PREAMBLE

The Government of the Republic of Korea ("Korea") and the Government of the Republic of Indonesia ("Indonesia"), hereinafter referred to collectively as the "Parties" and individually as a "Party":

RECOGNIZING their longstanding and strong friendship and the need to strengthen their close economic relations and their shared regional interests and ties;

CONVINCED that a free trade area will create an expanded and secure market for goods and services in their territories and a conducive environment for investment, thus contributing to the harmonious development and expansion of world trade;

DESIRING to promote economic growth and create new employment opportunities;

SEEKING to reduce or eliminate the barriers to trade and investment between them, and to facilitate cooperation and utilisation of the greater business opportunities provided by this Agreement;

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

RESOLVING to strengthen their economic, trade, and investment relations to contribute to the objectives of sustainable development and to promote trade and investment under this Agreement;

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

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

HAVE AGREED as follows:

CHAPTER 1
GENERAL PROVISIONS

Article 1.1: General Definitions

For purposes of this Agreement, unless otherwise specified,

Agreement means this Agreement;

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

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

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

customs authority means the authority that, in accordance with the laws and regulations of each Party, is responsible for the administration and enforcement of its customs laws and regulations:

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

(b) for Indonesia, the Directorate General of Customs and Excise of the Ministry of Finance;

or their respective successors;

customs duty means any customs or import duty or charge of any kind, including any form of surtax or surcharge, imposed in connection with the importation of a good, but does not include any:

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

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

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

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

(e) duty imposed pursuant to any agricultural safeguard measure taken under the WTO Agreement on Agriculture;

customs laws and regulations means such laws and regulations administered and enforced by the customs authorities of the Parties concerning the importation, exportation, transit or transshipment 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 the customs authority of a Party to goods and means of transport that are subject to customs control.

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

days means calendar days including weekends and holidays;

enterprise means any entity duly constituted or otherwise organized under the applicable laws and regulations, whether for profit or otherwise, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

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

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

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, including its notes and supplementary provisions, in Annex 1A to the WTO Agreement;

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

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

Joint Committee means the Joint Committee established under Article 12.1(Establishment of Joint Committee);

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

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

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

(a) central or local governments and authorities; and

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

national means:

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

(b) for Indonesia, an Indonesian national as defined in *the Indonesia Law No. 12/2006*, as amended from time to time, or any successor legislation;

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

person means a natural or juridical person or an enterprise;

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

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

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

territory means:

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

(b) for Indonesia, the land territories, internal waters, archipelagic waters, territorial sea, including the seabed and subsoil thereof, and airspace over such territories and waters, as well as the continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction as defined in its laws, and in accordance with international law, including the *United Nations Convention on the Law of the Sea*, done at Montego Bay, December 10, 1982;

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

UNCITRAL means the United Nations Commission on International Trade Law;

WTO means the World Trade Organization; and

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

Article 1.2: Establishment of a Free Trade Area

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

Article 1.3: Objectives

The objectives of this Agreement are to:

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

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

(c) achieve the substantial increase of investment opportunities in the territories of the Parties;

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

(e) establish a framework for cooperation and capacity building with a view to promoting the effective and efficient implementation and utilization of this Agreement, thereby fostering competitiveness and sustainable development; and

(f) develop international trade in such a way as to contribute to the objective of sustainable development as it is integrated and reflected in trade relations between the Parties.

Article 1.4: Relation to Other Agreements

1. The Parties reaffirm their rights and obligations under existing agreements to which both Parties are party, including the WTO Agreement and the Korea-ASEAN FTA.

2. For greater certainty, this Agreement shall not be construed to derogate from any international legal obligation between the Parties that provides for more favorable treatment of goods, services, investments, or persons than that provided for under this Agreement.

3. Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and any other agreement to which both Parties are party, the Parties shall, upon request, consult with each other with a view to finding a mutually satisfactory solution.

CHAPTER 2
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Article 2.1: Scope and Coverage

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

Section A: Definitions

Article 2.2: Definitions

For purposes of this Chapter:

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 purposes 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; and

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.

Section B: National Treatment

Article 2.3: National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994. To this end, the provisions of Article III of GATT 1994 shall be incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

Section C: Tariff Reduction or Elimination

Article 2.4: Reduction or Elimination of Customs Duties

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

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

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

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

5. In accordance with the WTO Agreement, originating goods of the other Party shall be eligible, at the time of importation, for the most-favored-nation (hereinafter referred to as "MFN") applied rate of customs duty for those goods in a Party, where that rate is lower than the rate of customs duty provided for in that Party's Schedule in Annex 2-A. Each Party shall make publicly available any amendments to the MFN rate on the internet.

6. For greater certainty, a Party may:

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

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

Article 2.5: Customs Valuation

For purposes of determining the customs value of goods traded between the Parties, the provisions of Article VII of GATT 1994, and the provisions of Part I and the Interpretative Notes of Annex I of the Customs

Valuation Agreement shall apply, *mutatis mutandis*.

Section D: Special Regimes

Article 2.6: Temporary Admission of Goods

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

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

3. Neither Party shall condition the temporary admission of a good provided for in paragraph 1, other than to require that the good:

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

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

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

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

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

(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 laws and regulations.

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 in addition to any other charges or penalties provided for under its laws and regulations.

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

Article 2.7: Duty-Free Entry of Samples of No Commercial Value

Each Party shall grant duty-free entry to samples of no commercial value, imported from the territory of the other Party subject to its laws and regulations, regardless of their origin.

Section E: Non-Tariff Measures

Article 2.8: Application of Non-Tariff Measures

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

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

Article 2.9: General Elimination of Quantitative Restrictions

1. Except as otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its rights and obligations under the relevant provisions of the WTO Agreement. To this end, Article XI of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Where a Party adopts an export prohibition or restriction in

accordance with subparagraph 2(a) of Article XI of GATT 1994, the Party shall, upon request:

(a) inform the other Party of such prohibition or restriction and its reasons together with its nature and expected duration, or publish such prohibition or restriction; and

(b) provide the other Party with a reasonable opportunity for consultation with respect to matters related to such prohibition or restriction.

Article 2.10: Technical Consultations on Non-Tariff Measures

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

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

3. Except as provided in paragraph 2, the requested Party shall respond and enter into technical consultations within 60 days after the receipt of the written request referred to in paragraph 1, unless otherwise determined by the Parties, with a view to reaching a mutually satisfactory solution within 180 days of the request. Technical consultations may be conducted via any means mutually agreed by the Parties.

4. If the requesting Party considers that the matter is urgent or involves perishable goods, it may request that technical consultations take place within a shorter time frame than that provided for under paragraph 3. Nothing in this paragraph shall be construed to prevent a Party from applying sanitary and phytosanitary (hereinafter referred to as "SPS") measures.

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

Article 2.11: Import Licensing

1. Each Party shall ensure that all automatic and non-automatic import

licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the *Agreement on Import Licensing Procedures*, in Annex 1A to the WTO Agreement (hereinafter referred to as the "Import Licensing Agreement"). Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after entry into force of this Agreement, each Party shall notify the other Party of any existing import licensing procedures. The notification shall include the information specified in Article 5.2 of the Import Licensing Agreement. A Party shall be deemed to be in compliance with this paragraph if:

(a) it has notified that procedure to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement together with the information specified in Article 5.2 of the Import Licensing Agreement; and

(b) in the most recent annual submission due before the date of entry into force of this Agreement for that Party to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement, it has provided, with respect to that procedure, the information requested in that questionnaire.

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

4. The notification required under paragraph 2 is without prejudice to whether the import licensing procedure is consistent with this Agreement.

5. No application shall be refused for minor documentation errors which do not alter the basic data contained therein. Minor documentation errors may include, but are not limited to, formatting errors (for instance, the width of a margin or the font used) and errors with spelling which are obviously made without fraudulent intent or gross negligence.

6. Each Party shall, to the extent possible, answer within 60 days all reasonable enquiries from the other Party with regard to the criteria employed by its respective licensing authorities in granting or denying import licenses. The importing Party shall publish sufficient information for the other Party and traders to know the basis for granting or allocating import licenses.

7. If a Party denies an import license application with respect to a good

of the other Party, it shall, on the request of the applicant and within a reasonable period after receiving the request provide the applicant with an explanation of the reason for the denial.

Article 2.12: Fees and Formalities Connected with Importation and Exportation

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

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

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

Article 2.13: Sanitary and Phytosanitary Measures

1. The Parties reaffirm their existing rights and obligations with respect to each other under the *Agreement on the Application of Sanitary and Phytosanitary Measures*, in Annex 1A to the WTO Agreement taking into account relevant decisions of the WTO Committee on Sanitary and Phytosanitary Measures and international standards, guidelines and recommendations.

2. The Parties shall encourage technical cooperation and communication in the field of SPS issues subject to the availability of appropriate resources.

3. Chapter Ten (Dispute Settlement) shall not be applied to any SPS matter arising under this section.

Article 2.14: Technical Barriers to Trade

1. The Parties reaffirm their existing rights and obligations with respect to each other under the *Agreement on Technical Barriers to Trade*, in Annex 1A to the WTO Agreement.

2. The Parties shall strengthen their cooperation in the fields of standards, technical regulations, and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. The Parties will 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 as agreed upon by the Parties on the mutually determined terms and conditions.

Section F: Institutional Provisions

Article 2.15: Committee on Trade in Goods

1. For purposes of the effective implementation and operation of this Chapter and Chapter Five (Trade Remedies), the function of the Committee on Trade in Goods (hereinafter referred to in this Article as the "Committee") established in accordance with Article 12.4 (Committees and Subsidiary Bodies) shall include:

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

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

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

(d) addressing any issues related to measures to update each Party's Schedule of tariff concessions to reflect amendments of the Harmonized System, including the transposition of the Parties' Schedules of tariff concessions and exchanging transposed Schedules of tariff concessions and correlation

tables in a timely manner; and

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

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

CHAPTER 3
RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A: Rules of Origin

Article 3.1: Definitions

For purposes of this Chapter:

CIF means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994 and Customs Valuation Agreement;

exporter means a natural or juridical person located in an exporting Party from where a good is exported by such a person;

FOB means the free-on-board value of a good, inclusive of the cost of transport from the producer to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and Customs Valuation Agreement;

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support 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 statement. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

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

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

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

non-originating goods means products or materials that do not qualify as originating under this Chapter;

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

producer means a natural or juridical person who carries out production in the territory of a Party;

Product Specific Rules means the rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content/qualifying value content[1] or a combination of any of these criteria; and

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

Article 3.2: Origin Criteria

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

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

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

(c) a good which is produced entirely in the territory of the exporting Party using non-originating materials, provided the good satisfies the applicable requirements set out in Annex 3-A.

2. Except as provided for in Article 3.6, the conditions for acquiring originating status set out in this Chapter must be fulfilled without interruption in the territory of the exporting Party.

[1] Regional value content (hereinafter referred to as "RVC") and qualifying value content (hereinafter referred to as "QVC") bear the same meaning and are fully interchangeable. For greater certainty, RVC is a percentage that indicates to what extent a good is produced in Korea or Indonesia.

Article 3.3: Wholly Obtained or Produced Goods

Within the meaning of Article 3.2.1(a), the following shall be considered to be wholly obtained or produced entirely in the territory of a Party:

(a) plants and plant products grown and harvested there;

(b) live animals born and raised there;

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

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

(e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from the territory of a Party;

(f) goods of sea-fishing and other marine life taken from the sea, seabed, or subsoil outside the territorial sea of a Party by vessels registered with a Party and flying its flag, provided that Party has rights to exploit such sea, seabed, or subsoil in accordance with the international law[2];

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

(h) goods taken by a Party or a person of a Party from the seabed or subsoil outside the territory of a Party, provided that Party has rights to exploit such seabed or subsoil in accordance with the international law[3];

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

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

[2, 3] "The international law" refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea*.

(k) waste and scrap derived from:

(i) production there; or

(ii) used goods collected there, provided that such goods are fit only for the recovery of raw materials; and

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

Article 3.4: Calculation of Regional/Qualifying Value Content

For purpose of Article 3.2.1(c), the Parties shall provide that the importer, exporter, or producer may calculate regional/qualifying value content based on one or the other of the following methods:

(a) Build-Up Method

$$\text{RVC or QVC} = \frac{\text{VOM}}{\text{FOB}} \times 100\%$$

VOM means value of originating materials, which includes the value of originating materials, direct labour cost, direct overhead cost, transportation cost and profit.

