilateral cooperation.

3. To achieve these objectives, the Parties agree to pay particular attention to cooperation initiatives aimed at:

(a) stimulating productive synergies, creating new opportunities for trade and investment, and promoting competitiveness and innovation;

(b) promoting the development of small and medium enterprises;

(c) strengthening institutional capacities for implementation and better use of this Agreement; and

(d) meeting the needs of cooperation that have been identified in other Chapters of this Agreement.

ARTICLE 17.2: METHODS AND MEANS

1. Cooperation between the Parties will be implemented through the tools, resources, and mechanisms available to the Parties, following the existing rules and procedures through the competent bodies for the discharge of their cooperation relations.

2. In particular, the Parties may use instruments and modalities, such as exchange of information, experiences, and best practices, technical assistance, and refundable and non-refundable financial cooperation including triangular cooperation amongst others, for the identification, development, and implementation of projects.

ARTICLE 17.3: AGRICULTURAL COOPERATION

The Parties shall endeavor to promote cooperation in the field of agriculture. To this end, the Parties shall, among others:

(a) promote the creation of partnerships for projects in areas of mutual interest, including agricultural research on plantation commodities, the

development of small-scale agriculture, the conservation and management of water resources for agricultural use, sustainable agricultural development, and the application of good agricultural practices, among others;

(b) promote the exchange of information on trade in agricultural goods between the Parties; and

(c) develop training programs for leading producers, technicians, and professionals in order to improve the productivity and competitiveness in livestock and agricultural value-added products.

ARTICLE 17.4: FISHERIES AND AQUACULTURE COOPERATION

1. The Parties, recognizing the social and economic importance of fish and fisheries products, shall endeavor to cooperate in the field of fisheries and aquaculture.

2. The objectives of cooperation in fisheries and aquaculture are to:

(a) strengthen the research and productive capacities for the development of seedstock and processing of hydro-biological fisheries and aquacultural species, with the aim of increasing direct human consumption; and

(b) facilitate information exchange and the conservation of natural resources under the approach of responsible fishing.

3. The Parties will cooperate in the field of fisheries and aquaculture through:

(a) strengthening public and private institutions related to fisheries and aquaculture development and promoting investment in those sectors;

(b) promoting research and development of new products for direct human consumption, as well as the consumption of major aquatic fisheries and aquaculture resources to support food security programs;

(c) combating illegal, unreported, and unregulated fishing;

(d) facilitating mutually beneficial developments in the field of aquaculture;

(e) exchanging information regarding fisheries, aquaculture, and fish resources. For that purpose, the corresponding institutions of the Parties will establish appropriate contact points;

(f) promoting the sustainable and optimal utilization of fish resources of the Parties in compliance with laws and regulations of a Party, through a fisheries cooperation arrangement[1];

[1] The fisheries cooperation arrangement may include, among others, the cooperation between the Parties regarding trade facilitation and enhancement of research of the Parties in the fields of fish resources, hydro-biological species, and aquaculture.

(g) exchanging officials, scientists, technicians, and trainees, to promote the development of fisheries and aquaculture between the Parties;

(h) promoting the training of national officials and members of the fishery and aquaculture community of the Parties, through their participation in jointly organized courses, visits, seminars, and workshops;

(i) building partnerships and exchange between research institutes of the Parties; and

(j) other forms of cooperation as may be agreed by the Parties.

ARTICLE 17.5: FORESTRY COOPERATION

1. The Parties shall endeavor to promote and strengthen cooperation in the field of forestry.

2. The Parties will encourage and facilitate cooperation in, as appropriate, including but not limited to, the following activities:

(a) implementation of sustainable forest management, including the development of related indicators;

(b) management, development, and utilization of forest resources;

(c) forest protection, including the prevention and control of forest fires, diseases, and insect pests;

(d) promotion of joint measures to limit or reduce the adverse effects of climate change;

(e) investment in forest plantation and wood processing industries;

(f) processing and supply of, and trade in, forest products;

(g) development of eco-forestry technology and conservation of forest ecosystems;

(h) research and development, education, and training; and

(i) any other areas as agreed by the Parties.

ARTICLE 17.6: MARITIME TRANSPORT COOPERATION

The Parties shall endeavor to cooperate in maritime transport through:

(a) establishing contact points to facilitate information exchange on matters related to maritime transportation, port technology, and logistics services;

(b) arranging training programs and technical cooperation related to port operation and management, and port technologies;

(c) developing exchange programs for training of merchant marine students; and

(d) arranging technical assistance and capacity building activities related to maritime transportation, including the vessel traffic service.

ARTICLE 17.7: INFORMATION AND COMMUNICATIONS TECHNOLOGY COOPERATION

1. The Parties, recognizing the rapid development led by the private sector, of Information and Communications Technology (hereinafter referred to as "ICT") and of business practices regarding ICT-related services both in the domestic and international contexts, shall endeavor 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. Cooperation in accordance with paragraph 1 may include the following:

(a) promoting dialogue on policy issues;

(b) promoting cooperation between the private sectors of the Parties;

(c) enhancing cooperation in international fora related to ICT; and

(d) undertaking other appropriate cooperative activities.

3. The Parties will encourage cooperation in the following areas, including, but not limited to:

(a) cyber-infrastructure and policy issues for e-government;

(b) inter-operability of Public Key Infrastructure;

(c) development, processing, management, distribution, and trade of digital contents;

(d) scientific and technical cooperation for the software industry of the Parties;

(e) research and development and management of information technology parks;

(f) research and development on information technology services such as integration of broadcasting and telecommunications;

(g) research and development and deployment of networks and telecommunications, when the Parties agree on the necessity of such activities;

(h) business opportunities in the international markets;

(i) Intelligent Transport Systems (ITS); and

(j) any other areas as agreed by the Parties.

ARTICLE 17.8: ENERGY AND MINERAL RESOURCES COOPERATION

1. The Parties shall promote cooperation under this Chapter as a means of building a stronger, more stable, and mutually beneficial partnership in the field of energy and mineral resources.

2. Areas of energy and mineral resources cooperation may include, but are not limited to, the following:

(a) upstream activities such as the exploration, exploitation, and production of oil and gas;

(b) downstream activities such as the refining of oil, processing of petrochemicals, liquefaction of gas, and transportation and distribution of gas, crude oil, and oil products;

(c) activities such as the exploration, exploitation, production, smelting, refining, processing, transportation, and distribution of mineral resources;

(d) cartographic activities (geodesy, satellite images, remote sensing, and geographic information systems) applied to cadastral, mining, environmental, and geological activities required for an efficient use and administration of the territories of the Parties related to mining activities;

(e) exchange of mining technology for remediation of mining-related environmental liabilities;

(f) exchange of information and experiences on environmental issues and sustainable development in mining;

(g) activities for encouraging and facilitating the business relations regarding energy and mineral resources cooperation between the Parties; and

(h) any other areas as agreed by the Parties.

3. The Parties shall facilitate the exchange of information freely available to the public on the following subjects in the field of energy and mineral resources:

(a) current investment data for domestic and foreign enterprises;

(b) investment opportunities such as tenders and mining projects;

(c) geological data/information;

(d) relevant laws, regulations, and policies;

(e) mine reclamation technology and environmental issues that could arise between the developers and the local people in the process of mine development; and

(f) any other information that a Party is free to release to the public on request of the other Party.

4. Each Party shall ensure that its laws and regulations regarding energy and mineral resources are published or otherwise made publicly available.

5. The Party that adopts or maintains any prohibition or restriction on the exportation or sale of any energy and mineral resources destined for the territory of the other Party in accordance with Article XI and Article XX of the GATT 1994 and its interpretative notes shall:

(a) give the other Party written notice prior to its introduction and simultaneously provide all relevant information concerning the prohibition or restriction; and

(b) consult with the other Party regarding the prohibition or restriction, upon the request of the other Party.

6. The Parties shall:

(a) promote cooperation between the public and private sectors of the Parties, through their government bodies, public organizations, research centers, universities, and enterprises, engaged in the field of energy and mineral resources;

(b) encourage and support, recognizing each Party's regulations, business opportunities, including investment, related to plant construction in the field of energy and mineral resources for a stable and mutually beneficial bilateral relationship; and

(c) recognize and facilitate activities related to agreements and cooperation entities that have already been organized.

7. The Parties shall facilitate visits and exchanges of researchers, technicians, and other experts, and shall also promote joint fora, seminars, symposia, conferences, exhibitions, and research projects.

ARTICLE 17.9: SMALL AND MEDIUM-SIZED ENTERPRISES COOPERATION

The Parties shall endeavor to promote a favorable environment for the development of small and medium-sized enterprises by encouraging relevant private and governmental bodies to build the capacities of small and medium-sized enterprises. The cooperation will include, among others:

(a) designing and developing mechanisms in order to foster partnerships and the development of productive chains;

(b) promoting cooperation between the economic agents of the Parties in order to identify areas of mutual interest and to obtain the maximum benefits possible of trade, investment, and small and medium-sized enterprises;

(c) fostering more dialogue and exchange of information on mandatory procedures, enhanced access to trade promotion networks, business fora, business cooperation instruments, and any other relevant information for small and medium-sized enterprises exporters;

(d) promoting training and exchange programs for small and medium-sized enterprises exporters of the Parties;

(e) promoting exchange of experiences between the public agencies of the Parties on initiatives and policy instruments for the development of enterprises, with a special focus on small and medium-sized enterprises; and

(f) encouraging public and private institutions related to small and medium-sized enterprises to cooperate in areas such as environmental management, ICT, nanotechnology, biotechnology, renewable energy, and other subjects of mutual interest.

ARTICLE 17.10: INDUSTRIAL AND COMMERCIAL COOPERATION

The Parties shall endeavor to strengthen and develop trade, investment, and technological cooperation through the *Joint Committee on Industrial Cooperation between Korea and Colombia*, including but not limited to:

(a) auto parts and automobiles;

(b) cosmetics and toiletries;

(c) textile, apparel, design, and fashion;

(d) electricity, and related goods and services;

(e) software & IT;

(f) health tourism; and

(g) home appliances.

ARTICLE 17.11: SCIENCE AND TECHNOLOGY COOPERATION

1. The Parties, recognizing the importance of science and technology in their respective economies, shall endeavor to develop and promote cooperative activities in the field of science and technology.

2. The Parties will encourage and facilitate cooperation in, as appropriate, including but not limited to, the following activities:

(a) joint research and development, and high level education, including, if necessary, sharing of equipment, exchange and supply of non-confidential scientific and technical data, and, where possible, exchange of scientific samples;

(b) exchange of scientists, researchers, technicians, and experts;

(c) joint organization of seminars, symposia, conferences, and other scientific and technical meetings, including the participation of experts in those activities;

(d) promotion of joint science and technology research activities under existing national programs or policies, where the Parties agree on the necessity of the activities;

(e) exchange of information on practices, policies, laws, regulations, and programs related to science and technology;

(f) cooperation in the commercialization of products and services resulting from joint scientific and technological activities; and

(g) any other forms of scientific and technological cooperation as agreed by the Parties.

3. The Parties will undertake joint research and development projects, especially in high-end science or key technology areas, including, but not limited to:

(a) biotechnology (including bioinformatics);

(b) nanotechnology;

(c) microelectronics;

(d) new materials;

(e) e-government;

(f) manufacturing technology;

(g) ICT;

(h) environmental technology; and

(i) science and technology policy and research and development systems.

ARTICLE 17.12: TOURISM COOPERATION

The Parties, recognizing that tourism contributes to the enhancement of mutual understanding between them and is an important industry for their economies, shall endeavor to:

(a) explore the possibility of undertaking joint research on tourism development and promotion to increase inbound visitors to each Party;

(b) consider setting up linkages and networks between the websites of the Parties;

(c) encourage the relevant authorities and agencies of the Parties to strengthen cooperation in tourism training and education, to ensure high-quality services for tourists of the Parties;

(d) cooperate in joint campaigns to promote tourism in the territories of the Parties through workshops and seminars among the relevant authorities and agencies of the Parties;

(e) collaborate to promote the sustainable development of tourism in the territories of the Parties;

(f) exchange information on relevant statistics, promotional materials, policies, and laws and regulations in tourism and related sectors; and

(g) encourage tourism and transportation authorities and agencies to improve the aviation connectivity between the Parties.

ARTICLE 17.13: CULTURAL COOPERATION

1. The objective of cultural cooperation is to promote cultural exchanges between the Parties. In attaining this objective, the Parties shall respect the existing agreements or arrangements already in effect for cultural cooperation.

2. Recognizing that audio-visual, including film, animation, and broadcasting programs, co-productions can significantly contribute to the development of the audio-visual industry and to the intensification of cultural and economic exchange between the Parties, the Parties agree to consider and negotiate co-production agreements in the audio-visual sector.

3. The co-production agreement referred to in paragraph 2, once concluded, will be considered to be 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 Culture* (*Ministerio de Cultura*) for Colombia, and the *Ministry of Culture, Sports and Tourism* and the *Korea Communications Commission* for Korea.

4. Co-produced projects in compliance with the co-production agreement referred to in paragraph 3 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 is accorded under the applicable laws and regulations of each Party.

5. The Parties, in conformity with their respective legislations and without prejudice to the reservations included in their commitments in other Chapters of this Agreement, shall encourage exchanges of expertise and best practices regarding the protection of cultural heritage sites and historic monuments, including environmental surroundings and cultural landscapes.

6. The Parties commit to exchange information to identify, recover, and avoid the illegal traffic of their cultural heritage.

ARTICLE 17.14: IDENTIFICATION, DEVELOPMENT, FOLLOW-UP AND MONITORING INITIATIVES OF COOPERATION

1. The Parties grant particular importance to the follow-up of cooperation activities that are implemented in order to contribute to an optimal execution and better use of the benefits of this Agreement.

2. For the implementation of this Chapter, the following contact points are designated:

(a) for Colombia, the *Ministry of Trade, Industry and Tourism* (*Ministerio de Comercio, Industria y Turismo*); and

(b) for Korea, the *Ministry of Foreign Affairs and Trade.*

3. The contact points shall be responsible for:

(a) receiving and channeling the project proposals presented by the Parties;

(b) informing the other Party about the status of the project;

(c) informing the other Party the acceptance or denial of the project;

(d) monitoring and assessing the progress in the implementation of trade related cooperation initiatives; and

(e) other tasks on which the Parties may agree.

4. The contact points shall periodically review the implementation of this Chapter and act as a coordinating body between the Parties, as appropriate.

CHAPTER EIGHTEEN
TRANSPARENCY

ARTICLE 18.1: PUBLICATION

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

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

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

ARTICLE 18.2: NOTIFICATION AND PROVISION OF INFORMATION

1. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.

2. Upon request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 18.3: ADMINISTRATIVE PROCEEDINGS

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application respecting any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 18.1 to particular persons, goods, or services of the other Party in specific cases, that:

   (a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with the Party's procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

   (b) such persons are afforded a reasonable opportunity to present facts and

arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its law.

ARTICLE 18.4: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by the Party's law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

ARTICLE 18.5: DEFINITIONS

For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

CHAPTER NINETEEN
INSTITUTIONAL PROVISIONS

ARTICLE 19.1: JOINT COMMISSION

1. The Parties hereby establish the Joint Commission comprising officials of each Party, which shall be co-chaired by the Minister of Trade, Industry and Tourism of Colombia and the Minister for Trade of Korea, or their respective designees.

2. The Joint Commission shall:

(a) supervise the implementation of this Agreement;

(b) supervise the work of all committees, working groups, and other bodies established under this Agreement, referred to in Annex 19-A;

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

(d) seek to resolve disputes that may arise regarding the interpretation or application of this Agreement;

(e) assess the outcomes of the application of this Agreement;

(f) oversee the further elaboration of this Agreement; and

(g) consider any other matter that may affect the operation of this Agreement.

3. The Joint Commission may:

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

(b) seek the advice of non-governmental persons or groups;

(c) consider amendments to the rights and obligations under this Agreement;

(d) issue interpretations of the provisions of this Agreement;

(e) adopt its own rules of procedure;

(f) modify:

(i) the Schedules to Annex 2-A (Elimination of Customs Duties), with the purposes of adding one or more goods excluded in the Schedule of a Party;

(ii) the phase-out periods established in the tariff elimination schedule, with the purposes of accelerating the tariff reduction;

(iii) the specific rules of origin established in Annex 3-A (Product Specific Rules of Origin);

(iv) the procuring entities listed in Annex 14-A;

(v) any uniform regulations on origin procedures that the Parties may develop; and

(vi) the model rules of procedure for panels; and

(g) take such other action in the exercise of its functions as the Parties may agree.

4. Unless the Parties otherwise agree, the Joint Commission shall convene:

(a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and

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

5. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Commission or of any body established under this Agreement on the same basis as the Party providing the information.

6. All decisions of the Joint Commission and all committees, working groups, and other bodies established under this Agreement shall be taken by consensus of the Parties.

ARTICLE 19.2: CONTACT POINTS

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. Upon request of the other Party, a Party's contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the other Party.

ANNEX 19-A
COMMITTEES, WORKING GROUPS AND COUNCILS

1. Committees

(a) Committee on Trade in Goods (Article 2.16);

(b) Customs Committee (Article 4.21);

(c) Committee on Sanitary and Phytosanitary Measures (Article 5.5);

(d) Committee on Technical Barriers to Trade (Article 6.9);

(e) Committee on Telecommunications Cooperation (Article 11.16); and

(f) Committee on Government Procurement (Article 14.18).

2. Working Groups

(a) *Ad-hoc* Working Group on Trade in Agricultural Goods (Article 2.16); and

(b) Working Group on Temporary Entry (Article 10.5).

3. Councils

Council on Sustainable Development (Article 16.11).

CHAPTER TWENTY
DISPUTE SETTLEMENT

ARTICLE 20.1: COOPERATION

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

ARTICLE 20.2: SCOPE OF APPLICATION

1. Except for any matter arising under Chapter 5 (Sanitary and Phytosanitary Measures), 13 (Competition and Consumer Policy), 16 (Trade and Sustainable Development), 17 (Cooperation) or as otherwise provided in this Agreement or as the Parties otherwise agree, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that:

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

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

   (c) a benefit the Party could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 9 (Cross-Border Trade in Services), or 14 (Government Procurement), is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement.

2. A Party may not invoke paragraph 1(c) with respect to any measure subject to an exception under Article 21.1 (General Exceptions).

ARTICLE 20.3: CHOICE OF FORUM

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other trade agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

ARTICLE 20.4: CONSULTATIONS

1. Either Party may request consultations with the other Party with respect to any

matter described in Article 20.2 by delivering written notification to the other Party. The complaining Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the complaint. The other Party shall reply in writing within 10 days of the date of receipt of the request and enter into consultations.

2. Each Party shall:

(a) provide sufficient information in the consultations to enable a full examination of how the matter subject to consultations might affect the operation of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

3. Consultations are confidential and without prejudice to the rights of the Parties in proceedings under this Chapter.

ARTICLE 20.5: REFERRAL TO THE JOINT COMMISSION

1. If the Parties fail to resolve a matter within 60 days of the receipt of a request for consultations under Article 20.4 or 20 days where the matter concerns cases of urgency, including those concerning perishable goods[1], or goods or services that rapidly lose their trade value such as certain seasonal goods or services, only the consulting Party may request the intervention of the Joint Commission by delivering written notification to the other Party.

2. The requesting Party shall deliver the request to the other Party, and shall set out in the request, the reasons thereof including identification of the measure at issue and an indication of the legal and factual basis for the complaint.

3. Unless it decides otherwise, the Joint Commission shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly, with the objective to arrive at a mutually satisfactory resolution.

4. The Joint Commission may meet in person or through any other technological means available to the Parties.

ARTICLE 20.6: GOOD OFFICES, CONCILIATION, OR MEDIATION

1. Good offices, conciliation, and mediation are procedures undertaken voluntarily if the Parties so agree.

[1] For greater certainty, **perishable goods** means perishable agricultural and fish goods classified in HS Chapters 1 through 24.

2. Proceedings involving good offices, conciliation, and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

3. Good offices, conciliation, or mediation may be requested at any time by any Party. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation, or mediation are concluded without an agreement between the Parties, the complaining Party may request the establishment of a panel.

ARTICLE 20.7: ESTABLISHMENT OF PANEL

1. The requesting Party may deliver a written request to establish a dispute settlement panel to the other Party, provided that a matter has not been resolved in any of the following cases:

(a) within 30 days following the receipt of the request to refer the matter to the Joint Commission or any other period agreed by the Parties, or when the meeting has not been held pursuant to the provisions established in Article 20.5.3;

(b) when the Parties have not settled the dispute during consultations within the 45 day period established in Article 20.4 or 20 days where the matter concerns cases of urgency, including those concerning perishable goods, or goods or services that rapidly lose their trade value such as certain seasonal goods or services, or within any other period that the Parties may agree during consultations; or

(c) when the requesting Party that referred the matter to the Joint Commission considers, once the period indicated by the Joint Commission has expired, that the measures aimed at complying with the agreement reached pursuant to Article 20.5, were not adopted.

2. The complaining Party shall set out the reasons for the request, including identification of the measure or other matter at issue and a brief summary of the legal basis for the complaint sufficient to present the problem clearly.

3. A panel shall be established upon the date of receipt of the request referred to in paragraph 1.

4. Unless the Parties otherwise agree, the Parties shall apply the following procedures in selecting a panel:

(a) the panel shall be composed of three members;

(b) each Party shall appoint one panelist within 30 days after the date of receipt of the request for panel establishment. If a Party fails to appoint a panelist within that period, the panelist shall be appointed by the other Party, unless the Parties otherwise decide; and

(c) the Parties shall endeavor to agree on a third panelist who shall serve as chair within 30 days after the date the second panelist has been appointed. If the Parties are unable to agree on the chair of the panel within this period, they shall within the next 10 days exchange their respective list comprising four nominees who shall not be nationals of either Party. The chair shall then be appointed by lot from the lists within 10 days of exchange of lists. If a Party fails to submit its list of four nominees, the chair shall be appointed by lot from the list already submitted by the other Party.

5. If a panelist appointed under this Article becomes unable to serve on the panel, a successor shall be appointed in the same manner as prescribed for the appointment of the original panelist and the successor shall have all the powers and duties of the original panelist. In such a case, any time period applicable to the panel proceedings shall be suspended for a period beginning on the date when the original panelist becomes unable to serve and ending on the date when the new panelist is appointed.

6. Panelists shall:

(a) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(b) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(c) be independent of, and not be affiliated with or take instructions from, either Party; and

(d) comply with the code of conduct established in Annex 20-A.

7. If a Party believes that a panelist has violated or is in violation of the code of conduct, the Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

ARTICLE 20.8: RULES OF PROCEDURE

1. Unless the Parties otherwise agree, the panel shall follow the model rules of procedure established in Annex 20-B, which shall ensure:

(a) a right to at least one hearing before the panel;

(b) that, subject to subparagraph (e), any hearing before the panel shall be open to the public;

(c) an opportunity for each Party to provide initial and rebuttal submissions;

(d) that each Party's written submissions, written versions of its oral statement, and written response to a request or questions from the panel

may be made available to the public; and

(e) the protection of information designated by either Party for confidential treatment.

2. Unless the Parties otherwise agree, the panel shall follow the model rules of procedure and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules.

3. Unless the Parties otherwise agree within 20 days of the delivery of the request for the establishment of the panel, the panel's terms of reference shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referenced in the request for the establishment of the panel, to make findings, determinations, and recommendations as provided in Article 20.9.1 and 20.9.2, and to present the written reports referred to in Article 20.9.1 and 20.9.4."

4. Upon request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

5. The decisions of the panel, including the adoption of the report, shall be adopted by a majority of its members. No panel may disclose which panelists are associated with majority or minority opinions.

ARTICLE 20.9: PANEL REPORT

1. Unless the Parties otherwise agree, the panel shall, within 90 days after the chair is appointed, present to the Parties an initial report containing findings of fact and its determination as to:

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

(ii) whether a Party has otherwise failed to carry out its obligations under this Agreement; or

(iii) whether the measure at issue is causing nullification or impairment in the sense of Article 20.2.1(c); and

(b) any other matter that the Parties have jointly requested that the panel address, as well as the reasons for its findings and determinations.

2. The panel shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties. The panel shall consider this Agreement in accordance with customary rules of interpretation of public international law, such as the ones established in the *Vienna Convention on the Law of Treaties* (1969). The panel may, at the request of the Parties, make recommendations for the resolution of the

dispute.

3. Each Party may submit written comments to the panel on its initial report within 14 days of the presentation of the report. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

4. The panel shall present a final report to the Parties within 30 days of the presentation of the initial report, unless the Parties otherwise agree. The Parties shall make the final report available to the public within 15 days thereafter, subject to the protection of confidential information.

ARTICLE 20.10: IMPLEMENTATION OF THE FINAL REPORT

1. Upon receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.

2. If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment in the sense of Article 20.2.1(c), the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment.

ARTICLE 20.11: NON-IMPLEMENTATION AND SUSPENSION OF BENEFITS

1. If a Panel has made a determinations of the type described in Article 20.10.2, and the Parties are unable to reach an agreement on a resolution pursuant to Article 20.10.1, within 30 days of receiving the final report, or such other period as the Parties may agree, the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable compensation.

2. If the Parties:

(a) are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or

(b) have agreed on compensation or on a resolution pursuant to Article 20.10.1, and the complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspending benefits of equivalent effect 15 days after the later of the date on which it provides notice to the other Party under this paragraph or the panel issues its determination under paragraph 5, as the case may be.

3. In considering which benefits to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as those affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Article 20.2.1(c); and

(b) the complaining Party that considers it is not practicable or effective to suspend benefits or other obligations in the same sector or sectors may suspend benefits in other sectors.

4. The suspension of benefits shall be temporary and be applied by the complaining Party only until the measure found to be inconsistent with the obligations of this Agreement or otherwise nullifying or impairing benefits under Article 20.2.1(c) has been brought into conformity with this Agreement, or until such time as the Parties have otherwise reached an agreement on a resolution of the dispute.

5. If the Party complained against considers that:

(a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has found,

it may, within 30 days after the complaining Party provides notice under paragraph 2, request that the original panel be reconvened to consider the matter. The panel shall reconvene as soon as possible after delivery of the request and shall present its determination to the Parties within 90 days after it reconvenes to review a request under either subparagraph (a) or (b), or within 120 days for a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

6. The complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2, unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

ARTICLE 20.12: COMPLIANCE REVIEW

1. Without prejudice to the procedures set out in Article 20.11.3, if the Party complained against considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may refer the matter to the panel by providing written notice to the complaining Party. The panel shall reconvene as soon as possible after delivery of the request and shall issue its report on the matter within 60 days after the Party complained against provides notice.