(b) Build-Down Method

$$\text{RVC or QVC} = \frac{\text{FOB - VNM}}{\text{FOB}} \times 100\%$$

VNM means value of non-originating materials, which shall be: (i) the CIF value at the time of importation of the materials, parts or goods; or (ii) the earliest ascertained price paid for the materials, parts or goods of undetermined origin in the territory of the Party where the working or processing has taken place.

Article 3.5: Treatment for Certain Goods

1. Treatment for Certain Goods shall be governed by Rule 6 of Annex 3 to *the Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Republic of Korea and the Member Countries of the Association of Southeast Asian Nations*, and the Exchange of Notes between the Republic of Korea and the ASEAN Member Countries regarding the Implementation and Monitoring of Rule 6 dated 27 February 2009 (hereinafter referred to as "Exchange of Notes"), which are hereby incorporated into and made part of this Chapter.

2. The list of goods subject to treatment under paragraph 1 shall be the list of goods attached to the Exchange of Notes referred to in paragraph 1. The Parties shall revise or amend the aforementioned list of goods through a further exchange of notes within one year from the date of entry into force of this Agreement, unless otherwise agreed.

Article 3.6: Accumulation

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

Article 3.7: Non-Qualifying Operations

1. Notwithstanding any provisions in this Chapter, a good shall not be considered to be originating in the territory of a Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:

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

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

(c) simple[4] washing, cleaning, removal of dust, oxide, oil, paint

[4, 5, 6] "simple" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.
[7] "simple mixing" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

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) operations to colour sugar or form sugar lumps;

(h) simple[6] peeling, stoning, or un-shelling;

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

(j) sifting, screening, sorting, classifying, grading, matching;

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

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

(m) simple mixing[7] of products, whether or not of different kinds;

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

(o) simple[8] testing or calibrations; or

(p) slaughtering of animals[9].

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

However, "simple mixing" does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which result in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

[8] "simple" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

[9] "Slaughtering" means the mere killing of animals and subsequent processes such as cutting, chilling or freezing, for purposes of preservation for storage and transport.

Article 3.8: Intermediate Goods[10]

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 purposes of determining the originating status of the subsequently produced good.

2. When a non-originating good is used in the subsequent production of another good:

(a) for purposes of calculating the value of the non-originating materials of the subsequently produced good, an account shall be taken only of the non-originating materials contained in the non-originating good; and

(b) for purposes of calculating the value of the originating materials of the subsequently produced good, an account shall be taken of the originating materials contained in the non-originating good.

Article 3.9: Direct Consignment

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

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

(a) the transit is justified for geographical reason or by consideration related exclusively to transport requirement;

(b) the good has not entered into trade or consumption there; and

(c) the good has not undergone any operation other than unloading and reloading or any operation required to keep it in good condition.

3. For purposes of implementing paragraph 2, where transportation is effected through the territory of one or more intermediate countries, other than

[10] For greater certainty, this Article applies only to production processes within a Party.

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

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

(b) other relevant supporting documents, if any, as evidence that the requirements of paragraph 2 are being complied with.

Article 3.10: De Minimis

1. A good that does not satisfy an applicable change in tariff classification requirement set out in Annex 3-A shall be considered as originating if:

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

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

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

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable RVC/QVC requirement for the good.

Article 3.11: Treatment of Packaging and Packing Materials

1. (a) If a good is subject to the RVC/QVC criterion, the value of the packaging and packing materials for retail sale shall be taken into account in its determination of origin, where the packaging and packing materials are considered to be forming a whole with the good.

(b) Where subparagraph (a) is not applicable, the packaging and packing materials for retail sale, if classified together with the packaged good, shall be disregarded in determining whether all the non-originating materials used in the production of the good fulfil criterion corresponding to a change in tariff classification of the said good.

2. Packing materials and containers for transportation of a good shall not be taken into account in determining the origin of the good.

Article 3.12: Accessories, Spare Parts and Tools

1. The Parties shall provide that a good's standard accessories, spare parts, or tools delivered with the good shall be considered originating goods if the good is an originating good and shall be disregarded in determining whether all the non-originating materials used in the production of the good satisfy the applicable change in tariff classification requirement set out in Annex 3-A, provided that:

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

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

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

Article 3.13: Neutral Elements

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

(a) fuel and energy;

(b) tools, dies and moulds;

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

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

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

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

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

Article 3.14: Identical and Interchangeable Goods or Materials

1. Whether identical and interchangeable goods or materials are originating can be determined by:

(a) physical segregation of each good or material; or

(b) generally accepted accounting principles of inventory management practiced in the territory of the exporting Party.

2. Once a decision has been taken on the inventory management method, that method shall be used throughout the fiscal year.

Section B: Origin Procedures

Article 3.15: Proof of Origin

1. Goods originating in a Party shall, on importation into the other Party, benefit from preferential tariff treatment under this Agreement on the basis of a Proof of Origin.

2. Any of the following shall be considered as a Proof of Origin:

   (a) a Certificate of Origin issued by an issuing body referred to in Article 3.16;

   (b) an Origin Declaration made out by an approved exporter; and

   (c) an Origin Declaration by an exporter or producer.

3. Notwithstanding paragraph 1, originating goods within the meaning of this Chapter, in the cases specified in Article 3.19 may benefit from preferential tariff treatment without any of the documents referred to in paragraph 2.

4. Both Parties shall implement the Origin Declaration by exporter or producer referred to in paragraph 2(c) within 10 years after the date of entry into force of this Agreement.

5. Notwithstanding paragraph 4, a Party may elect to seek a longer extension period, up to a maximum of 10 years in which to implement the provision.

6. The Parties may implement the Proof of Origin referred to in paragraph 2(b) and 2(c) after both Parties conclude negotiations on regulations and formats through the Committee on Customs and Trade Facilitation referred to in Article 4.12 (Committee on Customs and Trade Facilitation) within two years from the date of entry into force of this Agreement, unless otherwise agreed by the Parties.

7. Paragraph 6 shall apply only after the exporting Party has notified the importing Party, that it shall implement this paragraph.

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

Article 3.16: Certificate of Origin[11]

1. A Certificate of Origin shall be issued by issuing bodies of the exporting Party in accordance with its domestic laws and regulations, on application by the producer or exporter or, under his responsibility, by his authorized representative.

2. For purposes of this Agreement, a Certificate of Origin is any of:

   (a) a certificate of origin in paper format; or

   (b) an electronic certificate of origin.

3. A Certificate of Origin in paper format shall:

   (a) be on A4 size paper and be in the attached Form set out in Annex 3-B-1. For multiple items declaration, the Parties may use the attached Form set out in Annex 3-B-2 as additional pages to the Certificate of Origin;

   (b) comprise one original and two copies. The original shall be forwarded by the producer or exporter to the importer for submission to the customs authority of the importing Party. The duplicate shall be retained by the issuing body of the exporting Party. The triplicate shall be retained by the producer or exporter;

   (c) be completed in English and may cover one or more goods under one consignment; and

   (d) be in a printed format[12] or such other medium including electronic format.

4. An Electronic Certificate of Origin means a Certificate of Origin data that is transmitted electronically between Korea and Indonesia through Electronic Origin Data Exchange System referred to in Article 3.25.

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[11] If all the information of a Certificate of Origin is exchanged between the customs authority of each Party in accordance with Article 3.25, the customs authority of each Party may not require the importer to submit the Certificate of Origin on importation. Nevertheless, the customs authority of each Party reserves the right to require the importer to submit the Certificate of Origin, when it deems necessary. This footnote shall be without prejudice to any other requirements under this Chapter.

[12] "a printed format" means a Certificate of Origin manually or electronically signed, stamped, and issued in the exporting Party directly from the issuing body system and printed by issuing body, producer or exporter, or his authorized representative.

5. A Certificate of Origin shall be issued prior to or at the time of shipment, or within seven calendar days[13] after the date of shipment. In exceptional cases where a Certificate of Origin has not been issued prior to or at the time of shipment, or within seven calendar days after shipment due to involuntary errors, omissions, or other valid causes, a Certificate of Origin may be issued retroactively but within one year from the date of shipment, bearing the words "ISSUED RETROACTIVELY."

6. The exporter applying for the issuance of a Certificate of Origin shall be prepared to submit at any time, at the request of the issuing body of the exporting Party issuing the Certificate of Origin, all appropriate documents proving the originating status of the products concerned including statements from the suppliers or producers in accordance with its domestic laws and regulations as well as the fulfillment of the other requirements of this Chapter.

7. In the event of theft, loss, or destruction of a Certificate of Origin, the producer or exporter or his authorized representatives may apply to the issuing bodies of the exporting Party for issuing a certified true copy, provided that the original copy previously issued has been verified not to be used. This copy shall bear the words "CERTIFIED TRUE COPY" in box 4 in Annex 3-B-1. This copy shall bear the date of issuance of the original Certificate of Origin in box 12 in Annex 3-B-1. The certified true copy of a Certificate of Origin shall be issued within one year from the date of issuance of the original Certificate of Origin.

8. Neither erasures nor superimpositions shall be allowed on a Certificate of Origin. Any alteration shall be made by striking out the erroneous materials and making any addition required. Such alterations shall be certified by the issuing body. Unused spaces shall be crossed out to prevent any subsequent addition. Alternatively, a new Certificate of Origin may be issued to replace the erroneous Certificate of Origin. The issuing body shall specify the date of issuance of the originally issued Certificate of Origin in the new Certificate of Origin.

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

Article 3.17: Issuing Body

1. Each Party shall maintain an updated register of the names and seals of its issuing bodies.

2. Each Party shall notify the other Party of the names and specimen signatures and specimen of official seals of its issuing bodies through the contact point. Any changes in the said list shall be promptly provided in the same manner.

3. Notwithstanding paragraph 2, a Party shall not be required to provide the specimen signatures of its issuing body to the other Party, provided that it has established a secured website containing key information of a Certificate of Origin issued by the exporting Party, namely reference number, HS code, description of the goods, quantity, date of issuance, and name of the exporter.

4. The issuing bodies shall, to the best of their competence and ability, carry out proper examination, in accordance with the domestic laws and regulations of the Party, upon each application for a Certificate of Origin to ensure that:

(a) the Certificate of Origin is duly completed and signed by the authorized signatory;

(b) the origin of the good is in conformity with this Chapter;

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

(d) the description, quantity, and weight of the good, number and type of packages, as specified, conform to the good to be exported; and

(e) the Certificates of Origin issued are numbered consecutively.

Article 3.18: Claims for Preferential Tariff Treatment

1. Each Party shall provide that an importer may at the time of importation, make a claim for preferential tariff treatment based on a Proof of Origin.

2. Each Party may require, in accordance with its domestic laws and regulations, that an importer who claims preferential tariff treatment for a good imported into its territory:

(a) make written statement in the customs declaration that the good is an originating good;

(b) identify the applicable tariff rate;

(c) have in its possession at the time the declaration referred to in subparagraph (a) is made, a written or electronic Proof of Origin as described in Article 3.15;

(d) provide a Proof of Origin to the customs authority of the importing Party; and

(e) when the importer has reason to believe that the declaration in subparagraph (a) is based on inaccurate information, correct the importation document and pay any customs duty owing in accordance with its domestic laws and regulations.

3. Each Party shall provide that a Proof of Origin shall be valid for one year after the date it was issued.

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

(a) a Proof of Origin and other evidence that the good qualifies as an originating good; and

(b) such other documentation in relation to the importation as the customs authority may require to satisfactorily evidence the tariff preference claimed.

5. Notwithstanding paragraph 4, each Party may require, in accordance with its domestic laws and regulations, that the importer notify to the customs authority of the importing Party its intention to claim preferential tariff treatment at the time of importation.

Article 3.19: Waiver of Proof of Origin

1. Each Party shall provide that a Proof of Origin shall not be required where:

(a) the customs value of the importation does not exceed US$200 FOB or the equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for purposes of evading compliance with the Party's laws and regulations governing claims for preferential tariff treatment under this Agreement; or

(b) it is a good for which the importing Party does not require the importer to present a Proof of Origin.

2. Notwithstanding paragraph 1, the importing Party may require the importer to submit a Proof of Origin and such other documentation related to the origin of the good where there is doubt as to the veracity of the originating status of the good.