2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 20.11.

ANNEX 20-A
CODE OF CONDUCT

Definitions

1. For purposes of this Annex:

assistant means a person who, under the terms of appointment of a panelist, conducts research or provides support for the panelist;

panelist means a member of a panel established under Article 20.7;

proceeding, unless otherwise specified, means a panel proceeding under this Chapter; and

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

Responsibilities to the Process

2. Every panelist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved.

Disclosure Obligations

3. Prior to confirmation of his or her selection as a panelist under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

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

Performance of Duties by Panelists

5. A panelist shall comply with the provisions of this Chapter and the applicable rules of procedure.

6. Upon selection, a panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

7. A panelist shall consider only those issues raised in the proceeding and necessary to render a decision and shall not delegate the duty to decide to any other person.

8. A panelist shall take all appropriate steps to ensure that the panelist's assistant and staff are aware of, and comply with paragraphs 2, 3, 4, 18, 19 and 20.

9. A panelist shall not engage in *ex parte* contacts concerning the proceeding.

10. A panelist shall not communicate matters concerning actual or potential violations of this Annex unless the communication is to both Parties or is necessary to ascertain whether that panelist has violated or may violate this Annex.

Independence and Impartiality of Panelists

11. A panelist shall be independent and impartial. A panelist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

12. A panelist shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party, or fear of criticism.

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

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

15. A panelist shall not allow past or existing financial, business, professional, family or social relationships, or responsibilities to influence the panelist's conduct or judgment.

16. A panelist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panelist's impartiality or that might reasonably create an appearance of impropriety or bias.

Duties in Certain Situations

17. A panelist or former panelist shall avoid actions that may create the appearance that the panelist was biased in carrying out the panelist's duties or would benefit from the decision or ruling of the panel.

Maintenance of Confidentiality

18. A panelist or former panelist shall not at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.

19. A panelist or former panelist shall not disclose a panel ruling or parts thereof prior to its publication.

20. A panelist or former panelist shall not at any time disclose the deliberations of a panel or any panelist's view except as required by law.

Mediators

21. The provisions described in this code of conduct shall apply, *mutatis mutandis*, to mediators.

ANNEX 20-B
MODEL RULES OF PROCEDURE

Application

1. The following rules of procedure are established under Article 20.8 and shall apply to dispute settlement proceedings under this Chapter unless the Parties otherwise agree.

Definitions

2. For purposes of this Annex:

adviser means a person retained by a Party to advise or assist the Party related with the panel proceeding;

assistant means a person who, under the terms of appointment by a panelist, conducts research or provides assistance to that panelist;

complaining Party means a Party that requests the establishment of a panel under Article 20.7;

court reporter means a designated note-taker;

days means a calendar day;

legal holiday means every Saturday and Sunday and any other day designated by a Party as an official holiday;

panel means a panel established under Article 20.7;

panelist means a member of a panel established under Article 20.7;

Party complained against means a Party that received the request for the establishment of a panel under Article 20.7;

proceedings means a panel proceeding; and

representative means an employee of a government department or agency or of any other government entity of a Party.

3. Any reference made in these rules of procedure to an Article is a reference to the appropriate Article in this Chapter.

Written Submissions and Other Documents

4. Each Party shall deliver the original and no less than four copies of any written

submission to the panel and one copy to the Embassy of the other Party. Delivery of submissions and any other document related to the panel proceeding may be made by facsimile or other means of electronic transmission if the Parties so agree. Where a Party delivers physical copies of written submissions or any other document related to the panel proceeding, that Party shall deliver at the same time an electronic version of such submissions or other document.

5. The deadlines are counted from the following date of the receipt of such submission or documents. The complaining Party shall deliver a complete initial written submission to the Party complained against no later than 10 days after the date on which the last panelist is appointed. The Party complained against shall, in turn, deliver a written counter-submission no later than 20 days following the date of receipt of the initial written submission of the complaining Party.

6. The panel shall establish, in consultation with the Parties, dates for the delivery of the subsequent written rebuttal submissions of the Parties and any other written submissions that the panel and the Parties agree are appropriate.

7. A Party may at any time correct minor errors of a clerical nature in any written submission or other document related to the panel proceeding by delivering a new document clearly indicating the changes.

8. If the last day for delivery of a document falls on a legal holiday observed by a Party or on any other day on which the government offices of that Party are closed by order of the government or by *force majeure*, the document may be delivered on the next business day.

Burden of Proof

9. A Party asserting that a measure of the other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement, or that a benefit the Party could reasonably have expected to accrue is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement shall have the burden of proving its assertions.

10. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of proving that the exception applies.

Operation of Panels

11. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair of the panel authority to make administrative decisions regarding the proceedings.

12. The panel may conduct its business by any appropriate means, including technological means such as telephone, facsimile transmission, and video or computer links.

13. Only panelists may take part in the deliberations of the panel. The panel may, in consultation with the Parties, employ such number of assistants, interpreters or translators, or court reporters as may be required for the proceeding and permit them to be present during such deliberations.

14. Where a procedural question arises that is not addressed by these rules, a panel may adopt an appropriate procedure that is consistent with this Agreement.

15. The time-period applicable to the panel proceeding shall be suspended for a period that begins on the date on which any member of the panel becomes unable to act and ends on the date on which the successor is appointed.

16. A panel may, in consultation with the Parties, modify any time-period applicable in the panel proceeding and make other procedural or administrative adjustments as may be required in the proceeding.

Hearings

17. The chair of the panel shall fix the date and time of the initial hearing and any subsequent hearings in consultation with the Parties and the panelists, and then notify the Parties in writing of those dates and times.

18. Unless the Parties otherwise agree, the hearings shall be held in the capital of the Party complained against.

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

20. All panelists shall be present during the entirety of any hearing.

21. No later than five days before the date of a hearing, each Party shall deliver to the other Party and the panel a list of the names of those persons who will be present at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

22. Each hearing shall be conducted by the panel in a manner that ensures that the complaining Party and the Party complained against are afforded equal time for arguments, replies and counter-replies.

23. Hearings shall be open to the public, except as necessary to protect information designated by either Party for confidential treatment. The Panel may, in consultation with the Parties, adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public.

24. The panel shall arrange the preparation of hearing transcripts, if any, and shall, as soon as possible after any such transcripts are prepared, deliver a copy to each Party.

Ex Parte Contacts

25. No Party may communicate with the panel without notifying the other Party. The panel shall not communicate with a Party in the absence of, or without notifying, the other Party.

26. No panelist may discuss any aspect of the substantive subject matter of the proceeding with the Parties in the absence of the other panelists.

Availability of Information

27. The Parties shall maintain the confidentiality of the panel's hearings, deliberations and initial report, and all written submissions to, and communications with, the panel, in accordance with the following procedures:

(a) a Party may make available to the public at any time its own written submissions;

(b) 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, a Party may designate specific information included in its written submissions, or that it has presented in the panel hearing, for confidential treatment;

(c) 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 subparagraph (b); and

(d) each Party shall take such reasonable steps 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

28. Unless the Parties otherwise agree, the expenses of the panel, the remuneration of the panelists and their assistants, their travel and lodging expenses, and all general expenses shall be borne in equal shares between the Parties.

29. Each panelist shall keep a record and render a final account of his or her time and expenses, and those of any assistant, and the panel shall keep a record and render a final account of all general expenses.

Language

30. During the panel procedure, the Parties have the right to use either their own languages or English. Written submissions and oral arguments may be submitted in Korean with English translation or in Spanish with English translation.

Questions in Writing

31. The panel may at any time during the proceedings address questions in writing to one or both Parties. The Parties shall receive a copy of any questions put forward by the Panel.

32. Each Party shall also provide a copy of its written response to the panel's questions to the other Party. The Parties shall be given the opportunity to provide written comments on the reply of the other Party within five days of the date of delivery.

Role of Experts

33. Upon request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, subject to paragraphs 34 and 35, and such additional terms and conditions as the Parties may agree upon. The requirements set out in Article 20.8 shall apply to the experts or bodies, as appropriate.

34. Before the panel seeks information or technical advice, it shall:

(a) notify the Parties of its intention to seek information or technical advice pursuant to paragraph 33 and provide them with an adequate period of time to submit comments; and,

(b) provide the Parties with a copy of any information or technical advice received pursuant to paragraph 33 and provide them with an adequate period of time to submit comments.

35. When the panel takes into consideration the information or technical advice received pursuant to paragraph 33 for the preparation of its report, it shall also take into consideration any comments or observations submitted by the disputing Parties with respect to such information or technical advice.

CHAPTER TWENTY-ONE
EXCEPTIONS

ARTICLE 21.1: GENERAL EXCEPTIONS

1. For purposes of Chapters 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Administration and Trade Facilitation), 6 (Technical Barriers to Trade), 7 (Trade Remedies), and 12 (Electronic Commerce), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters 8 (Investment), 9 (Cross-border Trade in Services), 10 (Temporary Entry for Business Persons), 11 (Telecommunications), and 12 (Electronic Commerce),[1] Article XIV of the GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health. The Parties understand that the measures referred to in Article XIV(a) of the GATS include measures aimed at preserving internal public order.

ARTICLE 21.2: ESSENTIAL SECURITY

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests.[2]

ARTICLE 21.3: TAXATION

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

---

[1] Article 21.1 is without prejudice to whether digital products should be classified as goods or services.

[2] For greater certainty, if a Party invokes Article 21.2 in an arbitral proceeding initiated under Chapter 8 (Investment) or Chapter 20 (Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

(a) Article 2.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 2.11 (Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 9.2 (National Treatment) shall apply to taxation measures on income, on capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Article 8.3 (National Treatment) and Article 8.4 (Most-Favored Nation Treatment), and Article 9.2 (National Treatment) and Article 9.3 (Most-Favored Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, or on the taxable capital of corporations, or taxes on estates, inheritances and gifts, and generation-skipping transfers;

except that nothing in the Articles referred to in subparagraphs (a) and (b) shall apply:

(c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(d) to a non-conforming provision of any existing taxation measure;

(e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of the GATS); or

(h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust or pension plan on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 8.9 (Performance Requirements) shall apply to taxation measures.

6. (a) Article 8.7 (Expropriation and Compensation) and Article 8.17 (Settlement of Dispute between a Party and an Investor of the Other Party) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or investment authorization. However, no investor may invoke Article 8.7 (Expropriation and Compensation) as the basis for a claim where it has been determined pursuant to this subparagraph that the measure is not an expropriation.[3] An investor that seeks to invoke Article 8.7 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 8.17 (Settlement of Dispute between a Party and an Investor of the Other Party), the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 8.17 (Settlement of Dispute between a Party and an Investor of the Other Party); and

(b) For purposes of this paragraph, **competent authorities** means:

(i) for Colombia, the Legal Advisory Office of the *Ministry of Finance and Public Credit* (*Oficina Asesora Jurídica del Ministerio de Hacienda Crédito Público*); and

[3] The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 8-B (Expropriation) and the following considerations:

(a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

(b) a taxation measure that is consistent with internationally recognized tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;

(c) a taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and

(d) a taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

(ii) for Korea, the Deputy Minister for Tax and Customs, *Ministry of Strategy and Finance*.

7. For purposes of this Article,

(a) "taxes" and "taxation measures" do not include:

(i) a customs duty as defined in Article 1.3 (Definitions); or

(ii) the measures listed in exceptions (b), (c), (d), and (e) of that definition; and

(b) **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement.

ARTICLE 21.4: DISCLOSURE OF INFORMATION

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

CHAPTER TWENTY-TWO
FINAL PROVISIONS

ARTICLE 22.1: ANNEXES, APPENDICES, AND FOOTNOTES

The Annexes, Appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

ARTICLE 22.2: AMENDMENTS

The Parties may agree, in writing, to amend this Agreement. Any amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, on such date as the Parties may agree.

ARTICLE 22.3: AMENDMENT OF THE WTO AGREEMENT

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult to consider amending the relevant provision of this Agreement, as appropriate, in accordance with Article 22.2.

ARTICLE 22.4: ENTRY INTO FORCE

This Agreement shall enter into force 30 days after the receipt of the last written notification by the Parties certifying that they have completed their respective legal requirements or on such other date as the Parties may agree.

ARTICLE 22.5: TERMINATION

This Agreement shall terminate 180 days after the date either Party notifies the other Party in writing that it wishes to terminate this Agreement, unless otherwise agreed by the Parties.

ARTICLE 22.6: PROVISIONAL APPLICATION

1. Without prejudice to Article 22.4, in the event Korea has notified the completion of its ratification procedures under Article 22.4 while Colombia has not, this Agreement shall be provisionally applied from the first day of the first month following the day on which Colombia notifies Korea of its decision to apply this Agreement provisionally in accordance with the *Vienna Convention on the Law of Treaties* (1969) and the Colombian Constitution (*Constitución Politica de Colombia*).

2. Where this Agreement is applied by the Parties pending its entry into force in accordance with paragraph 1, any reference in the provisions of this Agreement to the

date of entry into force of this Agreement shall be understood to refer to the date of provisional application in accordance with paragraph 1.

3. Subject to paragraphs 1 and 2, a Party may terminate provisional application by written notice to the other Party. Such termination shall take effect on the first day of the first month following notification.

ARTICLE 22.7: AUTHENTIC TEXTS

The Spanish, Korean, and English texts of this Agreement are equally authentic. In case of any divergence, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Seoul, this 21st day of February, 2013, in duplicate, in the Spanish, Korean, and English languages.

FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA:

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA:

ANNEX I
SCHEDULE OF COLOMBIA

Sector:	All Sectors
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Código de Comercio de 1971, Arts. 469, 471 y 474*
Description:	Cross-Border Trade in Services A juridical person constituted or organized under the laws of another country and with its principal domicile in another country, shall establish a branch in Colombia in order to develop a concession granted by the Colombian State.

Sector:	All Sectors
Obligations Concerned:	Performance Requirements (Article 8.9) Senior Management and Boards of Directors (Article 8.10) National Treatment (Article 9.2)
Measures:	*Código Sustantivo del Trabajo, 1993, Arts. 74 y 75*
Description:	Investment and Cross-Border Trade in Services

Any employer that has more than 10 workers shall employ Colombians as part of its ordinary workforce in a proportion of no less than 90 percent of its ordinary workers and of no less than 80 percent of its skilled, specialized or managerial personnel or persons in a position of trust.

At the employer's request, these proportions may be reduced when it involves essential and strictly technical workers and only for the time necessary to train Colombian workers.

Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 8.3)
Measures:	*Decreto 2080 de 2000, Art. 26*
Description:	Investment Foreign investors shall make portfolio investments in securities in Colombia only through an Administrator (*Administrador).*

Sector: All Sectors

Obligations Concerned: National Treatment (Article 8.3)
Senior Management and Boards of Directors (Article 8.10)

Measures: As set out in the **Description** element, including *Arts. 3 y 11 de la Ley 226 de 1995*

Description: Investment

Colombia, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of Korea or of a non-Party or their investments. With respect to such a sale or other disposition, Colombia may adopt or maintain any measure related to the nationality of senior management or members of the board of directors.

Relevant existing legislation concerning this non-conforming measure includes *Ley 226 de 1995*. In this respect, if Colombia decides to sell all or part of its interest in an enterprise to a person other than a Colombian state enterprise or other Colombian government entity, it shall first offer such interest exclusively, and under the conditions established in *article 11 of Ley 226 de 1995*, to:

a) current, pensioned, and former employees (other than former employees terminated for just cause) of the enterprise and of other enterprises owned or controlled by the enterprise;

b) associations of employees and former employees of the enterprise;

c) employee unions;

d) federations and confederations of trade unions;

e) employee funds (“fondos de empleados”);

f) pension and severance funds; and

g) cooperative entities[1].

However, once such interest has been transferred or sold, Colombia does not reserve the right to control any subsequent transfer or other disposal of such interest.

For purposes of this reservation.

a) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this reservation shall be deemed to be an existing measure; and

b) "state enterprise" means an enterprise owned or controlled through ownership interests by Colombia and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

[1] For greater certainty, *Ley 454 de 1998* establishes the type of cooperative entities existing in Colombia, including, *inter alia*, "cooperativas de ahorro y crédito," "cooperativas financieras," and "cooperativas multiactivas o integrales."

Sector:	All Sectors
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Ley 915 de 2004, Art. 5*
Description:	Cross-Border Trade in Services

Only natural or juridical persons with their main office in the free port of San Andrés, Providencia, and Santa Catalina may supply services in this region.

For greater certainty, this measure does not affect the cross-border supply of services as defined in Article 9.13.

Sector:	Accounting Services
Obligations Concerned:	National Treatment (Article 9.2) Local Presence (Article 9.5)
Measures:	*Ley 43 de 1990, Art. 3 Par. 1* *Resolución No. 160 de 2004, Art. 2 Par. y Art. 6*
Description:	Cross-Border Trade in Services Only persons registered with the *Junta Central de Contadores* may practice as accountants. A foreign national must have been domiciled continuously in Colombia for at least three years prior to the registration request and demonstrate accounting experience carried out in the territory of Colombia for a period of not less than one year. This experience may be acquired while engaging in public accounting studies or thereafter. For natural persons, the term "domiciled" means being a resident of Colombia and having the intention of remaining in Colombia.

Sector:	Research and Development Services
Obligations Concerned:	National Treatment (Article 9.2)
Measures:	*Decreto 309 de 2000, Art. 7*
Description:	Cross-Border Trade in Services

Any foreign person planning to undertake scientific research on biological diversity in the territory of Colombia must involve at least one Colombian researcher in the research or analysis of the results of such research.

For greater certainty, this measure does not require or prohibit foreign persons and Colombian researchers from reaching an agreement with respect to the rights in relation to the scientific research or analysis.

Sector:	Fishing and Services Related to Fishing
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2) Most-Favored-Nation Treatment (Article 9.3) Market Access (Article 9.4)
Measures:	*Decreto 2256 de 1991, Arts. 27, 28 y 67* *Acuerdo 005 de 2003, Sección II y VII*
Description:	Investment and Cross-Border Trade in Services Only Colombian nationals may engage in artisanal fishing. A foreign flagged vessel may obtain a permit and engage in commercial fishing and related activities in Colombian territorial waters only in association with a Colombian enterprise that owns a permit. In this case, the costs of the permit and fishing license are higher for foreign-flagged vessels than for Colombian-flagged vessels. If the flag of a foreign-flagged vessel is that of a country that is a party to another bilateral agreement with Colombia, the terms of that other bilateral agreement shall determine whether or not the requirement to associate with a Colombian enterprise that owns a permit applies.

Sector:	Services Directly Incidental to the Exploration and Exploitation of Minerals and Hydrocarbons
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Ley 685 de 2001, Arts. 19 y 20* *Decreto legislativo 1056 de 1953, Art. 10* *Código de Comercio de 1971, Arts. 471 y 474*
Description:	Cross-Border Trade in Services To supply services directly related to the exploration and exploitation of minerals and hydrocarbons in Colombia, a juridical person organized under the laws of a foreign country must establish a branch, affiliate company, or subsidiary in Colombia. For greater certainty, this entry does not apply to service suppliers engaged in those services for less than one year.

Sector:	Private Security and Surveillance Services
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Decreto 356 de 1994, Arts. 8, 12, 23 y 25*
Description:	Investment and Cross-Border Trade in Services

Only an enterprise organized under Colombian law as a limited liability company or a private security and surveillance services cooperative[2] may provide private security and surveillance services in Colombia. Partners or members of such enterprises must be Colombian nationals.

Enterprises established prior to February 11, 1994 with foreign members or foreign capital may not increase the participation of foreign members. Cooperatives organized before that date may retain their juridical form.

[2] Article 23 of *Decreto 356 de 1994* defines a "private security and surveillance services cooperative" as an employee-owned and employee-run non-profit associative enterprise created to provide private security and surveillance services, for remuneration.

Sector:	Journalism
Obligations Concerned:	Senior Management and Board of Directors (Article 8.10)
Measures:	*Ley 29 de 1944, Art. 13*
Description:	Investment The director or general manager of a newspaper published in Colombia that focuses on Colombian politics must be a Colombian national.

Sector:	Travel and Tourism Services
Obligations Concerned:	National Treatment (Article 9.2) Local Presence (Article 9.5)
Measures:	*Ley 32 de 1990, Art. 5* *Decreto 502 de 1997, Arts. 1 al 7*
Description:	Cross-Border Trade in Services Foreign nationals must be domiciled in Colombia to provide travel and tourism agent services within the territory of Colombia. For greater certainty, this entry does not apply to tour guide services, nor does it affect the cross-border supply of services as defined in Article 9.13.

Sector:	Notary and Registrar Services
Obligations Concerned:	National Treatment (Article 9.2) Market Access (Article 9.4)
Measures:	*Decreto Ley 960 de 1970, Arts. 123, 124, 126, 127 y 132* *Decreto Ley 1250 de 1970, Art. 60*
Description:	Cross-Border Trade in Services Only Colombian nationals may be notaries and/or registrars. The establishment of new notaries is subject to an economic needs test that takes into account the population of the area of interest, the necessity of the services, and access to means of communication facilities, among other factors.

Sector:	Domiciliary Public Services
Obligations Concerned:	National Treatment (Article 8.3) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Ley 142 de 1994, Arts. 1, 17, 18, 19 y 23* *Código de Comercio de 1971, Arts. 471 y 472*
Description:	Investment and Cross-Border Trade in Services

A domiciliary public service enterprise, must be organized under the *Empresas de Servicios Públicos* (E.S.P.) regime, must be domiciled in Colombia and organized under Colombian law as a share company (*sociedad por acciones*). The requirement to be organized as a share company does not apply to a decentralized entity that takes the form of a commercial and industrial enterprise of the State.

For purposes of this entry, domiciliary public services include the provision of water, sewage, refuse disposal, electric power, combustible gas distribution, and basic public-switched telephone services (PSTN) and any activities supplemental thereto. Activities supplemental to basic public-switched telephone services means long-distance public telephone and fixed wireless local loop telephone services in rural areas, but does not mean commercial mobile telephone services.

An enterprise in which a locally organized community holds a controlling interest shall be given a preference over enterprises with otherwise equivalent bids in the granting of a concession or license for the provision of domiciliary public services to that community.

Sector:	Electrical Power
Obligations Concerned:	Market Access (Article 9.4)
Measures:	*Ley 143 de 1994, Art. 74*
Description:	Cross-Border Trade in Services Only enterprises organized under Colombian law before July 12, 1994, may engage in marketing (*comercialización*) and transmission of electrical power or engage in more than one of the following activities at the same time: generation, distribution, or transmission of electrical power. For greater certainty, an enterprise legally constituted in Colombia can not engage in marketing and transmission activities.

Sector:	Customs Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Decreto 2685 de 1999, Arts. 74 y 76*
Description:	Cross-Border Trade in Services In order to perform customs intermediation, intermediation for postal services ("*intermediación para servicios postales*") and *mensajeria especializada* [3] (including express delivery), deposit of merchandise, transportation of merchandise under the customs control, or international cargo services, or to act as Permanent Customs Users ("*Usuarios Aduaneros Permanentes*") or Highly Exporting Users ("*Usuarios Altamente Exportadores*"), a person must be domiciled in Colombia or have a domiciled representative legally responsible for their activities in Colombia.

[3] *"Servicio de mensajería especializada"* means the class of postal services that is supplied independently of the official postal networks for national and international mail, and that requires the application and adoption of special procedures for the receipt, collection, and personal delivery of mail and other postal objects transported by land or air within or from the territory of Colombia.

Sector:	Postal and *Mensajería Especializada* Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Ley 1369 de 2009, Art. 4*
Description:	Cross-Border Trade in Services Only juridical persons organized under Colombian law may supply postal services and "*mensajería especializada"* (as defined in the footnote to the previous entry) in Colombia.

Sector:	Telecommunication Services
Obligations Concerned:	National Treatment (Article 9.2) Local Presence (Article 9.5)
Measures:	*Ley 671 de 2001* *Decreto 1616 de 2003, Arts. 13 y 16* *Decreto 2542 de 1997, Art. 2* *Decreto 2926 de 2005, Art. 2* *Decreto 2870 de 2007, Título II (Arts. 3 al 7)*
Description:	Cross-Border Trade in Services Only enterprises organized under Colombian law may receive concessions for the supply of telecommunications services within Colombia. Colombia may grant licenses to enterprises to provide long distance basic switched telecommunications services on less favorable terms, with respect only to payment and duration, than those provided to *Colombia Telecomunicaciones S.A. E.S.P.* under *article 2 of Decreto 2542 de 1997, articles 13 and 16 of Decreto 1616 de 2003 and Decreto 2926 de 2005*.

Sector:	Cinematography
Obligations Concerned:	Performance Requirements (Article 8.9) National Treatment (Article 9.2)
Measures:	*Ley 814 de 2003, Arts. 5, 14, 15, 18 y 19*
Description:	Investment and Cross Border Trade in Services The exhibition and distribution of foreign films is subject to the Cinematographic Development Fee, which is set at 8.5 percent of the monthly net income derived from such exhibition and distribution. The fee applied to an exhibitor is reduced to 2.25 percent, when a foreign movie is exhibited together with a Colombian short film. The fee applied to a distributor is reduced to 5.5 percent until 2012, provided that during the preceding year, the percentage of Colombian full-length films it distributed to cinemas and other exhibitors equaled or exceeded the target percentage set by the government.

Sector:	Radio Broadcasting Services
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2) Senior Management and Board of Directors (Article 8.10) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Ley 80 de 1993, Art. 35* *Ley 74 de 1966, Art. 7* *Decreto 1447 de 1995, Arts. 7, 9 y 18*
Description:	Investment and Cross-Border Trade in Services A concession to supply radio broadcasting services may be granted only to Colombian nationals or to juridical persons organized under Colombian law. The number of concessions to provide radio broadcasting services is subject to an economic needs test that applies criteria set forth by law. The director of informative or journalist programs must be a Colombian national.

Sector:	Free-to-air Television Audio-Visual Production Services
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2) Performance Requirements (Article 8.9) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Ley 014 de 1991, Art. 37* *Ley 680 de 2001, Arts. 1 y 4* *Ley 335 de 1996, Arts. 13 y 24* *Ley 182 de 1995, Arts. 37 numeral 3, 47 y 48* *Acuerdo 002 de 1995, Art. 10 Parágrafo* *Acuerdo 023 de 1997, Art. 8 Parágrafo* *Acuerdo 024 de 1997, Arts. 6 y 9* *Acuerdo 020 de 1997, Arts. 3 y 4*

Description:

Investment and Cross-Border Trade in Services

Only Colombian nationals or juridical persons organized under Colombian law may be granted concessions to provide free-to-air television services.

To hold a concession for a privately operated national television channel that provides free-to-air television services, a juridical person must be organized as a corporation ("*sociedad anónima*").