Article 3.20: Record Keeping Requirements

1. Each Party shall provide that an exporter or producer of the good covered by a Proof of Origin shall maintain, for a minimum of three years from the date the Proof of Origin was issued, all records necessary to demonstrate that the good covered by the Proof of Origin was an originating good, including records concerning:

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

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

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

(d) such other documentation as required by the laws and regulations of the exporting Party.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of the Party based on a Proof of Origin shall maintain, for a minimum of three years from the date of importation of the good, documentation related to importation.

3. Each Party shall provide that the issuing bodies as referred to in Article 3.17 shall maintain, for a minimum of three years from the date that a Certificate of Origin was issued, a copy of the Certificate of Origin as well as the supporting information required for certification.

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

Article 3.21: Discrepancies and Formal Errors

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

2. Obvious formal errors such as typing errors on a Proof 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.

3. For multiple items declared under the same Proof of Origin, a problem encountered with one of the items listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining items listed in that Proof of Origin.

Article 3.22: Non-Party Invoice

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

Article 3.23: Verification

1. The importing Party may request the issuing body[14] of the exporting Party to conduct a retroactive check at random or when the importing Party has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof, subject to the following procedures:

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

(b) the issuing body of the exporting Party receiving a request for retroactive check shall respond to the request promptly and reply the result within two months after receipt of the request;

(c) If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the issuing body of the exporting Party shall provide the information requested in a period not exceeding four months after the date of receipt of the request; and

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

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

[14] In the case of Korea, the issuing body of origin verification refers to the customs authority in accordance with its customs laws and regulations. In the case of Indonesia, issuing body of origin verification refers to its laws and regulations.

3. If the importing Party is not satisfied with the outcome of the retroactive check, it may, under exceptional circumstances, request verification visits to the exporting Party.

4. Prior to conducting a verification visit pursuant to paragraph 3:

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

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

(ii) the issuing body of the Party in the territory of which the verification visit is to occur;

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

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

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

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

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

(iii) the proposed date of the verification visit;

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

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

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

(d) when a written consent from the producer or exporter is not obtained within 30 days from the date of receipt of the notification pursuant to subparagraph (a)**,** the notifying Party

may deny preferential tariff treatment to the good referred to in the said Proof of Origin that would have been subject to the verification visit; and

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

5. The Party conducting the verification visit shall provide the producer or exporter, whose good is subject to such verification, and the relevant issuing body with a written determination of whether or not the good subject to such verification qualifies as an originating good.

6. Any suspended preferential tariff treatment shall be reinstated upon the written determination referred to in paragraph 5 that the good qualifies as an originating good.

7. The producer or exporter shall be allowed 30 days from the date of receipt of the written determination to provide in writing comments or additional information regarding the eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination shall be communicated to the relevant issuing body within 30 days from the date of receipt of the comments or the additional information from the producer or exporter.

8. The verification visit process, including the actual visit and the determination under paragraph 5 whether the good subject to such verification is originating or not, shall be carried out and its results shall be communicated to the relevant issuing body within a maximum period of six months from the first day the initial verification visit was conducted. While the process of verification is being undertaken, subparagraph 1(d) shall be applied.

Article 3.24: Denial of Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment without verification of a Proof of Origin, in accordance with its laws and regulations, as the Proof of Origin can be considered as inapplicable when:

(a) the requirements on direct consignment of Article 3.9 have not been fulfilled;

(b) the Proof of Origin is produced subsequently for goods that were initially imported fraudulently;

(c) the Proof of Origin has been issued in a non-Party to this Agreement;

(d) the importer fails to submit the Proof of Origin to the customs authorities of the importing Party within the period specified in the domestic laws and regulations of the importing Party; or

(e) such other matters arise as the Parties may agree.

2. During verification procedures, the customs authority of the importing Party may deny preferential tariff treatment when the issuing body of the exporting Party, exporter, or producer fail to comply with Article 3.20 or Article 3.23.

Article 3.25: Electronic Origin Data Exchange System

The Parties may develop an electronic system for origin information exchange to ensure the effective and efficient implementation of this Chapter.

Article 3.26: Transitional Provisions for Goods in Transit and Storage

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

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

(b) had not been imported into the territory of that Party;

if a valid claim under Article 3.18 for preferential tariff treatment is made within 180 days from the date of entry into force of this Agreement for that Party.

ANNEX 3-B-1
Certificate of Origin

ORIGINAL (Duplicate/Triplicate)

<table>
<tr><td colspan="3">1. Exporter′s name and address:</td><td colspan="3" rowspan="2">Reference No.:
KOREA-INDONESIA
COMPREHENSIVE
ECONOMIC PARTNERSHIP AGREEMENT
CERTIFICATE OF ORIGIN
(Combined Declaration and Certificate)

FORM KI-CEPA

Issued in _____ (Country)

(see Overleaf Notes)</td></tr>
<tr><td colspan="3">2. Importer′s name and address:</td></tr>
<tr><td colspan="3">3. Means of transport and route (as far as known):

Departure Date:

Vessel/Flight/Train/Vehicle No.:

Port of loading:

Port of discharge:</td><td colspan="3">4. Remarks:</td></tr>
<tr><td>5. Item number</td><td>6. Description of goods (including number and type of package, and quantity)</td><td>7. HS code (Six digit code)</td><td>8. Origin criterion</td><td>9. Gross weight or other measurements and FOB Value (only when RVC/QVC criterion is used)</td><td>10. Number and date of invoice</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td colspan="3">11. Declaration by the exporter:

The undersigned hereby declares that the above details and statement are correct, that all the goods were produced in

……..
(Country)

and that they comply with the origin requirements specified in the Korea-Indonesia Comprehensive Economic Partnership Agreement for the goods exported to

……..
(Importing Country)

……..
(Place and date,
signature of authorized signatory)</td><td colspan="3">12. Certification:

It is hereby certified that the information herein is correct and that the goods described comply with the origin requirements specified in the Korea-Indonesia Comprehensive Economic Partnership Agreement.

……..
(Place and date, signature and stamp of issuing body)</td></tr>
</table>

OVERLEAF NOTES

1. Parties which accept this form for purpose of preferential tariff treatment under the KOREA- INDONESIA Comprehensive Economic Partnership Agreement (KICEPA) are REPUBLIC OF KOREA and REPUBLIC OF INDONESIA.

2. CONDITIONS: To enjoy preferential tariff treatment under the KICEPA, goods sent to a Party listed above:

   (i) must fall within a description of goods eligible for concessions in the importing Party;

   (ii) must comply with the consignment conditions in accordance with Article 3.9 (Direct Consignment); and

   (iii) must comply with the origin criteria in Chapter 3 (Rules of Origin and Origin Procedures).

Reference No.: Serial number of Certificate of Origin assigned by the issuing body.

Box 1: State the full legal name and address (including country) of the exporter.

Box 2: State the full legal name and address (including country) of the importer.

Box 3: Complete the means of transport and route and specify the departure date, transport vehicle No., port of loading, and port of discharge.

Box 4: Any additional information may be included. However, in the following conditions, the remarks shall be as follows:

Condition	Remark
A good is invoiced by a non-Party operator	"NON-PARTY INVOICING" and indicating the full legal name and country of the operator that issues the invoice
A Certificate of Origin is issued retroactively	"ISSUED RETROACTIVELY"
A Certified true copy is issued	"CERTIFIED TRUE COPY"

Box 5: State the serial number.

Box 6: Provide a full description of each good. The description should be sufficiently detailed to enable the goods to be identified by the Customs Officers examining them and relate them to the invoice description. The number and kind of packages, and quantity shall be specified. If the goods are not packed, state ″IN BULK″.

Box 7: For each good described in Box 6, identify HS Code to six digits. The HS Code shall be that of the importing Party.

Box 8: The exporter must indicate in Box 8 the origin criteria on the basis of which he claims that the goods qualify for preferential tariff treatment, in the manner shown in the following table:

Origin Criterion	Insert in box 8
(a) Goods wholly obtained or produced entirely in the territory of the exporting Party	″WO″
(b) Goods produced entirely in the territory of the exporting party exclusively from materials whose origin conforms to Chapter 3 (Rules of Origin and Origin Procedures).	"PE"

Origin Criterion	Insert in box 8
(c) Goods satisfying the Product Specific Rules	
- Change in Tariff Classification	"CC" / "CTH" / "CTSH"
- Regional / Qualifying Value Content	"RVC/QVC40"
- Change in Tariff Classification or Regional / Qualifying Value Content	"CC" / "CTH" / "CTSH" or "RVC/QVC40"
- Others	"CC ex" / "CTH ex" / "CTSH ex" or "RVC/QVC40"
(d) Goods satisfying Article 3.5 (Treatment for Certain Goods)	"Article 3.5"

When the good is subject to a Regional/Qualifying Value Content (RVC/QVC) requirement, indicate "BD" if the RVC/QVC is calculated according to the build down method or "BU" if the RVC/QVC is calculated according to the build-up method.

Box 9: Gross weight in Kilos should be shown here. Other units of measurement e.g. volume which would indicate exact quantities may be used when customary.

Box 10: Invoice number and date of invoice should be shown here. In case where a good is invoiced by a non-Party operator and the number and date of the commercial invoice is unknown, the number and date of the original commercial invoice, issued in the exporting Party, shall be indicated in this box.

Box 11: This box shall be completed, signed and, dated by the exporter or producer.

Box 12: This box shall be completed, signed, dated, and stamped by the authorized person of the competent authority or issuing body.

Note: The instructions hereon are only used for purposes of reference to complete the Certificate of Origin, and thus do not have to be reproduced or printed in the overleaf page.

ANNEX 3-B-2
Certificate of Origin (Additional Pages)

ORIGINAL (Duplicate/Triplicate)

Reference No.

5. Item number	6. Description of goods (including number and type of package, and quantity)	7. HS code (Six digit code)	8. Origin criterion	9. Gross weight or other measurements and FOB Value (only when RVC/QVC criterion is used)	10. Number and date of invoice

11. Declaration by the exporter:	12. Certification:
The undersigned hereby declares that the above details and statement are correct, that all the goods were produced in …….. (Country) and that they comply with the origin requirements specified in the KICEPA for the goods exported to …….. (Importing Country) …….. Place and date, signature of authorized signatory	It is hereby certified that the information herein is correct and that the goods described comply with the origin requirements specified in the Korea-Indonesia CEPA. …….. Place and date, signature and stamp of issuing body

CHAPTER 4
CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Publication

1. Each Party shall publish, including on the internet, laws, regulations, and general administrative procedures related to import and export.

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

3. To the extent possible, each Party shall provide opportunities and reasonable time period to interested persons to comment on the proposed introduction or amendments of general laws, regulations, and general administrative procedures related to import and export.

Article 4.2: Release of Goods

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

2. Pursuant to paragraph 1, each Party shall 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 regulations;

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

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

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

Article 4.3: Automation

To the extent possible, each Party shall use information technology that expedites procedures for the release of goods and shall:

(a) make electronic systems accessible to customs users;

(b) endeavor to use international standards;

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

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

Article 4.4: Risk Management

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

Article 4.5: Cooperation

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

2. The Parties affirm their commitment to facilitate the legitimate movement of goods and shall exchange expertise on measures to improve customs techniques and procedures, and on computerized systems.

3. The Parties shall commit to:

(a) pursuing the harmonization of documentation and data elements used in trade according to international standards for the purpose of facilitating the flow of trade between them in customs-related matters regarding the importation,

exportation, and transit of goods;

(b) intensifying cooperation between their customs laboratories and scientific departments and to working towards the harmonization of customs laboratories methods;

(c) exchanging customs' personnel;

(d) jointly organizing training programs on customs-related issues, for the officials who participate directly in customs procedures;

(e) developing effective mechanisms for communicating with the trade and business communities;

(f) assisting, to the extent practicable, each other in the tariff classification, valuation, and determination of origin;

(g) promoting strong and efficient intellectual property rights enforcement by customs authorities, regarding imports, exports, re-exports, transit, transshipments, and other customs procedures, and in particular as regards counterfeit goods; and

(h) improving the security, while facilitating trade, of sea-container and other shipments from all locations that are imported into, transshipped through, or transiting the Parties. The Parties agree that the objectives of the intensified and broadened cooperation include, but are not limited to:

(i) working together to reinforce the customs-related aspects for securing the logistics chain of international trade; and

(ii) coordinating positions, to the greatest extent practicable, in any multilateral fora where issues related to container security may be appropriately raised and discussed.