The number of concessions to provide free-to-air national and local for-profit television services is subject to an economic needs test in accordance with the criteria set forth by law.

Foreign equity in any enterprise holding a free-to-air television concession is limited to 40 percent.

National Television

Suppliers (operators and/or persons granted the right to use programming slots) of free-to-air national television services must broadcast nationally produced programming on each channel as follows:

(a) a minimum of 70 percent between 19:00 hours and 22:30 hours;
(b) a minimum of 50 percent between 22:30 hours and 24:00 hours;

(c) a minimum of 50 percent between 10:00 hours and 19:00 hours; and

(d) a minimum of 50 percent for Saturdays, Sundays, and holidays during the hours described in subparagraphs (a), (b) and (c).

Regional and Local Television

Regional television may be supplied only by state-owned entities.

Suppliers of regional and local free-to-air television services must broadcast a minimum of 50 percent nationally produced programming on each channel.

Sector:	Subscription Television Audio-visual Production Services
Obligations Concerned:	Performance Requirements (Article 8.9) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Ley 680 de 2001, Arts. 4 y 11* *Ley 182 de 1995, Art. 42* *Acuerdo 014 de 1997, Arts. 14, 16 y 30* *Ley 335 de 1996, Art. 8* *Acuerdo 032 de 1998, Arts. 7 y 9*
Description:	Investment and Cross-Border Trade in Services Only juridical persons organized under Colombian law may supply subscription television services. Such juridical persons must make available to subscribers, at no additional cost, those free-to-air Colombian national, regional, and municipal television channels available in the authorized area of coverage. The transmission of regional and municipal channels will be subject to the technical capacity of the subscription television operator. Suppliers of satellite subscription television only have the obligation of including in their basic programming the transmission of the public interest channels of the Colombian State. When rebroadcasting free-to-air programming subject to a domestic content quota, a subscription television provider may not modify the content of the original signal. Subscription television not including satellite The concessionaire of subscription television that transmits commercials different from those of origin must comply with the minimum percentages of nationally produced programming required of suppliers of free-to-air national television services as described in the entry on free-to-air television and audio-visual production services on pages 22 and 23 of this Annex. Colombia interprets Article 16 of *Acuerdo 014 de 1997* as not requiring subscription television suppliers to comply with minimum percentages of nationally produced programming when commercials are inserted into programming outside the territory of Colombia. Colombia will continue to apply this interpretation, subject to Article 9.6.1(c) (Non-Conforming Measures).

There will be no restrictions on the number of subscription television concessions at the zonal, municipal, and district level once the current concessions at those levels expire and in no case after 31 October 2011.

Suppliers of cable television services must produce and broadcast in Colombia a minimum of one hour of programming each day between 18:00 hours and 24:00 hours.

Sector:	Community Television
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Ley 182 de 1995, Art. 37 numeral 4* *Acuerdo 006 de 1999, Arts. 3 y 4*
Description:	Cross-Border Trade in Services

Community television services may only be supplied by communities organized and legally constituted under Colombian law as foundations, cooperatives, associations, or corporations governed by civil law.

For greater certainty, such services are restricted with respect to area of coverage and number and type of channels; may be offered to no more than 6000 associates, or community members; and must be offered under the modality of a closed network local access channels.

Sector:	Waste-Related Services
Obligations Concerned:	National Treatment (Article 8.3)
Measures:	*Decreto 2080 de 2000, Art. 6*
Description:	Investment Foreign investment is not permitted in activities related to the processing, disposition, and disposal of toxic, hazardous, or radioactive waste not produced in Colombia.

Sector:	Transportation
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Ley 336 de 1996, Arts. 9 y 10* *Decreto 149 de 1999, Art. 5*
Description:	Cross-Border Trade in Services Suppliers of public transportation services within the territory of Colombia must be enterprises organized under Colombian law and domiciled in Colombia. Only foreign enterprises with an agent or representative domiciled in Colombia and legally responsible for its activities in Colombia may supply multimodal transportation of cargo within and from the territory of Colombia.

Sector:	Maritime and Fluvial Transportation
Obligations Concerned:	Performance Requirements (Article 8.9) Senior Management and Board of Directors (Article 8.10) National Treatment (Article 9.2) Local Presence (Article 9.5)
Measures:	*Decreto 804 de 2001, Arts. 2 y 4 inciso 4* *Código de Comercio de 1971, Art. 1455* *Decreto Ley 2324 de 1984, Arts. 99, 101 y 124* *Ley 658 de 2001, Art. 11* *Decreto 1597 de 1988, Art. 23*
Description:	Investment and Cross-Border Trade in Services Only enterprises organized under Colombian law using Colombian flag vessels may supply maritime and fluvial transport services between two points within the territory of Colombia (cabotage). All foreign-flagged vessels entering a Colombian port must have a representative legally responsible for their activities in Colombia and domiciled in Colombia. The maritime and fluvial public service of pilotage on Colombian territorial waters may only be performed by Colombian nationals. In Colombian flag vessels and foreign-flagged vessels (except those relating to fishing) that operate in Colombian jurisdictional waters for a period of time longer than six months, continuous or discontinuous, from the date of the issuing of the respective permit, the captain, officials and at least 80 percent of the rest of the crew must be Colombians.

Sector:	Port Services
Obligations Concerned:	National Treatment (Article 9.2) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Ley 1 de 1991, Arts. 5.20 y 6* *Decreto 1423 de 1989, Art. 38*
Description:	Cross-Border Trade in Services

The holder of a concession to supply port services must be organized under Colombian law as a corporation (*sociedad anónima*) whose corporate objective is the construction, maintenance, and administration of ports.

Only Colombian flag vessels may supply port services in Colombian waters. However, in exceptional cases, the *Dirección General Marítima* may authorize supply of such services by foreign flag vessels if no Colombian vessel has the capacity to supply such service. The authorization will be issued for six months, but may be extended up to one year.

Sector:	Air Services
Obligations Concerned:	National Treatment (Article 8.3) Performance Requirements (Article 8.9)
Measures:	*Código de Comercio de 1971, Arts. 1795, 1803 y 1804*
Description:	Investment Only Colombian nationals or juridical persons organized under Colombian law may own and maintain real and effective control of an airplane registered to supply commercial air services in Colombia. All air services companies established in Colombia as an agency or branch shall employ Colombian workers in a proportion of no less than 90 percent for their operation in Colombia.

ANNEX I
SCHEDULE OF KOREA

Sector:	Construction Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Framework Act on the Construction Industry* (Law No. 11015, August 4, 2011), Articles 9 and 10 *Enforcement Decree of the Framework Act on the Construction Industry* (Presidential Decree No. 23583, February 2, 2012), Article 13 *Enforcement Regulations of the Framework Act on the Construction Industry* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 397, November 3, 2011), Articles 2 and 3 *Information and Communication Construction Business Act* (Law No. 10250, April 12, 2010), Article 14 *Fire Fighting System Installation Business Act* (Law No. 11036, August 4, 2011), Articles 4 and 5 *Enforcement Decree of the Fire Fighting System Installation Business Act* (Presidential Decree No. 23571, January 31, 2012), Article 2 (Table 1) *Enforcement Regulations of the Fire Fighting System Installation Business Act* (Ordinance of the Ministry of Public Administration and Security No. 282, February 3, 2012), Article 2
Description:	Cross-Border Trade in Services A person that supplies construction services in Korea must, prior to the signing of the first contract related to such services, establish an office in Korea.

Sector:	Leasing, Rental, Maintenance, Repair, Sales, and Disposal Services Related to Construction Machinery and Equipment
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Construction Machinery Management Act* (Law No. 11361, February 22, 2012), Article 21 *Enforcement Decree of the Construction Machinery Management Act* (Presidential Decree No. 22467, November 2, 2010), Articles 13, 14, 15, and 15-2 *Enforcement Regulations of the Construction Machinery Management Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 266, July 20, 2010), Articles 57 through 63, 65-2, and 65-3
Description:	Cross-Border Trade in Services A person that supplies leasing, rental, maintenance, repair, sales, and disposal services related to construction machinery and equipment must establish an office in Korea.

Sector:	Transportation Services - Automobile Maintenance, Repair, Sales, Disposal, and Inspection Services; Automobile License Plate Issuing Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Automobile Management Act* (Law No. 11190, January 17, 2012), Articles 20, 44, 45, and 53 *Enforcement Regulations of the Automobile Management Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 222, February 18, 2010), Articles 7, 8, 83, 87, and 111
Description:	<u>Cross-Border Trade in Services</u> A person that supplies automobile management services (which includes used car sales, maintenance, auto dismantling and recycling services) must establish an office in Korea and obtain authorization from the head of the *si/gun/gu* (municipal authorities), which is subject to an economic needs test, as appropriate. A person that supplies automobile inspection services that is designated as a "designated repair facility" must establish an office in Korea. A person that supplies license plate manufacturing, delivery, and seal services that is designated as a "license plate issuing agency" must establish an office in Korea.

Sector:	Distribution Services - Wholesale and Retail Distribution of Tobacco and Liquor
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Tobacco Business Act* (Law No. 9932, January 18, 2010), Articles 12, 13, and 16 *Enforcement Decree of the Tobacco Business Act* (Presidential Decree No. 23349, December 6, 2011), Articles 4 and 5 *Enforcement Regulations of the Tobacco Business Act* (Ordinance of the Ministry of Strategy and Finance No. 131, March 3, 2010), Articles 5, 7, and 7-3 *Liquors Act* (Law No. 11134, December 31, 2011), Articles 8 through 10 *Enforcement Decree of the Liquors Act* (Presidential Decree No. 23598, February 2, 2012), Article 9 *Notice of National Tax Service*, 2010-13 (April 1, 2010) and 2011-24 (December 31, 2011)
Description:	Cross-Border Trade in Services A person that supplies tobacco wholesale (including importation) or retail distribution services must establish an office in Korea. Only designated tobacco retailers may sell tobacco to retail buyers. The sale of tobacco to retail buyers by mail or in electronic commerce is prohibited. The distance between places of business of tobacco retailers must be at least 50 meters. A person that supplies liquor wholesale distribution services must establish an office in Korea and obtain authorization from the head of the relevant tax office, which is subject to an economic needs test. The sale of liquor by telephone or in electronic commerce is prohibited.

Sector:	Agriculture and Livestock
Obligations Concerned:	National Treatment (Article 8.3)
Measures:	*Foreign Investment Promotion Act* (Law No. 10801, June 15, 2011), Article 4 *Enforcement Decree of the Foreign Investment Promotion Act* (Presidential Decree No. 23297, November 16, 2011), Article 5 *Consolidated Public Notice for Foreign Investment* (No. 2012-220, April 26, 2012, Ministry of Knowledge Economy), Appendix 1
Description:	Investment Foreign persons may not: (i) invest in an enterprise engaged in rice or barley farming; or (ii) hold 50 percent or more of the equity interest of an enterprise engaged in beef cattle farming.

Sector:	Business Services - *An-gyung-sa* (Optician and Optometry) Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Medical Technicians Act* (Law No. 11102, November 22, 2011), Article 12 *Enforcement Regulations of the Medical Technicians Act* (Ordinance of the Ministry of Health and Welfare No. 124, May 23, 2012), Article 15
Description:	Cross-Border Trade in Services Only a natural person that is a licensed *an-gyung-sa* (optician or optometrist) that has established an office in Korea may engage in optician or optometry services. An *an-gyung-sa* (optician or optometrist) may not establish more than one office.

Sector:	Wholesale and Retail Distribution Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Pharmaceutical Affairs Act* (Law No. 10788, June 7, 2011), Articles 42 and 45 *Decree on the Facility Standards of Pharmacy, Manufacturer, Importer and Distributor of Pharmaceuticals* (Presidential Decree No. 23248, October 25, 2011), Articles 6 and 7 *Supply, Demand and Distribution of Oriental Medicinal Herbs Regulations* (Notice of the Ministry of Health and Welfare No. 2011-118, September 28, 2011), Articles 4 and 13 *Medical Devices Act* (Law No. 10564, April 7, 2011), Article 15 *Enforcement Regulations of the Medical Devices Act* (Ordinance of the Ministry of Health and Welfare No. 85, November 25, 2011), Article 19 *Functional Foods Act* (Law No. 10219, March 31, 2010), Article 6 *Enforcement Regulations of the Functional Foods Act* (Ordinance of the Ministry of Health and Welfare No. 48, April 1, 2011), Articles 2 and 5 *Food Sanitation Act* (Law No. 10787, June 7, 2011), Articles 24, 36 and 37 *Enforcement Decree of the Food Sanitation Act* (Presidential Decree No. 23619, February 3, 2012), Articles 23 and 24 *Enforcement Regulations of the Food Sanitation Act* (Ordinance of the Ministry of Health and Welfare No. 125, May 31, 2012), Articles 23 and 36 (attached table 14) *Act on the Control of Narcotics* (Law No. 10786, June 7, 2011), Article 6
Description:	Cross-Border Trade in Services

A person that supplies wholesale trade services must establish an office in Korea in order to receive an import business license to supply such services with respect to:

(a) pharmaceuticals and related items;

(b) medical devices; or

(c) functional foods (including dietary supplements).

To supply the following services a person must establish an office in Korea:

(a) transportation, sales, and preservation (cold storage) of food and food additives;

(b) food supply services;

(c) food inspection services; or

(d) narcotic drug wholesale and retail distribution services.

The Minister of Health and Welfare controls the supply and demand of the wholesale distribution of imported designated *han-yak-jae* (Asian medicinal herbs).