Article 4.6: Confidentiality

1. Where a Party that provides information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall keep the information confidential. The Party providing the information may require the other Party to furnish written assurance that the information will be held in confidence, will be used only for the purpose the

other Party specified in its request for information, and will not be disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

2. If a Party receives information designated as confidential in accordance with paragraph 1, the Party receiving the information may, under its domestic law and legal system, use or disclose the information for law enforcement purposes or in the course of judicial proceedings with a written consent from the other Party.

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

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

Article 4.7: Express Shipments

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

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

(b) provide for information necessary to process an express shipment to be submitted manually or electronically before the shipment arrives; and

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

Article 4.8: Review or Appeal

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

(a) a level of administrative review or appeal higher than or independent of the employee or office that issued the determinations/decisions; and

(b) judicial review or appeal of the determinations/decisions.

Article 4.9: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations.

Article 4.10: Advance Rulings

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

(a) ruling on tariff classification;

(b) information on the application of customs valuation criteria for a particular case, in accordance with the Article VII of GATT 1994 and Customs Valuation Agreement; or

(c) any such other matters as the Parties may agree.

2. An advanced ruling and information issued by a Party shall be binding on that Party in respect of the applicant that had sought it.

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

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

5. The issuing Party may modify or revoke an advance ruling and shall promptly provide written notice to the requester.

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

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

Article 4.11: Consultation

1. Either customs authority at any time may request for consultations with the other customs authority on any matter arising from the operation or implementation of this Chapter and Chapter three (Rules of Origin and Origin Procedures), in cases where there are reasonable grounds or truth provided by the requesting Party. Such consultations shall be conducted through the relevant contact points.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Customs and Trade Facilitation referred to in Article 4.12.

Article 4.12: Committee on Customs and Trade Facilitation

1. The Parties hereby establish Committee on Customs and Trade Facilitation (hereinafter referred to as the "Committee") composed of the customs authorities of the Parties. Other competent authorities of the Parties may join the Committee if the Parties deem it necessary.

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

3. The functions of the Committee may include:

(a) reviewing, discussing, and proposing effective, uniform, and consistent administration of this Chapter and Chapter Three (Rules of Origin and Origin Procedures);

(b) reviewing, discussing, and proposing uniform regulations for the effective, uniform, and consistent interpretation of this Chapter and Chapter Three (Rules of Origin and Origin Procedures);

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

(d) consulting on and endeavoring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the HS;

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

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

CHAPTER 5
TRADE REMEDIES

Section A: Safeguard Measures

Article 5.1: Definitions

For purposes of Section A:

competent authority means:

(a) for Korea, the Korea Trade Commission, or its successor; and

(b) for Indonesia, the Ministry of Trade, 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;

safeguard measure means a measure described in Article 5.2;

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 of entry into force of this Agreement, except that for any good for which the Schedule in Annex 2-A (Reduction or Elimination of Custom 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.

Article 5.2: 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 of the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may:

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

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

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

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

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

Article 5.3: Conditions and Limitations

1. A Party shall notify the other Party in writing immediately after the initiation of an investigation described in paragraph 2, and should conduct a public hearing and consultations after the initiation as practicable with a view to reviewing the information arising from the initiation of the investigation.

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

3. In the investigation described in paragraph 2, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to

this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

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

5. Neither Party may apply a safeguard measure:

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

(b) 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, except with the consent of the other Party.

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

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

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

Article 5.4: 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 of 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 may not apply a provisional measure until at least 45 days after the date its competent authorities initiate an investigation.

3. The applying Party shall notify the other Party before applying a safeguard measure on a provisional basis, and shall initiate consultations immediately after applying the measure.

4. The duration of any provisional measure shall not exceed 180 days, during which time the Party shall comply with the requirements of Articles 5.3.2 and 5.3.3.

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

Article 5.5: Compensation

1. Within 30 days after a Party applies a safeguard measure, the Party shall afford an opportunity for the other Party to consult with it regarding 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 through consultations under paragraph 1 within 30 days after the consultations begin, the Party against whose originating good the measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure.

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

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

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

Article 5.6: Global Safeguard Measures

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

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

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

(a) a safeguard measure; and

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

Notwithstanding the provisions of this Article, neither Party may impose a safeguard measure on a good to which a measure is being applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, a measure on a good to which a safeguard measure is being applied, it shall terminate the safeguard measure prior to the imposition of the measure to be applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

Section B: Anti-Dumping and Countervailing Duties

Article 5.7: General Provisions

1. Except as otherwise provided for in this Agreement, each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing duties.

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

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

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

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

(c) When a Party considers imposing an anti-dumping or countervailing duty, careful consideration should be given to the interests of the other Party; and

(d) The investigating Party shall request an exporter or producer in the territory of the other Party for a timely response to its questionnaires. When the investigating Party finds major deficiency in information in a questionnaire response from relevant exporter or producer received before the deadline or requires clarifications for

purposes of investigation, the investigating Party shall demand missing information or request clarification of information concerning the answers to the questionnaires. This procedure shall not be used to cause unwarranted delays in the investigation or to circumvent the deadlines.

Article 5.8: Notification and Consultations

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

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

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

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

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

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

Article 5.9: Investigation after Termination Resulting from a Review

A Party shall examine, with special care, any application for initiation of an anti-dumping investigation on an originating good of the other Party on which anti-dumping measures have been terminated in the previous 12 months as a result of a review. Unless this pre-initiation examination indicates that the

circumstances have changed, the investigation shall not proceed.

Article 5.10: Cumulative Assessment

When imports from more than one country are simultaneously subject to an anti-dumping or countervailing duty investigation, a Party shall examine, with special care, whether the cumulative assessment of the effect of the imports from the other Party is appropriate in light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods.

Article 5.11: Cooperation in Anti-Circumvention Investigations

1. The Parties agree to cooperate in preventing circumvention in accordance with Articles 5 and 6 of the Anti-Dumping Agreement.

2. The Parties agree to carry out anti-circumvention investigations in a transparent way and to respect the right of all interested parties to defend their concerns in every step of the anti-circumvention investigation.

3. At the request of the other Party, the Party conducting an anti-circumvention investigation shall provide non-confidential information regarding the companies under investigation to the other Party.

4. In any proceedings in which a Party determines to conduct an on-site verification in the territory of the other Party, it shall notify the companies under investigation in advance.

5. The Party conducting an anti-circumvention investigation shall inform, before the final determination, all interested parties in the territory of the other Party of the essential facts under consideration, which form the basis for the assessment on whether to apply the measure or to grant an exemption. The Party will provide adequate opportunity for all interested parties to make comments on such assessment. Such disclosure of the essential facts should take place within a reasonable period of time for interested parties to defend their interests. Interested parties may also apply to be heard.

CHAPTER 6
TRADE IN SERVICES

Article 6.1: 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 do not include so-called line maintenance;

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

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

(b) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

computer reservation system (CRS) services means services provided by 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;

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

(a) constituted or otherwise organized under the laws and regulations of the other Party, and is engaged in substantive business operations in the territory of the other Party; or

(b) in the case of the supply of a service through commercial presence, owned or controlled by:

(i) natural persons of the other Party; or

(ii) juridical persons of the other Party identified under subparagraph (a);

a juridical person is:

(a) owned by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that

Party;

(b) controlled by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(c) affiliated with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

measure means any measure as defined in Article 1.1 (General Definitions) by a party affecting trade in services including measures in respect of:

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

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

(c) the presence, including commercial presence, in its territory of a service supplier of the other Party;

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

natural person of the other Party means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party is a national of the other Party;

person means either a natural person or a juridical person;

sector of a service means,

(a) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule;

(b) otherwise, the whole of that service sector, including all of its subsectors;

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;

services includes any service in any sector except services supplied in the exercise of governmental authority;

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;

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

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

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

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

service supplier means any person that supplies a service;[1]

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

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

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

(b) in the territory of a Party to the service consumer of the other Party;

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

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

[1] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

traffic rights means the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

Article 6.2: Scope

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

2. For purposes of this Chapter, measures by a Party means measures taken by:

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

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

3. This Chapter shall not apply to:

(a) a service supplied in the exercise of governmental authority within the territory of each respective Party;

(b) measures affecting air traffic rights, however granted; or to measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

(c) cabotage in maritime transport services;

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

(e) government procurement; and

(f) measures affecting natural persons seeking access to the employment market of a Party and measures regarding

citizenship, residence or employment on a permanent basis.

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits[2] accruing to the other Party under the terms of a specific commitment.

Article 6.3: National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers[3].

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

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

4. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

Article 6.4: Most-Favored-Nation Commitments

1. The Parties shall, in respect of the services sectors and subsectors listed in their Schedules to Annex 6-D and 6-E that are identified with an

[2] 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 or impairing benefits under a specific commitment.

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

'MFN', and subject to any conditions and qualifications set out therein, accord to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of a non-Party.

2. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of a non-Party under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

3. Notwithstanding paragraph 1, Indonesia reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other ASEAN Member State Party taken under an agreement on the liberalization of trade in goods or services or investment as part of a wider process of economic integration between or among ASEAN Member States.

4. The provisions of this Chapter shall not be construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchange limited to contiguous frontier zones of services that are both locally produced and consumed.

Article 6.5: Market Access

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

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

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

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

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

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

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

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

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

Article 6.6: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 6.3 or Article 6.5, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 6.7: Schedules of Specific Commitments

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Article 6.3, Article 6.5, and Article 6.6. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

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

(b) conditions and qualifications on national treatment;

[5] Subparagraph 2 (c) does not cover measures of a Party which limit inputs for the supply of services.

(c) undertakings relating to additional commitments;

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

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

2. Measures inconsistent with Article 6.3 shall be inscribed in the column relating to Article 6.3, and measures inconsistent with Article 6.5 shall be inscribed in the column relating to Article 6.5.

3. In addition to commitments referred to in paragraph 1, each Party shall also make commitments under Article 6.4.

4. The Schedules shall be annexed to this Chapter and shall form an integral part thereof.

5. Neither Party may adopt new, or more, discriminatory measures with regard to services and service supplier of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

6. Each Party shall identify in its schedule sectors or sub-sectors for future liberalization with an 'FL'. In these sectors and subsectors, any applicable terms, conditions, limitations, qualifications and undertakings referred to in paragraph 1 shall be limited to measures that the Party maintains on the date of entry into force of this Agreement.

7. If a Party amends a measure referred to in paragraph 6 in a manner that reduces or eliminates the inconsistency of that measure with Article 6.3 or 6.5, as it existed immediately before the amendment, that Party shall not subsequently amend that measure in a way that increases the measure's inconsistency with Article 6.3 or 6.5.

Article 6.8: Modification of Schedules

1. Notwithstanding article 6.7, if a Party requests a consultation to discuss the possibility of modifying or withdrawing a commitment, and to reach any necessary compensatory adjustment, the other Party shall enter into consultation with the requesting Party. The requesting Party may not modify or withdraw its commitment until the Parties reach an agreement on the compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall ensure that the general level of mutually advantageous commitment is not less favorable to trade than provided for in the Schedules prior to such negotiations.

3. If the Parties concerned are unable to reach an agreement on the compensatory adjustment, the matter shall be resolved by arbitration in accordance with Chapter Ten (Dispute Settlement) of this Agreement. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

4. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, the other Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Such a modification or withdrawal may be implemented solely with respect to the modifying Party.

Article 6.9: Transparency

1. The Parties recognize that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency in trade in services.

2. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:

(a) all relevant measures of general application affecting trade in services; and

(b) all international agreements pertaining to, or affecting, trade in services to which a Party is a signatory.

3. To the extent possible, each Party shall make the measures and international agreements of the kind referred to in paragraph 2 available on the internet and, to the extent provided for under its domestic legal framework, in the English language.

4. Where publication referred to in paragraphs 2 and 3 is not practicable, such information[6] shall be made otherwise publicly available.

5. Each Party shall respond promptly to all requests by the other Party

[6] For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

for specific information on any of its measures of general application or international agreements within the meaning of paragraph 2. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters as well as those subject to the notification requirement in paragraph 6. Such enquiry points shall be established within two years from the date of entry into force of this Agreement.