Certain liquor-selling bars and the wholesale and retail distribution of narcotics require authorization by the relevant authority.

Sector:	Retail Distribution of Pharmaceuticals
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Pharmaceutical Affairs Act* (Law No. 10788, June 7, 2011), Articles 20 and 21
Description:	Cross-Border Trade in Services A person that supplies pharmaceutical product retail distribution services (including distribution of *han-yak-jae* (Asian medicinal herbs)) must establish a pharmacy in Korea. That person may not establish more than one pharmacy nor establish in the form of a corporation.

Sector:	Transportation Services - Rail Transportation and Incidental Services
Obligations Concerned:	Market Access (Article 9.4)
Measures:	*Railroad Enterprise Act* (Law No. 10722, May 24, 2011), Articles 5, 6, 12, and 13 *Korea Railroad Corporation Act* (Law No. 10580, April 12, 2011), Article 9 *Railroad Construction Act* (Law No. 10599, April 14, 2011), Article 8 *Framework Act on Railroad Industry Development* (Law No. 9772, June 9, 2009), Articles 3, 20, 26, and 38 *Korea Rail Network Authority Act* (Law No. 9391, January 30, 2009), Article 7
Description:	Cross-Border Trade in Services Only the Korea Railroad Corporation may supply railroad transportation services on railroad routes constructed on or before June 30, 2005. Only juridical persons that have obtained authorization from the Minister of Land, Transport, and Maritime Affairs may supply railroad transportation services on railroad routes constructed on or after July 1, 2005. Such authorization is subject to an economic needs test. In case that a person who operates a rail transport service business concludes or revises a contract for joint venture or agreement related to transport, he/she must obtain relevant authorization from the Minister of Land, Transport, and Maritime Affairs. Only the central or local level of government or the Korea Rail Network Authority may supply rail construction services and maintain and repair government-owned rail facilities (including high-speed rail). However, juridical persons that meet the criteria in the *Act on Public-Private Partnerships in Infrastructure* may supply rail construction services.

Sector:	Transportation Services - Passenger Road Transportation Services (not including Taxis and Scheduled Passenger Road Transportation Services)
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Passenger Transport Service Ac*t (Law No. 10599, April 14, 2011), Article 4 *Enforcement Decree of the Passenger Transport Service Ac*t (Presidential Decree No. 23743, April 20, 2012), Article 3 *Enforcement Regulations of the Passenger Transport Service Ac*t (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 425, December 30, 2011), Article 11 *Tramway Transportation Act* (Law No. 11060, September 16, 2011), Article 4 *Enforcement Regulations of Tramway Transportation Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 208, January 11, 2010), Article 3
Description:	Cross-Border Trade in Services A person that supplies passenger road transportation services, not including taxis and scheduled passenger road transportation services, must establish an office in the *dang-hae--ji-yeok* (relevant geographic area) in Korea.

Sector:	Transportation Services - International Maritime Cargo Transportation and Maritime Auxiliary Services
Obligations Concerned:	National Treatment (Article 9.2) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Maritime Transportation Ac*t (Law No. 10219, March 31, 2010), Articles 24 and 33 *Enforcement Regulations of the Maritime Transportation Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 147, July 1, 2009), Articles 16, 19, 22, and 23 *Pilotage Act* (Law No. 10801, June 15, 2011), Article 6 *Ship Investment Company Act* (Law No. 9707, May 22, 2009), Articles 3 and 31
Description:	Cross-Border Trade in Services A person that supplies international maritime cargo transportation and shipping brokerage services must be organized as a *Chusik Hoesa* (stock company) in Korea. A ship investment company must also be organized as a *Chusik Hoesa* (stock company) in Korea. Only a Korean national may supply maritime pilotage services.

Sector: Transportation Services - Air Transportation Services

Obligations Concerned: National Treatment (Article 8.3)
Senior Management and Boards of Directors (Article 8.10)

Measures: *Aviation Act* (Law No. 11244, January 26, 2012), Articles 2, 3, 6, 112, 113, 114, 129 and 132

Enforcement Regulations of the Aviation Act (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 436, January 18, 2012), Articles 14-2, 15, 278, 278-3, 296-2, 298 and 299

Description: Investment

The following persons may not supply scheduled or non-scheduled domestic air transportation services or supply international air transportation services as Korean air carriers:

(a) a foreign national;

(b) a foreign government or a foreign *gong-gong-dan-che* (organization for public purposes);

(c) an enterprise organized under foreign law;

(d) an enterprise in which any of the persons referred to in subparagraphs (a) through (c) owns 50 percent or more of the equity interest, or has control; or

(e) an enterprise organized under Korean law whose *dae-pyo-ja* (for example, a chief executive officer, president, or similar principal senior officer) is a foreign national or half or more of whose senior management are foreign nationals.

A person that owns an aircraft or is authorized to operate a chartered aircraft must register the aircraft with the Minister of Land, Transport, and Maritime Affairs. The persons listed in subparagraphs (a) through (e) are not allowed to register an aircraft.

For purposes of this entry, non-scheduled air transportation services include point-to-point

transportation services, flight tour services and charter flight services.

Sector:	Transportation Services - Aircraft- Use Services
Obligations Concerned:	National Treatment (Article 8.3) Senior Management and Boards of Directors (Article 8.10)
Measures:	*Aviation Act* (Law No. 11244, January 26, 2012), Articles 3, 6, and 134 *Enforcement Regulations of the Aviation Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 436, January 18, 2012), Articles 15-2, 298 and 299-2

Description:

Investment

A person that supplies aircraft-*sa-yong* (use) services must register its self-owned or chartered aircraft with the Minister of Land, Transport, and Maritime Affairs.

The following persons may not register an aircraft:

(a) a foreign national;

(b) a foreign government or a foreign *gong-gong-dan-che* (organization for public purposes);

(c) an enterprise organized under foreign law;

(d) an enterprise in which any of those referred to in subparagraphs (a) through (c) owns 50 percent or more of the equity interest, or has control; or

(e) an enterprise organized under Korean law whose *dae-pyo-ja* (for example, a chief executive officer, president, or similar principal senior officer) is a foreign national or half or more of whose senior management are foreign nationals.

For purposes of this entry, aircraft-*sa-yong* (use) services are services using an aircraft, and supplied upon request, for hire, other than for passenger or freight transportation, including aerial fire-fighting, forestry fire management, aerial advertising, flight training, aerial mapping, aerial investigation, aerial spraying, aerial photographing and other aerial agricultural activities, aerial inspections and

observations, glider towing, parachute jumping, aerial construction, and heli-logging.

Sector:	Transportation Services - Road Transportation Support Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Passenger Transport Service Act* (Law No. 10599, April 14, 2011), Articles 36 and 37 *Enforcement Regulations of the Passenger Transport Service Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 425, December 30, 2011), Article 73 *Parking Lot Service Act* (Law No. 10599, April 14, 2011), Article 12 *Road Traffic Act* (Law No. 10790, June 8, 2011), Article 36
Description:	Cross-Border Trade in Services A person that supplies parking lot services, bus terminal operation services, or car towing and storage services must establish a place of business in the relevant geographic area in Korea and obtain an authorization from the Minister of Land, Transport, and Maritime Affairs, head of local police, or head of *shi/gun*, as appropriate, which is subject to an economic needs test.

Sector:	Courier Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Aviation Act* (Law No. 11116, December 2, 2012), Article 139 *Enforcement Regulations of the Aviation Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 436, January 18, 2012), Article 306 *Truck Transportation Business Act* (Law No. 11064, September 16, 2011), Articles 3, 24 and 29 *Enforcement Regulations of Truck Transportation Business Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 430, December 31, 2011), Articles 6, 34 and 41-2
Description:	Cross-Border Trade in Services To supply international courier services that include commercial document delivery services, as specified in Article 3 of the *Enforcement Decree of the Postal Services Act*, a person must establish an office in Korea. In order to obtain a trucking business license from the Minister of Land, Transport, and Maritime Affairs, a domestic courier services supplier must establish an office in the relevant geographic area. Such a license is subject to an economic needs test.

Sector:	Telecommunications Services
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Telecommunications Business Act* (Law No. 10656, May 19, 2011), Articles 6, 7, 8, 21 and 87 *Telecommunications Business Act* (Law No. 5385, August 28, 1997), Addenda Article 4 *Radio Waves Act* (Law No. 10393, July 23, 2010), Articles 13 and 20
Description:	Investment and Cross-Border Trade in Services A license for facilities-based public telecommunications services or a registration for non-facilities-based public telecommunications services shall be granted only to a juridical person organized under Korean law. A license for facilities-based public telecommunications services shall not be granted to or held by a juridical person organized under Korean law in which a foreign government, foreign person, or deemed foreign person holds in the aggregate more than 49 percent of the juridical person's total voting shares. A foreign government, foreign person, or deemed foreign person may not in the aggregate hold more than 49 percent of the total voting shares of a facilities-based supplier of public telecommunications services. In addition, with respect to KT Corporation (KT), a foreign government, foreign person, or deemed foreign person may not be the largest shareholder of KT, except if it holds less than five percent of the total voting shares of KT. A foreign government, or its representative, or a foreign person may not obtain or hold a radio station license. A foreign person may not supply cross-border public telecommunications services into Korea, except through a commercial arrangement with a supplier of public telecommunications services that is licensed in Korea. For purposes of this entry:

(a) **deemed foreign person** means a juridical person organized under Korean law in which a foreign government or a foreign person (including a "specially related person" under relevant Korean laws or regulations) is the largest shareholder and holds 15 percent or more of that juridical person's total voting shares, but does not include a juridical person that holds less than 1 percent of the total voting shares of a facilities-based supplier of public telecommunications services;

(b) consistent with Article 5.2 of the *Telecommunications Business Act* (Law No. 10656, May 19, 2011), a facilities-based supplier is a supplier that owns transmission facilities;

(c) consistent with Article 5.3 of the *Telecommunications Business Act* (Law No. 10656, May 19, 2011), a non-facilities-based supplier is a supplier that does not own transmission facilities (but may own a switch, router or multiplexer) and supplies its public telecommunication services through transmission facilities of a licensed facilities-based supplier; and

(d) consistent with Article 2.3 of the *Telecommunications Basic Act* (Law No. 10139, March 17, 2010), **transmission facilities** means wireline or wireless transmission facilities (including circuit facilities) that connect transmitting points with receiving points.

Sector:	Real Estate Brokerage and Appraisal Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Act on Duties of a Licensed Real Estate Broker and Filing of Real Estate Transactions* (Law No. 10580, April 12, 2011), Article 9 *Enforcement Decree of the Act on Duties of a Licensed Real Estate Broker and Filing of Real Estate Transactions* (Presidential Decree No. 23086, August 19, 2011), Article 13 *Enforcement Regulations of the Act on Duties of a Licensed Real Estate Broker and Filing of Real Estate Transactions* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 399, November 8, 2011), Article 4 *Public Notice of Values and Appraisal of Real Estate Act* (Law No. 10136, March 17, 2010), Article 27 *Enforcement Decree of the Public Notice of Values and Appraisal of Real Estate Act* (Presidential Decree No. 23488, January 6, 2012), Articles 65, 66, and 68 *Enforcement Regulations of the Public Notice of Values and Appraisal of Real Estate Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 456, April 13, 2012), Articles 25 and 26
Description:	<u>Cross-Border Trade in Services</u> A person that supplies real estate brokerage services or real estate appraisal services must establish an office in Korea.

Sector:	Retail, Leasing, Rental and Repair Services Related to Medical Devices
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Medical Devices Act* (Law No. 10564, April 7, 2011), Articles 16 and 17 *Enforcement Regulations of the Medical Devices Act* (Ordinance of the Ministry of Health and Welfare No. 85, November 25, 2011), Articles 22 and 24
Description:	Cross-Border Trade in Services A person that supplies retail, leasing, rental, or repair services related to medical devices must establish an office in Korea.

Sector:	Rental Services - Automobiles
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Passenger Transport Service Act* (Law No. 10599, April 14, 2011), Articles 28 and 29 *Enforcement Regulations of the Passenger Transport Service Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 425, December 30, 2011), Article 60
Description:	Cross-Border Trade in Services A person that supplies automobile rental services must establish an office in Korea.

Sector:	Scientific Research Services and Sea Map Making Services
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2)
Measures:	*Marine Scientific Research Act* (Law No. 8852, February 29, 2008), Articles 6, 7, and 8 *Territorial Sea and Contiguous Zone Act* (Law No. 10524, April 4, 2011), Article 5
Description:	<u>Investment and Cross-Border Trade in Services</u> A foreign person, a foreign government, or a Korean enterprise owned or controlled by a foreign person that intends to conduct marine scientific research in the territorial waters or exclusive economic zone of Korea must obtain prior authorization or consent from the Minister of 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 to the Minister of Land, Transport, and Maritime Affairs.

Sector:	Professional Services - Legal Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Attorney-at-law Act* (Law No. 10922, July 25, 2011), Articles 4, 7, 21, 34, 45, 58-6, 58-22, and 109 *Certified Judicial Scriveners Act* (Law No. 8920, March 21, 2008), Articles 2, 3, and 14 *Notary Public Act* (Law No. 11154, January 17, 2012), Articles 10, 16, and 17
Description:	<u>Cross-Border Trade in Services</u> Only a *byeon-ho-sa* (Korean-licensed lawyer) registered with the Korean Bar Association may supply legal services. Only a *byeon-ho-sa* (Korean-licensed lawyer) may establish the following types of legal entity: *beop-yool-sa-mu-so* (law office), *beop-mu-beop-in* (law company with the characteristics of partnership), *beop-mu-beop-in* (*yoo-han*) (limited liability law company), or *beop-mu-jo-hap* (limited liability partnership law office). For greater certainty, a person that is not a Korean-licensed lawyer is not permitted to invest in any of these types of legal entity. A *byeon-ho-sa* (Korean-licensed lawyer) or *beop-mu-sa* (Korean-certified judicial scrivener) who practices in Korea must establish an office in the jurisdiction of the district court in which he or she practices. A *gong-jeung-in* (Korean notary public) must establish an office in the jurisdiction of the district office of the public prosecutor in which he or she practices. This entry is subject to the commitments undertaken in the entry for Legal Services – Foreign Legal Consultants in the Schedule to Annex II.