6. Each Party shall promptly and at least annually inform the Joint Committee of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Chapter.

7. Each Party may notify to the Joint Committee any measure, taken by the other Party, which it considers affects the operation of this Chapter.

Article 6.10: Domestic Regulation

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

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

(b) The provisions of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where a Party requires authorization for the supply of a service on which a specific commitments has been made, it shall ensure that its competent authorities:

(a) ensure that any authorization fees charged for the completion of relevant application procedures are reasonable, transparent and do not in themselves restrict the supply of a service. For purposes of this sub-paragraph, authorization fees do not

include fees for the use of natural resources, payment for auctions, tendering, or other non-discriminatory means of awarding concessions, or mandated contribution to universal services provision;

(b) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;

(c) to the extent practicable establish an indicative timeframe for processing of an application;

(d) at the request of the applicant, provide, without undue delay, information concerning the status of the application;

(e) in the case of an incomplete application, at the request of the applicant, where practicable, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

(f) if an application is terminated or denied, to the extent possible, inform the applicant in writing, and without undue delay, the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application;

(g) to the extent permissible under its domestic laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a license or qualification;

(h) endeavor to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions in accordance with domestic laws and regulations; and

(i) where they deem appropriate, accept copies of documents authenticated in accordance with domestic laws and regulations, in place of original documents.

4. If the results of the negotiations related to Article VI (4) of the GATS enter into effect, the Parties shall jointly review the results of such WTO negotiations and shall amend this Article, as appropriate, after consultation between the Parties to bring the results of such WTO negotiations into effect under this Chapter. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing

requirements do not constitute unnecessary barriers to trade in services, while recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavor to ensure that any such measures that it adopts or maintains 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.

5. (a) In sectors in which a Party has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

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

(b) In determining whether a Party is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations[7] applied by that Party.

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

Article 6.11: Recognition

1. For purposes of fulfillment of their respective standards or criteria for the authorization, licensing or certification of services suppliers, and subject to paragraph 4 of this Article, each Party may recognize the education

[7] The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

or experience obtained, requirements met, or licenses or certifications granted in the other Party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or the relevant competent bodies or may be accorded autonomously.

2. 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 comparable ones 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.

3. Nothing in Article 6.4 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 other Party.

4. A Party shall not accord recognition in a manner which 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.

5. Each Party shall endeavor:

(a) within 12 months from the date on which this Agreement takes effect for it, to inform the Joint Committee of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;

(b) to promptly inform the Joint Committee as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to the other Party to indicate their interest in participating in the negotiations before they enter a substantive phase; and

(c) to promptly inform the Joint Committee when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

6. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, the Parties shall work in cooperation

with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

7. As set out in Annex 6-C, the Parties shall endeavor to facilitate trade in professional services.

Article 6.12: Monopolies and Exclusive Service Suppliers

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

2. Where a Party's monopoly supplier competes, either directly or through an affiliated juridical person, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

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

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

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

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

Article 6.13: Business Practices

1. The Parties recognize that certain business practices of service suppliers, other than those falling under Article 6.12, may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of the other Party (the "Requesting Party"), enter into consultations with a view to eliminating practices referred

to in paragraph 1. The Party addressed (the "Requested Party"), shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Requested Party shall also provide other information available to the Requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the Requesting Party.

Article 6.14: Safeguard Measures

1. The Parties shall review the incorporation of safeguard measures pending any further developments in the multilateral fora pursuant to Article X of GATS.

2. In the event that after the entry into force of this Agreement, a Party encounters difficulties in the implementation of commitments in this Chapter, that Party may request consultation with the other Party to address such difficulties.

Article 6.15: Payments and Transfers[8]

1. Each Party shall permit all transfers and payments relating to its commitments in the trade in services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the trade in 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 and regulations relating to:

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

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

(c) criminal or penal offences;

(d) ensuring compliance with the judgments in judicial or

[8] For greater certainty, Annex 7-C (Temporary Safeguard Measures) applies to this Article.

administrative proceedings;

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

(f) taxation; or

(g) severance entitlement of employees.

Article 6.16: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is a juridical person of the other Party, if:

(a) person of a non-Party own or control the juridical person; 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 juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

2. A Party may deny the benefits of this Chapter in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(a) by a vessel registered under the laws of a non-Party; and

(b) by a person of a non-Party which operates and/or uses the vessel in whole or in part.

3. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is a juridical person owned or controlled by persons of a non-Party 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 juridical person 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 juridical person, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits.

Article 6.17: Progressive Liberalization

The Parties shall, at the reviews pursuant to Article 13.5 (Review of the Agreement) enter into successive rounds of negotiations to negotiate further packages of specific commitments under this Chapter so as to progressively liberalize trade in services between the Parties.

Article 6.18: Cooperation

The Parties shall strengthen cooperation efforts in services sectors, including sectors which are not covered by existing cooperation arrangements. The Parties shall discuss and mutually agree on the sectors for cooperation and develop cooperation programs in these sectors in order to improve their domestic capacities, efficiencies and competitiveness.

CHAPTER 7
INVESTMENT

Article 7.1: Definitions

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter and which, where applicable, has been admitted according to its laws and regulations.[1]

disputing parties means a disputing investor and a disputing Party;

disputing Party means a Party against which a claim is made under Article 7.19;

disputing party means a disputing investor or a disputing Party;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of that Party and carrying out business activities[2,3,4]

freely usable currency means any currency that is widely used to make payments for international transactions and is widely traded in the principal exchange markets as determined by International Monetary Fund under its *Articles of Agreement* and any amendment thereto;

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*;

investment[5,6,7] means every kind of asset that an investor owns or controls,

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[1] For greater certainty, in the case of Indonesia, "admitted according to its laws and regulations" may include a requirement for specific approval in writing.
[2] A branch of an enterprise shall not make any claim against a Party under this Agreement.
[3] For greater certainty, the inclusion of a "branch" in the definitions of "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.
[4] A branch of a legal entity of a non-Party shall not be considered as an enterprise of a Party
[5] Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take.
[6] The term "investment" does not include an order or judgment entered in a judicial or administrative action.
[7] For purpose of the definition of investment in this Article, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

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 loan[8, 9];

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

(e) intellectual property rights;

(f) licenses, authorizations, permits, and similar rights conferred pursuant to a Party's law[10]; and

(g) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges[11].

For greater certainty, investment does not mean claims to money that arise solely from:

(a) commercial contracts for sale of goods or services; or

(b) the extension of credit in connection with such commercial contracts.

investor of a non-Party means, with respect to a Party, an investor that has made an investment in the territory of that Party, that is not an investor of

[8] 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, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[9] A loan issued by one Party to the other Party is not an investment.

[10] 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 Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

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

either Party;

investor of a Party means a natural person or an enterprise of a Party that is seeking to make[12], is making, or has made an investment in the territory of the other Party;

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

UNCITRAL Arbitration Rules means the arbitration rules of the *United Nations Commission on International Trade Law* adopted by *United Nations General Assembly* on 28 April 1976.

Article 7.2: Scope and Coverage

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

   (a) investors of the other Party; and

   (b) covered investments.

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

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

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

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

4. This Chapter does not apply to:

   (a) government procurement;

   (b) subsidies or grants provided by a Party;

   (c) any taxation measure, except under Article 7.11 and Article

[12] For greater certainty, the Parties understand that an investor that "is seeking to make" an investment refers to an investor of a Party that has taken active steps to initiate a notification or approval process, where applicable, for making an investment.

7.12;

(d) services supplied in the exercise of governmental authority such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, provided that such services are supplied neither on a commercial basis, nor in competition with one or more service suppliers; or

(e) measures adopted or maintained by a Party to the extent that they are covered by Chapter Six (Trade in Services).

5. Notwithstanding paragraph 4(e), Article 7.6, Article 7.7, Article 7.11, Article 7.12[13], Article 7.13, and Article 7.19 shall apply, *mutatis mutandis*, to any measure affecting the supply of service by a service supplier of a Party through commercial presence[14] in the territory of the other Party pursuant to the provisions of Chapter Six (Trade in Services), only to the extent that they constitute a covered investment.[15]

Article 7.3: Relations to Other Chapters

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

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

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

Article 7.4: National Treatment

[13] For greater certainty, Annex 7-B applies to Article 7.12.
[14] For greater certainty, commercial presence shall have the same meaning as that in Chapter Six (Trade in Services).
[15] For greater certainty, this paragraph shall not be interpreted as extending the scope and coverage of application of Article 7.19.

1. Each Party shall accord to investors of the other Party, and to covered investments of investors of the other Party, treatment no less favorable than that it accords, in like circumstances,[16] to its own investors and investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

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

Article 7.5: Most-Favored-Nation Treatment[17]

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.

3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Article 7.19.

Article 7.6: Treatment of Investment[18]

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

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[16] For greater certainty, whether the treatment is accorded in "like circumstances" under Article 7.4 or Article 7.5 depends on the totality of the circumstances including, but not limited to, whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

[17] For greater certainty, Article 7.5 shall not apply to investor-state dispute settlement mechanisms such as those set out in Article 7.19.

[18] Article 7.6 shall be interpreted in accordance with Annex 7-A.

2. For greater certainty:

(a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;

(b) full protection and security require each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investment; and

(c) the concepts of "fair and equitable treatment" and "full protection and security" do not require treatment to covered investments in addition to or beyond that which is required under customary international law minimum standard of treatment of aliens, and do not create additional substantive rights.

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 7.7: Compensation for Losses

1. A Party shall accord to investors of the other Party whose covered investment suffered losses due to war or other armed conflict, state of national emergency, riot or other civil strife, treatment no less favorable than that accorded, in like circumstances, to its own investors or investors of a non-Party whichever is more favorable, relating to restitution, indemnification, compensation or any other forms of settlement.

2. An investor of a Party who in any of the events referred to in paragraph 1 suffers loss resulting from:

(a) requisitioning of its investment or part thereof by the forces or authorities of the other Party; or

(b) destruction of its investment or part thereof by the forces or authorities of the other Party, which was not required by the necessity of the situation;

shall in any case be accorded by the latter Party restitution or compensation which in either case shall be prompt, adequate and effective and, with respect to compensation, shall be accordance with Article 7.12.

Article 7.8: Performance Requirements[19, 20, 21]

1. Neither Party shall impose or enforce any of the following requirements, 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:

(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 investments of the investor;

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

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

(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 to a specific regional market or to the world market.

2. Paragraph 1 does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with 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 of the requirements set forth in subparagraphs 1(e) through (g).

Article 7.9: Senior Management and Boards of Directors

[19] This Article shall not preclude enforcement of any requirement between private parties, if a Party did not impose the requirement. For purposes of this Article, private parties include designated monopolies or state enterprises, if such entities are not exercising delegated governmental authority.

[20] For greater certainty, paragraphs 1 and 2 shall not apply to any requirement other than those set out in those paragraphs.

[21] This Article shall not be subject to Article 7.19.

1. A Party shall not require 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 7.10: Non-Conforming Measures

1. Articles 7.4, Article 7.5, Article 7.8, and Article 7.9 shall not apply to:

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

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

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

(iii) a local level of government[22];

(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 at the date of entry into force of the Party's Schedule to Annex I with Article 7.4, Article 7.5, Article 7.8, and Article 7.9.

2. Article 7.4, Article 7.5, Article 7.8, and Article 7.9 shall not apply to any measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require

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

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 and, where applicable, unless otherwise specified in the initial approval by the relevant authorities.

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

Article 7.11: Transfers[23]

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

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

(b) profits, dividends, interest, capital gains, royalty payments, license fees, technical assistance fees, management fees and other current income accruing from any covered investment;

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

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

(e) payments made pursuant to Article 7.7 and Article 7.12; and

(f) payments arising out of the settlement of a dispute.

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

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

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

[23] For greater certainty, Annex 7-C applies to this Article.

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

(c) criminal or penal offences;

(d) ensuring compliance with the judgments in judicial or administrative proceedings;

(e) financial reporting or record keeping of transfers including capital movements and payments when necessary to assist law enforcement or financial regulatory authorities;

(f) taxation; or

(g) severance entitlement of employees.

Article 7.12: Expropriation and Compensation

1. A Party shall not nationalize or expropriate covered investments of an investor of the other Party, either directly or through measures equivalent to expropriation or nationalization (referred hereto as "expropriation"), except:

(a) for public purpose;

(b) in accordance with due process of law;

(c) on a non-discriminatory basis; and

(d) upon payment of prompt, adequate and effective compensation.

2. For purposes of paragraph 1(d), compensation shall:

(a) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced, or immediately before or when the expropriation occurred, whichever is applicable;[24]

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

[24] Where there is a dispute about whether a government conduct amounts to indirect expropriation within the meaning of this Article, the fact that compensation has not been paid while that dispute remains unresolved does not render that conduct inherently unlawful if it is subsequently found to constitute indirect expropriation within the meaning of this Article.

(c) be settled and paid without undue delay[25]; and

(d) be effectively realizable and freely transferable between the territories of the Parties.

3. The compensation referred to in paragraph 1(d) shall include appropriate interest.

4. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights under the TRIPS Agreement.

Article 7.13: Subrogation

1. If a Party or designated agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of a covered investment, the other Party in whose territory the covered investment was made shall recognize the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

2. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.[26]

Article 7.14: Special Formalities and Treatment of Information

1. Nothing in Article 7.4 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with establishment of investments by investors of the other Party, such as the requirement that investments be legally constituted under the laws or regulations of the Party and compliance with registration requirements, provided that such formalities do not materially impair the rights afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Agreement.

[25] The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

[26] This, however, does not necessarily imply recognition of the latter Party of the merits of any case or the amount of any claims arising therefrom.

2. Notwithstanding Article 7.4 and Article 7.5, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for information or statistical purposes. The Party shall protect any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor and its covered investment, or 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 7.15: Denial of Benefits

A Party may deny the benefits of this Chapter:

(a) to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if:

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

  (ii) the enterprise has no substantial business activities in the territory of the other Party;

(b) to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if:

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

  (ii) 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; or

(c) to an investor of the other Party if a person of a non-Party owns or controls the enterprise and the denying Party does not maintain diplomatic relations with that non-Party.

Article 7.16: Environmental Measures

Each Party recognizes that it is inappropriate to encourage investments by investors by relaxing its environmental measures. To this effect, each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its territory.

Article 7.17: Investment Promotion

The Parties recognize the importance of promoting cross-border investment and technology flows as a means for achieving economic growth and development through, *inter alia*:

(a) identifying investment opportunities and providing information on investment regulations;

(b) sharing of experiences and best practices on investment promotion;

(c) the furthering of a legal environment conducive to increased investment flows; and

(d) developing investments partnership, in particular with small and medium enterprises.

Article 7.18: Corporate Social Responsibility

Each Party reaffirms the importance of encouraging enterprises operating within its territory to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party.

Article 7.19: Investor-State Dispute Settlement

1. This Article shall apply to investment disputes between a Party and an investor of the other Party concerning an alleged breach of Article 7.4, Article 7.5, Article 7.6, Article 7.7, Article 7.9, Article 7.11 and Article 7.12which causes loss or damage by reason of, or arising out of, that breach to:

(a) the investor in relation to its covered investments; or

(b) the covered investment that has been made by that investor, relating to the management, conduct, operation or sale or other disposition of a covered investment.

2. An investment may not make a claim under this Article.

3. Without prejudice to the scope of any applicable exceptions, non-conforming measures, principles of international law or the disputing Party's ability to rely on such exceptions, non-conforming measures or principles of international law during the proceedings, no claim may be brought under this Article:

(a) in relation to an alleged breach of Most-Favored-Nation treatment as referred to in Article 7.5 on the basis that another international agreement contains more favorable rights or obligations. For greater certainty, this shall not prevent a claim challenging measures of a Party, including measures taken pursuant to another international agreement, on the basis that those measures breach Article 7.5 and have resulted in loss or damage to the disputing investor;

(b) in relation to a measure that is designed and implemented to protect or promote public health;[27]

(c) in relation to an investment that has been established through illegal conduct including fraudulent misrepresentation, concealment or corruption. For greater certainty, this exclusion does not apply to investments established through minor or technical breaches of law;

(d) in relation to investment disputes which have occurred prior to the entry into force of this Agreement;

(e) if the claim is frivolous or manifestly without merit;

(f) by a natural person possessing the nationality or citizenship of a disputing Party.

4. In the event of an investment dispute arising under this Article, the disputing parties shall as far as possible resolve the dispute through consultation and negotiation, a request of which shall be made in writing, with a view towards reaching an amicable settlement.

5. The written request for consultations shall contain information regarding the legal and factual basis for the investment dispute, including the name and address of the disputing investor, the provisions of this Agreement

[27] For Indonesia, measures include those comprising or relating to the Indonesia Health Service Scheme.

alleged to have been breached, the relief sought and the estimated amount of damages claimed, and evidence establishing that the claimant is an investor of the other Party and that it owns or controls the investments.

6. In the case that consultations take place in accordance with this Article, the consultations shall commence, unless the disputing parties agree to a longer period, within 60 days of the submission of the request for consultations. The place of consultation shall be Seoul where the disputing Party is Korea or Jakarta where the disputing Party is Indonesia.

7. If the dispute cannot be resolved within 180 days from the receipt by the disputing Party of the written request for consultations, the disputing Party may initiate a mediation process, which shall be mandatory for the disputing investor, with a view towards reaching an amicable settlement. Such a mediation process shall be initiated by a written request delivered by the disputing Party to the disputing investor.

8. The mediation process under this Article can only be initiated by a written request delivered by the disputing Party within 180 days from the receipt by the disputing Party of the written request for consultations.

9. Expenses incurred in relation to the mediation process shall be borne equally by the disputing parties. Each disputing party shall bear its own legal expenses.

10. Any such dispute which has not been resolved by consultations in accordance with paragraph 5 and paragraph 6 or by mediation in accordance with paragraph 7 to paragraph 9 may be submitted to the courts or administrative tribunals of the disputing Party provided that such courts or tribunals have jurisdictions over such claims or to arbitration. In the latter event, the investor has the choice among any of the following:

(a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules, provided that either the disputing Party or the non-disputing Party, but not both, is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other arbitration institution or any other arbitration rules, if the disputing parties so agree.

11. The applicable arbitration rules shall govern the arbitration set forth in paragraph 10 unless they are modified by this Article.

12. Once the investor has submitted the dispute to either the courts or administrative tribunals of the disputing Party or any of the arbitration mechanisms provided for in paragraph 10, the choice of forum shall be final.

13. The submission of a dispute to arbitration under paragraph 10 shall be conditional upon:

(a) the submission of the dispute to such arbitration taking place within three years and six months of the time at which the disputing investor become aware, or should reasonably have become aware, of a breach of an obligation under this Agreement and, of the loss or damage incurred by the disputing investor in relation to its covered investment or by the covered investment;

(b) the disputing investor providing written notice, which shall be delivered at least 90 days before the claim to arbitration is submitted, to the disputing Party of its intent to submit the dispute to such arbitration and which:

(i) states the name and address of the disputing investor and the covered investment;

(ii) nominates one of the fora in paragraph 10(a), (b), (c), or (d) as the forum for dispute settlement;

(iii) waives its right to initiate any proceedings, before any of the other dispute settlement procedures referred to in paragraph 10 in relation to the matter under dispute; and

(iv) briefly summaries the alleged breach of the disputing Party under this Agreement (including the articles alleged to have been breached) and the loss or damage allegedly caused to the investor in relation to its covered investment or caused to the covered investment; or

(c) the disputing parties spending at least 120 days on that process and the disputing investor providing written notice, which shall be delivered at least 60 days before the claim to arbitration is submitted, to the disputing Party of its intent to submit the dispute to such arbitration and which specifies the

information referred to paragraph 13(b), should the disputing Party initiate a mediation process in accordance with paragraph 7.

14. Notwithstanding paragraph 13(b), the disputing investor may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages or resolution of the substance of the matter in dispute before a court or administrative tribunals of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's rights and interests during the pendency of the arbitration.

15. An investor of a Party may not initiate or continue a claim under this Article if a claim involving the same measure or measures alleged to constitute a breach under paragraph 1 and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the disputing Party and a non-Party by:

(a) a person of a non-Party that owns or controls, directly or indirectly, the investor of a Party; or

(b) a person of a non-Party that is owned or controlled, directly or indirectly, by the investor of a Party.

16. Each Party consents to the submission of a claim to arbitration under this Article in accordance with this Agreement. The consent and the submission of a claim to arbitration under this Article shall be deemed to satisfy the requirement of:

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

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

17. The arbitral tribunal established under paragraph 10 shall decide the issues in dispute in accordance with this Agreement, any relevant rules of international law applicable in the relations between the Parties and, if applicable, any relevant domestic law of the disputing Party when it is relevant to the claim as a matter of fact.

18. If issues relating to jurisdiction or admissibility are raised as preliminary objections, the tribunal shall decide the matter before proceeding to the merits. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the

jurisdiction or competence of the tribunal, it shall render an award to that effect.

19. Unless the disputing parties otherwise agree, the arbitral 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 75 days from the date a claim is submitted to arbitration under this Article, the Appointing Authority[28], at the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Appointing Authority shall not appoint a national of either Party as the presiding arbitrator, unless the disputing parties otherwise agree.

20. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules and be independent of, and not be affiliated with or take instructions from the disputing Party, the non-disputing Party or disputing investor.

21. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the disputing Party agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) the disputing investor may submit a claim to arbitration under this Article, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the tribunal.

22. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

23. Subject to subparagraphs (a) and (b), the disputing parties shall make publicly available all awards and decisions produced by the tribunal.

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[28] Appointing Authority means:
(i) in the case of arbitration under Article 7.5, the Secretary General of ICSID;
(ii) in the case of arbitration under Article 7.5, the Secretary General of the Permanent Court of Arbitration; or
(iii) any person as agreed between the disputing parties.

(a) Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

(b) Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.

24. A disputing party may disclose to persons directly connected with the arbitral proceeding such confidential information as it considers necessary for the preparation of its case, but it shall require such confidential information is protected.

25. The tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law or which it determines to be contrary to its essential security.

26. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Party. The disputing Party shall notify the other Party of the receipt of the notice of arbitration within 30 days thereof.

27. The disputing Party may not assert as a defense, counter-claim, right of set-off or for any other reason, that the disputing investor has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract, except with respect to any subrogation as provided for in Article 7.13.

28. If a tribunal makes a final award against either of the disputing parties, the tribunal may award, separately or in combination only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

29. A tribunal may also award costs and attorney's fees in accordance with this Article and the applicable arbitration rules.

30. A Party shall not give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party have submitted to arbitration under this Article, unless the other Party has

failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

31. An award made by a tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

32. Subject to paragraph 33 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

33. A disputing party shall not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention,

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

(ii) revision or annulment proceedings have been completed; or

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to paragraph 10(d),

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

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

34. Each Party shall provide for the enforcement of an award in its territory.

ANNEX 7-A
Customary International Law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 7.6, including in relation to the customary international law minimum standard of treatment, results from a general and consistent practice of States that they follow from a sense of legal obligation.

ANNEX 7-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 7.12.1 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 7.12.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations[29]; and

(iii) the character of the government action, including its objectives, context and whether the action is disproportionate to the public purpose[30] .

[29] For greater certainty, whether investors of investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investors with binding written assurances, and the nature and extent of governmental regulations or the potential for governmental regulations in the relevant factors.

[30] For Korea, a relevant consideration could include whether the investor bears a disproportionate burden such as a special sacrifice that exceeds what the investor or investment should be expected to endure for the public interest.

(b) 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 do not constitute indirect expropriations[31].

[31] For greater certainty, the list of "legitimate public welfare objectives" in paragraph 3(b) is not exhaustive.

ANNEX 7-C
Temporary Safeguard Measures

1. Nothing in this Chapter, Chapter Six (Trade in Services), or Annex 6-A (Financial Services) shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures with regard to transfer, including payment and capital movements, or restrictions on trade in services on which it has undertaken specific commitments:

(a) in the event of serious balance of payments and external financial difficulties or under threat thereof; or

(b) in cases where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious economic or financial disturbance or serious difficulties for the operation of monetary or exchange rate policies in the Party concerned[32].