Sector:	Professional Services - Labor Affairs Consulting Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Certified Labor Affairs Consultant Act* (Law No. 10321, May 25, 2010), Articles 5 and 5-2, 7-3 and 7-4 *Enforcement Decree of the Certified Labor Affairs Consultant Act* (Presidential Decree No. 23759, May 1, 2012), Articles 15 and 19 *Enforcement Regulations of the Certified Labor Affairs Consultant Act* (Ordinance of the Ministry of Employment and Labor No. 48, February 9, 2012), Articles 6 and 10
Description:	Cross-Border Trade in Services Only a *gong-in-no-mu-sa* (Korean-licensed labor affairs consultant) registered under the Certified Labor Affairs Consultant Act may supply *gong-in-no-mu-sa* services. A person that supplies *gong-in-no-mu-sa* services must establish an office in Korea. For greater certainty, an enterprise that supplies labor affairs consulting services must consist of at least two *gong-in-no-mu-sa* (Korean-licensed labor affairs consultant) (including the natural person who is the founder) and must obtain authorization from the Minister of Employment and Labor.

Sector:	Professional Services - Patent Attorney (*byeon-ri-sa*)
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Patent Attorney Act* (Law No. 10706, May 24, 2011), Articles 3, 5, 6-2, and 6-3
Description:	Cross-Border Trade in Services

Only a *byeon-ri-sa* (Korean-licensed patent attorney) who is registered with the Korean Intellectual Property Office may supply patent attorney services.

Only a *byeon-ri-sa* (Korean-licensed patent attorney) may establish a *gae-in-sa-mu-so* (sole proprietorship) or a *teuk-heo-beop-in* (patent law firm). For greater certainty, a person that is not a Korean-licensed patent attorney may not invest in either of these types of legal entity.

A *byeon-ri-sa* (Korean-licensed patent attorney) may establish only one office.

Sector:	Professional Services - Accounting and Auditing Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Certified Public Accountant Act* (Law No. 10812, June 30, 2011), Articles 2, 7, 12, 18, and 23 *External Audit of Stock Companies Act* (Law No. 10303, May 17, 2010), Article 3
Description:	Cross-Border Trade in Services Only a *gae-in-sa-mu-so* (sole proprietorships), *gam-sa-ban* (auditing task forces) or *hoe-gye-boep-in* (accounting corporation limited liability company) established in Korea by *gong-in-hoe-gye-sa* (Korean-certified public accountants) registered under the *Certified Public Accountant Act* may supply accounting and auditing services. For greater certainty, a person that is not a Korean-registered certified public accountant may not invest in any of these types of legal entity. Only *gong-in-hoe-gye-sa* (Korean-certified public accountants) in an auditing task force or an accounting corporation may supply auditing services regulated under the *External Audit of Stock Companies Act*. This entry is subject to the commitments undertaken in the entry for Professional Services – Foreign Certified Public Accountant in the Schedule of Korea to Annex II.

Sector:	Professional Services - Tax Accountant (*se-mu-sa*)
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Certified Tax Accountant Act* (Law No. 11209, January 26, 2012), Articles 6, 13, 16-3, and 20 *Enforcement Decree of the Corporate Tax Act* (Presidential Decree No. 23724, April 15, 2012), Article 97 *Enforcement Regulations of the Corporate Tax Act* (Ordinance of the Ministry of Strategy and Finance No. 283, April 19, 2012), Articles 50-2 and 50-3 *Guidelines Governing the Work of Tax Agents*, Articles 20 and 22
Description:	Cross-Border Trade in Services Only a *se-mu-sa-mu-so* (sole proprietorships), *se-mu-jo-jeong-ban* (tax reconciliation task forces) or, *se-mu-beop-in* (tax agency corporation limited liability company) established in Korea by *se-mu-sa* (Korean-certified tax accountants) registered under the *Certified Tax Accountant Act* may supply *se-mu-sa* (Korean-certified tax accountants) services, including tax reconciliation services and tax representative services. For greater certainty, a person that is not a Korean-registered certified tax accountant may not invest in any of these types of legal entity. Only a *se-mu-jo-jeong-ban* (tax reconciliation task forces) or a *se-mu-beop-in* (tax agency corporation limited liability company) may supply tax reconciliation services. This entry is subject to the commitments undertaken in the entry for Professional Services – Foreign Certified Tax Accountants in the Schedule of Korea to Annex II.

Sector:	Professional Services - Customs Clearance Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Customs Broker Act* (Law No. 10570, April 8, 2011), Articles 3, 7, and 9
Description:	Cross-Border Trade in Services Only a *gwan-se-sa* (customs broker) licensed under the *Customs Brokers Act*, a corporation incorporated by such customs brokers, or a corporation licensed to engage in the customs-clearance brokerage business under the *Customs Broker Act* may supply customs-clearance services. A person that supplies customs-clearance services must establish an office in Korea.

Sector:	Engineering and Other Technical Services - Industrial Safety, Health Institution, and Consulting Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Industrial Safety and Health Act* (Law No. 10968, July 25, 2011), Articles 15, 16, and 52-4 *Enforcement Decree of the Industrial Safety and Health Act* (Presidential Decree No. 23845, June 7, 2012), Articles 15-3 *Enforcement Regulations of the Industrial Safety and Health Act* (Ordinance of the Ministry of Employment and Labor No. 47, January 26, 2012), Articles 17, 18, 20, 21, and 136-8
Description:	Cross-Border Trade in Services A person that supplies safety and health management or diagnostic services to industrial workplaces must establish an office in Korea. A person that supplies industrial safety or hygiene consulting services, such as evaluation and instruction on safety in a work process and evaluation and instruction on the improvement of work environments, must establish an office in Korea. For greater certainty, only Occupational Safety Consultants and Industrial Hygiene Consultants registered according to the *Industrial Safety and Health Act* can provide occupational safety and industrial hygiene consulting services such as providing evaluation and guidance on safety in work process

Sector:	Engineering and Other Technical Services - Architectural Services, Engineering Services, Integrated Engineering Services, Urban Planning and Landscape Architectural Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Certified Architects Act* (Law No. 10719, May 24, 2011), Article 23
	Enforcement Decree of the Certified Architects Act (Presidential Decree No. 23535, January 25, 2012), Articles 22 and 23
	Enforcement Regulations of the Certified Architects Act (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 349, April 7, 2011), Article 13
	Engineering Industry Promotion Act (Law No. 11235, January 26, 2012), Article 21
	Professional Engineers Act (Law No. 10771, June 7, 2011), Article 6
	Special Act on the Safety Control of Public Structures (Law No. 10719, May 24, 2011), Article 9
	Enforcement Decree of the Special Act on the Safety Control of Public Structures (Presidential Decree No. 23299, November 16, 2011), Article 11
	Construction Technology Management Act (Law No. 11056, September 16, 2011), Articles 25 and 28
	Enforcement Decree of the Construction Technology Management Act (Presidential Decree No. 23718, April 10, 2012), Articles 91 and 108
	Enforcement Regulations of the Construction Technology Management Act (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 450, March 16, 2012), Article 48
	Act on Land Survey, Waterway Survey and Cadastral Records (Law No. 11062, September 16, 2011), Article 44
	Enforcement Decree of the Act on Land Survey, Waterway Survey and Cadastral Records (Presidential

Decree No. 23718, April 10, 2012), Articles 34, 35, and 36

Environmental Testing and Inspection Act (Law No. 10615, April 28, 2011), Article 16

Thermal Spring Management Act (Law No. 10732, May 30, 2011), Article 7

Fire Fighting System Installation Business Act (Law No. 11036, August 4, 2011), Article 4

Description: Cross-Border Trade in Services

A person that supplies architectural services, engineering services, integrated engineering services, urban planning and landscape architectural services, or surveying services must establish an office in Korea.

For greater certainty, this entry does not apply to the supply of services by a foreign architect through a joint contract with a Korean-licensed architect.

Sector:	Business Services - Electronic Billboard Operator Services and Outdoor Advertisement Services
Obligations Concerned:	Performance Requirements (Article 8.9) Senior Management and Boards of Directors (Article 8.10) Local Presence (Article 9.5)
Measures:	*Broadcasting Act* (Law No. 10856, July 14, 2011), Articles 13 and 73 *Outdoor Advertisements, Etc. Management Act* (Law No. 10466, March 29, 2011), Article 11 *Enforcement Decree of the Outdoor Advertisements, Etc. Management Act* (Presidential Decree No. 23215, October 10, 2011), Articles 14 and 44
Description:	Investment and Cross-Border Trade in Services A foreign national or a Korean national who serves as a *dae-pyo-ja* (for example, a chief executive officer, president, or similar principal senior officer) of a foreign enterprise may not serve as the *dae-pyo-ja* (for example, a chief executive officer, president, or similar principal senior officer) or chief programmer of an enterprise that supplies electronic billboard operator services. At least 20 percent of the electronic billboard programs must be non-commercial public advertisements provided by the central or local government. A person that supplies outdoor advertising services must establish an office in Korea.

Sector:	Business Services - Job Placement Services, Labor Supply and Worker Dispatch Services, and Education Services for Seafarers
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2) Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Employment Security Act* (Law No. 10339, June 4, 2010), Articles 19 and 33 *Enforcement Decree of the Employment Security Act* (Presidential Decree No. 23488, January 6, 2012), Articles 21 and 33 *Enforcement Regulations of the Employment Security Act* (Ordinance of the Ministry of Employment and Labor No. 55, June 5, 2012), Articles 17 and 36 *Act Relating to Protection for Dispatched Workers* (Law No. 11024, August 4, 2011), Articles 7, 8, 9, and 10 *Enforcement Decree of the Act Relating to Protection Etc. for Dispatched Workers* (Presidential Decree No. 23488, January 6, 2012), Article 3 *Enforcement Regulations of the Act Relating to Protection for Dispatched Workers* (Ordinance of the Ministry of Employment and Labor No. 48, February 9, 2012), Articles 3, 4, and 5 *Special Act on Designation and Management of Free Economic Zones* (Law No. 10599, April 14, 2011), Article 17 *Seafarers Act* (Law No. 11188, January 17, 2012), Articles 109, 110, 112, 115, 116, 117, 142, and 143 *Enforcement Regulations of the Seafarers Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 465, May 18, 2012), Article 56-4 *Korea Institute of Maritime and Fisheries Technology Act* (Law No. 9453, February 6, 2009), Article 5
Description:	<u>Investment and Cross-Border Trade in Services</u> A person that supplies job placement services for a fee, worker supply services, or worker dispatch (secondment)

services must establish an office in Korea.

For transparency purposes, as of April 17, 2009 the types of business to which workers may be seconded are limited to the 32 businesses set forth in the Presidential Decree, but the Minister of Employment and Labor can expand the types of business and the secondment period, pursuant to the review and determination by the Committee of the Free Economic Zone.

Only the Korea Seafarers Welfare and Employment Center, regional offices of the Minister of Land, Transport, and Maritime Affairs, seafarer management business operators, Korea Shipping Association and National Federation of Fisheries Cooperative may supply seafaring labor supply services.

To become an agent for seafarer personnel management services, a person must register with the Minister of Land, Transport, and Maritime Affairs as a stock company under the *Korean Commercial Code*.

Only the Korea Institute of Maritime and Fisheries Technology may provide education and training for seafarers.

Sector:	Investigation and Security Services
Obligations Concerned:	Market Access (Article 9.4) Local Presence (Article 9.5)
Measures:	*Certified Private Security Act* (Law No. 9579, April 1, 2009), Articles 3 and 4 *Enforcement Decree of the Certified Private Security Act* (Presidential Decree No. 23759, May 1, 2012), Articles 3 and 4 *Enforcement Regulations of the Certified Private Security Act* (Ordinance of the Ministry of Public Administration and Security No. 297, May 31, 2012), Article 3
Description:	Cross-Border Trade in Services Only a juridical person organized under Korean law may supply security services in Korea. For transparency purposes, only five types of security services are permitted in Korea: (a) *shi-seol-gyung-bee* (facility security); (b) *ho-song-gyung-bee* (escort security); (c) *shin-byun-bo-ho* (personal security); (d) *gee-gye-gyung-bee* (mechanized security); and (e) *teuk-soo-gyung-bee* (special security).

Sector:	Distribution Services Related to Publications
Obligations Concerned:	National Treatment (Article 9.2)
Measures:	*Publication Cultural Industry Promotion Act* (Law No. 10108, March 17, 2010), Article 12 *Enforcement Decree of the Publication Cultural Industry Promotion Act* (Presidential Decree No. 22783, March 30, 2011), Article 7 *Enforcement Regulations of the Publication Cultural Industry Promotion Act* (Ordinance of the Ministry of Culture, Sports and Tourism No. 61, June 21, 2010), Article 7
Description:	Cross-Border Trade in Services A person that imports the following types of foreign publications for the purpose of domestic distribution must obtain a recommendation from the Minister of Culture, Sports and Tourism: (a) publications issued by anti-government subversive entities or groups; or (b) novels, comics, photo albums, pictorial series and magazines. Distributors of domestic publications are subject to a review process on an *ad hoc* basis after distribution takes place.