2. The measures referred to in paragraph 1:

(a) are in effect for a period not to exceed one year, and can be renewed should the conditions in paragraph 1 continue to exist;

(b) are not confiscatory;

(c) do not constitute a dual or multiple exchange rate practice;

(d) shall not be adopted or maintained solely for purpose of affecting investor's ability to earn a market rate of return in the territory of the Party[33];

(e) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;

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

(g) avoid unnecessary damage to investors and covered investments of the other Party;

[32] For greater certainty, any measures taken to ensure the stability of the exchange rate including to prevent speculative capital flows shall not be adopted or maintained for purpose of protecting a particular sector.

[33] For greater certainty, any inadvertent impact of the measures referred to in paragraph 1 on the economic value of an investment, standing alone, shall not be considered as affecting investor's ability to earn a market rate of return.

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

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

(j) are applied in a manner consistent with a non-discriminatory basis such that no Party is treated less favorably than a non-Party, and on a national treatment basis; and

(k) shall be promptly notified to the other Party.

Nothing in this Chapter, Chapter Six (Trade in Services), or Annex 6-A (Financial Services) shall be regarded as altering the rights enjoyed and obligation undertaken by a Party as a party to the *Articles of Agreement of the International Monetary Fund*.

CHAPTER 8
ECONOMIC COOPERATION

Article 8.1: Basic Principles

1. Recognizing the importance of economic cooperation under this Agreement, the Parties shall promote cooperation in areas of mutual interest, taking into account the different levels of development and capacity of the Parties. Special focus should be given to building capacity which will enhance economic complementarities to deepen and expand the Parties' roles in regional and global value chains.

2. To promote and facilitate the implementation of economic cooperation under this Agreement, the Parties shall undertake coordination between their respective governments and, where necessary and appropriate, encourage and facilitate cooperation where one or both sides are entities other than the governments of the Parties. Based on mutual benefits of the Parties towards the cooperative sectors in which the Parties have mutual interests, the Parties will cooperate on appropriate forms of activities.

3. Reaffirming the value of ongoing economic cooperation initiatives between the Parties, the Parties shall respect and continue their existing economic cooperation under frameworks other than this Agreement and shall ensure that there will be no duplication of work or activities.

4. The Parties acknowledge the provisions to encourage and facilitate economic cooperation as provided for in this Agreement in accordance with their respective domestic laws and regulations.

Article 8.2: Sectors for Cooperation

1. The Parties, on the basis of mutual benefits, shall explore and undertake cooperative activities.

2. Sectors related to industry may include:

(a) automotive;

(b) steel and metal;

(c) chemicals;

(d) information and communication technology;

(e) electronics;

(f) machinery;

(g) garment, textiles and apparel;

(h) ships;

(i) aircrafts;

(j) food and beverages; and

(k) other sectors of cooperation as may be agreed by the Parties.

3. Sectors related to agriculture, fishery and forestry may include:

(a) livestock and crop production;

(b) improvement of investment conditions in the fields of fisheries and forestry;

(c) satisfying the needs of investors in fisheries and forestry sectors in accordance with each Party's relevant domestic laws and regulations;

(d) forest management;

(e) agro-based and food processing; and

(f) other sectors of cooperation as may be agreed by the Parties.

4. Sectors related to rules and procedures for trade may include:

(a) standards, technical regulations and conformity assessment procedures;

(b) sanitary and phytosanitary;

(c) customs procedures;

(d) rules of origin and other aspects of implementation of tariff commitments;

(e) intellectual property; and

(f) other sectors of cooperation as may be agreed by the Parties.

5. Sectors related to movement of natural persons (MNP) may include:

(a) Professionals; and

(b) Trainee.

6. Other areas for cooperation may include:

(a) supporting policy for small and medium-sized enterprises;

(b) statistics;

(c) fair competition;

(d) infrastructure;

(e) investment;

(f) science, technology and innovation;

(g) culture and other creative areas;

(h) energy and mineral resources;

(i) health care;

(j) environment;

(k) construction service; and

(l) other sectors of cooperation as may be agreed by the Parties.

Article 8.3: Forms of Cooperation

The forms of economic cooperation may include, but are not limited to:

(a) technical assistance;

(b) training of human resources;

(c) exchange of data and information;

(d) exchange of experts;

(e) thematic seminar and workshop;

(f) design and improvement of institutions;

(g) formulation of sectoral master plan;

(h) formulation of development strategy;

(i) sharing of best practices;

(j) base study;

(k) joint research and development;

(l) joint trade and investment promotion activities;

(m) model and technology transfer; and

(n) other forms of cooperation as may be agreed by the Parties.

Article 8.4: Implementation

1. The cooperation shall be implemented in accordance with each Party's domestic laws and regulations.

2. For purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Economic Cooperation (hereinafter referred to as the "Committee") and conclude an Implementing Arrangement setting out the functions and procedures of the Committee, building upon and complementing existing bilateral economic cooperation projects, initiatives and activities.

3. The Parties shall undertake cooperation projects according to their priority at mutually agreed periods of time. The projects shall be monitored and reviewed by the Committee to ensure their effective implementation to meet their intended objectives.

4. Taking into account the different levels of development and capacity, the Parties shall contribute appropriately to the cost of implementation based on a mutual understanding or agreement.

5. Funding for implementation of cooperation sectors shall be set out in detail in the implementing arrangement.

Article 8.5: Resources for Economic Cooperation

1. The Parties shall cooperate to adopt the most effective means for the implementation of this Chapter.

2. The Parties shall endeavor to make available necessary financial and other resources for the implementation of economic cooperation under this Chapter in accordance with their respective domestic laws and regulations.

3. Funding for economic cooperation under this Chapter shall be borne according to mutual agreement, taking into account the different levels of development of the Parties.

Article 8.6: Dispute Settlement

Neither Party shall have recourse to Chapter Ten (Dispute Settlement) for any matter arising under this Chapter. Any dispute between the Parties concerning interpretation and implementation of this implementing arrangement shall be settled through consultation amicably.

CHAPTER 9
TRANSPARENCY

Article 9.1: Definitions

For purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct, but does not include:

(a) a determination or ruling made in an administrative proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 9.2: Publication

1. Each Party shall ensure that its domestic laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made publicly available.

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

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

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

Article 9.3: Provision of Information

Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure referred to in Article 9.2 that the requesting Party considers might affect the operation of this Agreement.

Article 9.4: Administrative Proceedings

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

(a) wherever possible, in accordance with its applicable domestic laws and regulations, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) persons of the other Party that are directly affected by a proceeding are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its domestic laws and regulations.

Article 9.5: Review and Appeal

1. In accordance with its domestic laws and regulations, each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative actions relating to any matter covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in 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 its domestic laws and regulations the record compiled by the administrative authority.

3. The decision in subparagraph 2(b) shall, subject to appeal or further review as provided for in its domestic laws and regulations, be implemented by the authority entrusted with administrative enforcement.

CHAPTER 10
DISPUTE SETTLEMENT

Article 10.1: Definitions

For purposes of this Chapter:

arbitration panel means a panel established under Article 10.7;

arbitrator means a member of an arbitration panel established under Article 10.7;

candidate means an individual who is under consideration for appointment as the third arbitrator under Article 10.9;

complaining Party means a Party that requests the establishment of an arbitration panel under Article 10.7;

Party complained against means the Party that is alleged to be in violation of this Agreement, as referred to in Article 10.3; and

proceeding, unless otherwise specified, means an arbitration panel proceeding under this Chapter.

Article 10.2: Objective

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

2. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter raised in accordance with this Chapter.

Article 10.3: Scope

Except as otherwise provided for in this Agreement or agreed by the Parties, this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation and application of this Agreement; or

(b) wherever a Party considers that:

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

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

Article 10.4: Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested the establishment of, or referred a matter to, a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora, unless the forum selected fails for procedural or jurisdictional reasons to initiate a dispute settlement proceeding.

Article 10.5: Consultations

1. Each Party may request consultations with respect to any matter arising under this Agreement, pursuant to Article 10.3.

2. A request for consultations shall be submitted in writing and shall give the reasons for the request, including the identification of the specific measure or other matter at issue and an indication of the legal basis for the complaint.

3. If a request for consultations is made, the Party complained against shall reply within 10 days of the date of the receipt of the request. The Parties shall enter into consultations in good faith within 30 days of the date of receipt of the request with a view to reaching a mutually satisfactory solution. Consultations shall take place, unless the Parties otherwise agree, in the territory of the Party complained against.

4. In cases of urgency, including those concerning perishable goods, the Parties shall enter into consultations within 15 days of the date of receipt of the request by the Party complained against.

5. Upon initiation of consultations, the Parties shall provide information to enable the examination of how the measure at issue might affect the

interpretation and application of this Agreement, and give confidential treatment to the information exchanged during consultations.

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

Article 10.6: Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of both Parties and be terminated at any time upon request of either Party.

2. If the Parties agree, good offices, conciliation, or mediation may continue while the proceedings of the arbitration panel provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation or mediation, and in particular, positions taken by both Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under this Agreement or other proceedings.

Article 10.7: Establishment of the Arbitration Panel

1. The complaining Party that made a request for consultations under Article 10.5 may request in writing the establishment of an arbitration panel to the Party complained against,

(a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency including those concerning perishable goods, of the date of receipt of the request for such consultations in accordance with paragraphs 3 and 4 of Article 10.5; or

(b) if the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency including those concerning perishable goods, of the date of receipt of the request for such consultations.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against. The complaining Party shall identify in its request, the measure or other matter at issue, and the factual and legal basis for the complaint sufficient to present the problem clearly.

Article 10.8: Terms of Reference of the Arbitration Panel

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the arbitration panel shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 10.7, and to make findings of law and fact together with the reasons for the resolution of the dispute, conclusions, and recommendations".

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

Article 10.9: Composition of the Arbitration Panel

1. Unless otherwise agreed by the Parties, an arbitration panel shall consist of three arbitrators.

2. Each Party shall appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitration panel within 30 days of the date of receipt of the request for the establishment of the arbitration panel. The Parties shall endeavour to agree on and appoint the third arbitrator who shall serve as the chair of the arbitration panel within 45 days of the date of receipt of the request for the establishment of the arbitration panel, taking into account the candidates proposed. If the Parties fail to agree on and appoint the third arbitrator within 45 days, the Parties shall meet within seven days and select the chair by lot from the list of candidates proposed by both Parties.

3. The candidates for the third arbitrator referred to in paragraph 2 shall not be nationals of either Party, nor have their usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

4. The date of the establishment of an arbitration panel shall be the date on which the third arbitrator is appointed.

5. All arbitrators shall have expertise or experience in law, international trade or other matters relating to this Agreement, or in the resolution of disputes arising under international trade agreements. Each arbitrator shall

be independent, serve in his or her individual capacities and not be affiliated with, nor take instructions from, either Party or organization related to the dispute, and shall comply with Annex 10-B.

6. Where a Party considers that an arbitrator does not comply with the requirements of Annex 10-B, the Parties shall consult and replace, if so agreed, that arbitrator in accordance with paragraph 7.

7. If an arbitrator appointed under this Article resigns or becomes unable to participate in the proceedings, or is to be replaced according to paragraph 6, a successor shall be selected within 15 days in accordance with the appointment method provided for in paragraphs 2 and 3, *mutatis mutandis*. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended for a period beginning on the date the arbitrator resigns or becomes unable to participate in the proceeding, or is to be replaced according to paragraph 6. The work of the arbitration panel shall resume on the date the successor is appointed.

Article 10.10: Proceedings of the Arbitration Panel

1. The arbitration panel shall meet in closed sessions. The Parties shall be present at the meetings only when invited by the arbitration panel to appear before it.

2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information provided or written submissions made by a Party to the arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.

3. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

5. The arbitration panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international laws, taking due account of the interpretation adopted by the Parties.

6. The arbitration panel shall aim to make its decisions, including its

reports, by consensus but may also make its decisions, including its report, by majority vote.

7. The arbitration panel shall provide the Parties with a copy of any advice or opinion obtained from any relevant source or experts and an opportunity to provide comments.

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

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

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

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

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

Article 10.11: Suspension or Termination of Proceedings

1. Where the Parties agree, the arbitration panel may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Upon request of a Party, the arbitration panel proceedings shall be resumed after such suspension. In the event of such suspension, the

timeframes regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If, in any case, each period of the suspension of the work of the arbitration panel exceeds 12 months, the authority of the arbitration panel shall lapse unless the Parties otherwise agree. This lapse shall not prejudice the rights of the complaining Party to request, at a later stage, the establishment of an arbitration panel on the same subject matter.