Sector:	Transportation Services - Aircraft Maintenance and Repair Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Aviation Act* (Law No. 11244, January 26, 2012), Articles 137, 137-2, and 138 *Enforcement Regulations of the Aviation Act* (Ordinance of the Ministry of Land, Transport, and Maritime Affairs No. 436, January 18, 2012), Articles 16, 304, and 305
Description:	Cross-Border Trade in Services A person that supplies aircraft maintenance and repair services must establish an office in Korea.

Sector:	Education Services - Higher Education
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2) Market Access (Article 9.4) Senior Management and Boards of Directors (Article 8.10)
Measures:	*Higher Education Act* (Law No. 11212, January 26, 2012), Articles 3, 4, 32, 42, and 43 *Enforcement Decree of the Higher Education Act* (Presidential Decree No. 23650, March 2, 2012), Article 28 *Private School Act* (Law No. 11216, January 26, 2012), Articles 3, 5, 10, and 21 *Enforcement Decree of the Private School Act* (Presidential Decree No. 22971, June 9, 2011), Article 9-3 *Decree for the Establishment of the Korea Air and Correspondence University* (Presidential Decree No. 21709, September 3, 2009), Articles 1 and 2
Description:	Investment and Cross Border Trade in Services At least 50 percent of the members of the board of directors of a private higher education institution must be Korean nationals. If a foreign person contributes at least 50 percent of the basic property of a higher education institution, up to but not including two thirds of the members of the board of directors of such an institution may be foreign nationals. For purposes of this entry, **basic property** means real estate, property designated as basic property by the articles of association, property incorporated into the basic property according to decisions of the board of directors, and an annual budgetary surplus reserve of the institution. Only non-profit school juridical persons approved by the Minister of Education, Science and Technology may establish higher education institutions (other than the types of institutions listed in Annex II) in Korea. The Minister of Education, Science and Technology may restrict the total number of students per year in the fields

of medicine, pharmacology, veterinary medicine, traditional Asian medicine, medical technicians, and higher education for pre-primary, primary, and secondary teachers, and higher education institutions located in the Seoul Metropolitan Area.

For purposes of this entry, "Seoul Metropolitan Area" includes the Seoul Metropolitan City, Incheon Metropolitan City, and Gyeonggi Province.

Only the central or local governments of Korea may establish higher education institutions for training of primary school teachers. Only the central government may establish higher education institutions that supply higher education services to the public through broadcasting.

Sector:	Education Services - Vocational Competency Development Training Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Workers' Vocational Competency Development Act* (Law No. 11272, February 1, 2012), Articles 28, 32, and 36 *Enforcement Decree of the Workers' Vocational Competency Development Act* (Presidential Decree No. 23839, June 5, 2012), Articles 24 and 26 *Enforcement Regulations of the Workers' Vocational Competency Development* Act (Ordinance of the Ministry of Employment and Labor No. 57, June 8, 2012), Articles 12, 14, and 18
Description:	Cross-Border Trade in Services A person that supplies vocational competency development training services must establish an office in Korea.

Sector:	Veterinary Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Veterinary Affairs Act* (Law No. 11354, February 22, 2012), Article 17 *Fish Culture Promotion Act* (Law No. 11005, August 4, 2011), Article 24
Description:	Cross-Border Trade in Services A person that supplies veterinary or aquatic animal disease inspection services must establish an office in Korea.

Sector:	Environmental Services - Waste Water Treatment Services, Waste Management Services, Air Pollution Treatment Services, Environmental Preventive Facilities Business, Environmental Impact Assessment, Soil Remediation and Groundwater Purification Services, and Toxic Chemical Control Services
Obligations Concerned:	Local Presence (Article 9.5)
Measures:	*Water Quality and Ecosystem Conservation Act* (Law No. 10599, April 14, 2011), Article 62 *Support for Environmental Technology and Environmental Industry Act* (Law No. 10615, April 28, 2011), Article 15 *Soil Environment Conservation Act* (Law No. 10551, April 5, 2011), Article 23-7 *Groundwater Act* (Law No. 10599, April 14, 2011), Article 29-2 *Clean Air Conservation Act* (Law No. 11256, February 1, 2012), Article 71 *Environmental Impact Assessment Act* (Law No. 9037, March 28, 2008), Article 35 *Toxic Chemicals Control Act* (Law No. 11014, August 4, 2011), Article 20 *Wastes Control Act* (Law No. 10615, April 28, 2011), Article 25 *Enforcement Decree of the Wastes Control Act* (Presidential Decree No. 23488, January 6, 2012), Article 8
Description:	Cross-Border Trade in Services A person that supplies the environmental services listed in the Sector heading must establish an office in Korea.

Sector:	Performance Services
Obligations Concerned:	National Treatment (Article 9.2)
Measures:	*Public Performance Act* (Law No. 10723, May 25, 2011), Articles 6 and 7 *Enforcement Decree of the Public Performance Act* (Presidential Decree No. 23317, November 25, 2011), Articles 4 and 6 *Enforcement Regulations of the Public Performance Act* (Ordinance of the Ministry of Culture, Sports and Tourism No. 94, November 25, 2011), Article 4 *Enforcement Regulations of the Immigration Control Act* (Ordinance of the Ministry of Justice No. 764, February 29, 2012), Table 5
Description:	Cross-Border Trade in Services A foreign person who intends to engage in a public performance in Korea, or a person who intends to invite a foreign person to engage in a public performance in Korea must obtain a recommendation from the Korea Media Rating Board.

Sector: News Agency *(News-tong-sin-sa)* Services

Obligations Concerned: National Treatment (Articles 8.3 and 9.2)
Senior Management and Boards of Directors (Article 8.10)
Market Access (Article 9.4)
Local Presence (Article 9.5)

Measures: *Act on Promotion of News Communications* (Law No. 10585, April 14, 2011), Articles 7, 8, 9, 9-5, 16, and 28

Enforcement Decree of the Act on Promotion of News Communications (Presidential Decree No. 22424, October 1, 2010), Articles 4 and 10

Radio Waves Act (Law No. 11037, August 4, 2011), Article 20

Description: Investment and Cross-Border Trade in Services

A *news-tong-sin-sa* (news agency) organized under foreign law may supply *news-tong-sin* (news communications*)* in Korea only under a contract with a news agency organized under Korean law.

The following persons may not supply news agency services in Korea:

(a) a foreign government;

(b) a foreign person;

(c) an enterprise organized under Korean law whose *dae-pyo-ja* (for example, a chief executive officer, president, or similar principal senior officer) is not a Korean national or is a person not domiciled in Korea; or

(d) an enterprise organized under Korean law in which a foreign person holds 25 percent or more equity interest.

The following persons may not serve as a *dae-pyo-ja* (for example, a chief executive officer, president, or similar principal senior officer) or editor of a news agency, or serve as *im-won*(a member of the board of directors) of Yonhap News or the News Agency Promotion Committee:

(a) a foreign national; or

(b) a Korean national not domiciled in Korea.

A foreign news agency may establish a branch or office in Korea for the sole purpose of collecting news. For greater certainty, such branch or office may not distribute *news-tong-sin* (news communications) in Korea.

The following persons may not obtain a radio station license:

(a) a foreign national;

(b) a foreign government or its representative; or

(c) an enterprise organized under foreign law.

Sector:	Manufacturing of Biological Products
Obligations Concerned:	Performance Requirements (Article 8.9)
Measures:	*Pharmaceutical Affairs Act* (Law No. 10788, June 7, 2011), Article 42 *Enforcement Regulations of the Pharmaceutical Affairs Act* (Ordinance of the Ministry of Health and Welfare No. 127, June 15, 2012), Article 21
Description:	Investment A person who manufactures blood products must procure raw blood materials from a blood management body in Korea.

Sector: Publishing of Periodicals (Excluding Newspapers)

Obligations Concerned: National Treatment (Articles 8.3 and 9.2)
Senior Management and Boards of Directors (Article 8.10)
Market Access (Article 9.4)
Local Presence (Article 9.5)

Measures: *Act on the Promotion of Periodicals including Magazines, Etc.* (Law No. 9098, June 5, 2008), Articles 20 and 29

Enforcement Decree of the Act on the Promotion of Periodicals including Magazines, Etc. (Presidential Decree No. 23351, December 6, 2011), Articles 17, 18, 19, and 20

Description: Investment and Cross-Border Trade in Services

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, Sports and Tourism. As of the date this Agreement enters into force, such branch or office may print and distribute its periodicals in Korea in the original language, provided that such periodicals are edited in the territory of the other Party.

Sector:	Distribution Services - Agriculture and Livestock
Obligations Concerned:	National Treatment (Articles 8.3 and 9.2) Market Access (Article 9.4)
Measures:	*Grain Management Act* (Law No. 10932, July 25, 2011), Article 12 *Livestock Industry Act* (Law No. 11005, August 4, 2011), Articles 30 and 34 *Seed Industry Act* (Law No. 10842, July 14, 2011), Article 142 *Feed Management Act* (Law No. 10219, March 31, 2010), Article 6 *Ginseng Industry Act* (Law No. 10948, July 25, 2011), Article 20 *Foreign Investment Promotion Act* (Law No. 10801, June 15, 2011), Article 4 *Enforcement Decree of the Foreign Investment Promotion Act* (Presidential Decree No. 23297, November 16, 2011), Article 5 *Consolidated Public Notice for Foreign Investment* (No. 2012-220, April 26, 2012, Ministry of Knowledge Economy), Appendix 1 *Act on Distribution and Price Stabilization of Agricultural and Fishery Products* (Law No. 10522, March 31, 2011), Articles 15, 17, and 43 *Notice on TRQ Products* (Ministry for Food, Agriculture, Forestry and Fishery Notice No. 2011-201, December 31, 2011), Articles 14 and 20-2
Description:	<u>Investment and Cross-Border Trade in Services</u> A foreign person may not hold 50 percent or more of the shares or equity interest of an enterprise engaged in *yook-ryu* (meat*)* wholesaling. Only the Livestock Cooperatives under the Agriculture Cooperative Act may establish and manage a *ga-chook-sijang* (livestock market*)* in Korea.

Only a local government may establish a g*ong-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 9.2 (National Treatment) and 9.4 (Market Access) do not prevent Korea from adopting or maintaining any measure with respect to the administration of the WTO Tariff-Rate-Quota.

Sector:	Energy Industry - Electric Power Generation Other Than Nuclear Power Generation; Electric Power Transmission, Distribution and Sales
Obligations Concerned:	National Treatment (Article 8.3)[1]
Measures:	*Financial Investment Services and Capital Markets Act* (Law No. 11040, August 4, 2011), Article 168 *Enforcement Decree of the Financial Investment Services and Capital Markets Act* (Presidential Decree No. 23496, January 6, 2012), Article 187 *Foreign Investment Promotion Act* (Law No. 10801, June 15, 2011), Articles 4 and 5 *Enforcement Decree of the Foreign Investment Promotion Act* (Presidential Decree No. 23297, November 16, 2011), Article 5 *Consolidated Public Notice for Foreign Investment* (No. 2012-220, April 26, 2012, Ministry of Knowledge Economy), Appendix 1 *Notice of Ministry of Strategy and Finance* (No. 2000-17, September 28, 2000) *Financial Investment Service Regulations* (Financial Services Commission Notice No. 2009-17, February 4, 2009), Sec. 6-2
Description:	<u>Investment</u> The aggregate foreign share of KEPCO's issued stocks may not exceed 40 percent. A foreign person may not become the largest shareholder of KEPCO. The aggregate foreign share of power generation facilities, including cogeneration facilities of heat and power (GHP) for the district heating system (DHS), may not exceed 30 percent of the total facilities in the territory of Korea. The aggregate foreign share of electric power transmission, distribution and sales businesses should be less than 50 percent. A foreign person may not be the largest shareholder.

[1] Paragraph (a) of the seventh entry of Korea's Schedule to Annex II does not apply to this entry.

Sector:	Energy Industry - Gas Industry
Obligations Concerned:	National Treatment (Article 8.3)[2]
Measures:	*Act on the Improvement of Managerial Structure and Privatization of Public Enterprises* (Law No. 9401, January 30, 2009), Article 19 *Financial Investment Services and Capital Markets Act* (Law No. 11040, August 4, 2011), Article 168 *Foreign Investment Promotion Act* (Law No. 10801, June 15, 2011), Articles 4 and 5 *Articles of Incorporation of the Korea Gas Corporation* (March 27, 2009), Article 11
Description:	Investment Foreign persons, in the aggregate, may not own more than 30 percent of the equity of KOGAS.

[2] Paragraph (a) of the seventh entry of Korea's Schedule to Annex II does not apply to this entry.

Sector:	Recreational, Cultural, and Sporting Services - Motion Picture Projection Services
Obligations Concerned:	Performance Requirements (Article 8.9) Market Access (Article 9.4)
Measures:	*Act on Promotion of Motion Pictures and Video Products* (Law No. 10219, March 31, 2010), Articles 2, 27, and 40 *Enforcement Decree of the Act on Promotion of Motion Pictures and Video Products* (Presidential Decree No. 22781, March 30, 2011), Article 19
Description:	Investment and Cross-Border Trade in Services Cinema operators must project Korean motion pictures for at least 73 days per year at each screen in Korea.