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

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

Article 10.12: Interim Report

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

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

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

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

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

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

Article 10.13: Final Report

1. Unless the Parties otherwise agree, the arbitration panel shall issue a final report to the Parties within 30 days of the date of issuance of the interim report.

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

3. In cases of urgency, including those concerning perishable goods, the arbitration panel shall make every effort to issue its interim and final reports within half of the respective time periods under paragraph 1 of Article 10.12 and paragraph 1 of Article 10.13.

Article 10.14: Implementation of the Final Report

1. The determinations of the arbitration panel in the final report shall be final and binding on the Parties and shall not be subject to appeal.

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

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

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

5. The arbitration panel that is established for purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for purposes of this Article shall be appointed pursuant to Article 10.9. The arbitration panel shall issue its report to the Parties within 20 days on the reasonable period of time and 45 days on the other issues after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

Article 10.15: Non–Implementation, Compensation and Suspension of Concessions or Other Obligations

1. If the Party complained against fails to notify the implementing measures before the expiry of the reasonable period of time, or notifies to the complaining Party that implementation is impracticable, or the arbitration panel to which the matter is referred pursuant to paragraph 4 of Article 10.14 determines that the Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days of the date of receipt of the request mentioned in paragraph 1, the complaining Party may, at any time, provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement. The complaining Party may begin suspending concessions or other obligations 30 days after the notification of such suspension.

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

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

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector or sectors as that in which the report of the

arbitration panel referred to in Article 10.13 has found a failure to comply with the obligations under this Agreement;

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

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

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

6. The arbitration panel that is established for purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for purposes of this Article shall be appointed pursuant to Article 10.9. The arbitration panel established under this Article shall issue its report to the Parties within 45 days after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

Article 10.16: Rules of Procedure

1. Dispute settlement proceedings under this Chapter shall be governed by the Rules of Procedure for Arbitration set out in Annex 10-A. The Parties in consultation with the arbitration panel may agree to adopt additional rules of procedures not inconsistent with the provisions of the Annex.

2. Any period of time or other rule of procedure for arbitration panel provided for in this Chapter and Annex 10-A may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

Article 10.17: Expenses

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

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

Article 10.18: Annexes

Annexes 10-A and 10-B shall form an integral part of this Chapter.

CHAPTER 11
EXCEPTIONS

Article 11.1: General Exceptions

1. For purposes of Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Rules of Origin and Origin Procedures), Chapter Four (Customs Procedures and Trade Facilitation), and Chapter Five (Trade Remedies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For purposes of Chapters Six (Trade in Services) and Seven (Investment), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 11.2: Security Exceptions

Nothing in this Agreement shall be construed to:

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

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

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

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

(iii) taken so as to protect critical public infrastructure, including communications, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure; or

(iv) taken in time of domestic emergency, or war or other emergency in international relations; or

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

Article 11.3: Taxation Measures

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

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under Article III of GATT 1994;

(b) they are granted or imposed under Article 7.11 (Transfers); or

(c) they are granted or imposed under Article 7.12 (Expropriation and Compensation).

3. Where paragraph 2(b) or (c) apply, Article 7.19 (Investor-State Dispute Settlement) shall also apply in respect of taxation measures.

4. (a) Where an investor claims that the disputing Party has breached Article 7.11 (Transfers) or Article 7.12 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the competent authorities of the disputing Party shall request consultations with the competent authorities of the non-disputing Party at the time that the disputing Party receives the investor's notice of intent under Article 7.19 (Investor-State Dispute Settlement). The competent authorities of the Parties shall hold consultations with a view to determining whether Article 7.11 (Transfers) has been breached or whether the taxation measure in question has an effect equivalent to expropriation. Any tribunal that may be established in accordance with Article 7.19 (Investor-State Dispute Settlement) shall accept as binding the decision of the competent authorities under this paragraph.

(b) If the competent authorities of the Parties fail to determine whether Article 7.11 (Transfers) has been breached or

whether the taxation measure has an effect equivalent to expropriation within 180 days of the date of receipt of the request for consultations by the non-disputing Party, the investor may submit its claim to arbitration under Article 7.19 (Investor-State Dispute Settlement).

(c) For purposes of this paragraph, **competent authorities** means:

(i) with respect to Korea, the Deputy Minister for Tax and Customs, Ministry of Economy and Finance; and

(ii) with respect to Indonesia, the Minister of Finance or his or her authorised representative;

or their respective successors.

5. In assessing whether a measure related to taxation constitutes expropriation, the following considerations shall be taken into account:

(a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of taxes in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

(b) enforcement activities of the tax laws including seizure of property for the purpose of tax collection generally do not constitute expropriation;

(c) a taxation measure that is consistent with internationally recognized tax policies, principles, and practices does not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxes generally does not constitute an expropriation;

(d) a taxation measure that is applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers[1], is not likely to constitute an expropriation; and

[1] For greater certainty, the term "individual taxpayers" includes natural person, juridical person, and enterprise.

(e) 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 made public or otherwise made publicly available.

6. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency. The competent authorities under that convention shall have sole responsibility for jointly determining whether any inconsistency exists between this Agreement and that convention.

7. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any tax convention by which the Party is bound.

8. For purposes of this Article:

(a) **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

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

Article 11.4: Confidentiality of Information

1. Nothing in this Agreement shall require a Party to furnish or allow access to information that would be contrary to its law or impede law enforcement, or otherwise be contrary to the public interest or that would be prejudice the legitimate commercial interests of any particular enterprises, public or private.

2. Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information. The information shall be used only for the purposes specified by the Party providing the information. It shall not be disclosed without the specific written permission of the Party providing the information, except where the disclosure of information is necessary to comply with the legal requirements of a Party.

CHAPTER 12
INSTITUTIONAL PROVISIONS

Article 12.1: Establishment of Joint Committee

1. The Parties hereby establish the Joint Committee.

2. The Joint Committee shall be composed of relevant government officials of each Party and co-chaired by ministerial level officials of the Ministry of Trade, Industry and Energy of Korea and the Ministry of Trade of Indonesia, or their respective designees. The Joint Committee shall agree on its meeting schedule and set its agenda.

Article 12.2: Functions of Joint Committee

1. The Joint Committee shall:

   (a) consider any matter related to the implementation and operation of this Agreement;

   (b) review the implementation and operation of this Agreement;

   (c) supervise and coordinate the work of all committees and subsidiary bodies established under this Agreement;

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

   (e) seek to resolve disagreements regarding any matter arising under this Agreement; and

   (f) carry out any other function relating to the areas covered by this Agreement as the Parties may agree.

2. The Joint Committee may:

   (a) establish and delegate responsibilities to committees, or subsidiary bodies;

   (b) adopt its own rules of procedure at its first meeting;

   (c) seek to resolve differences that may arise regarding the interpretation or application of this Agreement; and

(d) make recommendations.

Article 12.3: Procedures of the Joint Committee

1. The Joint Committee shall meet within one year from the entry into force of this Agreement. Its meetings shall be chaired jointly by the Parties.

2. Thereafter, unless the Parties otherwise agree, the Joint Committee shall convene:

(a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and

(b) in special session upon the request of either Party, with such sessions to be held in the territory of the other Party or at such locations as the Parties may agree.

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

4. All decisions of the Joint Committee shall be taken by mutual agreement.

Article 12.4: Committees and Subsidiary Bodies

1. The following committees are established under this Agreement:

(a) Committee on Trade in Goods, in accordance with Article 2.15 (Committee on Trade in Goods);

(b) Committee on Trade in Services and Investment;

(c) Committee on Economic Cooperation, in accordance with Article 8.4 (Implementation);

(d) Committee on Customs and Trade Facilitation, in accordance with Article 4.12 (Committee on Customs and Trade Facilitation).

2. The Joint Committee may establish additional subsidiary bodies, including ad hoc bodies, as it determines necessary to address issues arising under, and assist with the implementation of, this Agreement.

3. Unless otherwise provided, any subsidiary bodies shall:

(a) be composed of representatives of the Parties;

(b) be chaired jointly by the Parties;

(c) by agreement, take decisions on any matter within its functions.

4. The committees or subsidiary bodies shall inform the Joint Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Joint Committee on their activities at each regular meeting of the Joint Committee. The creation or existence of a committee or subsidiary bodies shall not prevent either Party from bringing any matter directly to the Joint Committee.

5. The Joint Committee may decide to change or undertake the task assigned to a committee or subsidiary bodies or may dissolve a committee or subsidiary body.

Article 12.5: Contact Points

1. In order to facilitate communications between the Parties on any trade matter covered by this Agreement, the Parties hereby establish the following contact points:

(a) for Korea, the Ministry of Trade, Industry and Energy; and

(b) for Indonesia, the Ministry of Trade;

or their respective successors.

2. Upon request of either Party, the contact point of the other Party shall indicate the office or official responsible for any matter relating to the implementation of this Agreement, and provide the required support to facilitate communications with the requesting Party. Each Party shall notify the other Party of any change in its contact point in due time.

CHAPTER 13
FINAL PROVISIONS

Article 13.1: Annexes, Appendices, and Footnotes

The Annexes, Appendices, and footnotes to this Agreement shall form an integral part of this Agreement.

Article 13.2: Amendments

The Parties may agree, in writing, to amend this Agreement. Any amendment shall enter into force after the Parties exchange written notifications through diplomatic channels certifying that they have completed all necessary domestic legal procedures, on such date as the Parties may agree. The amendments shall form an integral part of this Agreement.

Article 13.3: Amendments to the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall, upon request, consult to consider amending the relevant provisions of this Agreement.

Article 13.4: Entry into Force

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications through diplomatic channels that they have compeleted their respective necessary domestic legal procedures, or on such other date as the Parties may agree.

Article 13.5: Review of the Agreement

1. In accordance with Article 12.2 (Functions of Joint Committee), this Agreement is subject to review at any time following one year after the entry into force of the Agreement upon the request of a Party, with a view to updating and enhancing this Agreement to further its objectives, through negotiations, as appropriate. The review shall include, but is not limited to, consideration of deepening liberalization, reducing or eliminating remaining discrimination and further expanding market access.

2. In conducting a review under this Article, the Joint Committee shall take into account:

(a) the work of all committees and subsidiary bodies established under this Agreement;

(b) relevant developments in international fora; and

(c) as appropriate, inputs from experts.

Article 13.6: Duration and Termination

1. This Agreement shall remain in force unless terminated pursuant to paragraph 2.

2. Either Party may notify the other Party of its intention to terminate this Agreement in writing through diplomatic channels.

3. Such termination shall take effect six months after the receipt of the notice referred to in paragraph 2, unless the Parties agree otherwise.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Seoul, on the 18th day of December, in the year 2020, in the Korean, Indonesian, and English languages, each text being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of the Republic of Korea	**For the Government of the Republic of Indonesia**

ANNEX I
SCHEDULE OF INDONESIA

EXPLANATORY NOTES

1. Articles 7.4 (National Treatment), 7.5 (Most-Favored-Nation Treatment), 7.8 (Performance Requirements), and 7.9 (Senior Management and Boards of Directors) apply only to the following sectors:

(a) manufacturing;

(b) agriculture;

(c) fisheries;

(d) forestry;

(e) mining and quarrying.

2. This Annex sets out, in accordance with Article 7.10 (Non-conforming Measures), Indonesia's existing measures in the sectors listed in paragraph 1 that are not subject to some or all of the obligations imposed by:

(a) Article 7.4 (National Treatment);

(b) Article 7.5 (Most-Favored-Nation Treatment);

(c) Article 7.8 (Performance Requirements); or

(d) Article 7.9 (Senior Management and Boards of Directors).

1. Sector	:	**All Sectors**
Sub-Sector	:	Acquisition of Lease of Land
Industry Classification	:	-
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	The right of ownership of land (*hak milik*) is restricted to Indonesian nationals only. Note: Notwithstanding the above, foreign national and foreign company incorporated and domiciled in Indonesia may acquire land and property on the basis of the following rights: a. Leasehold (*hak guna milik*), granted to foreign company for a maximum period of 35 (thirty-five) years and may be extended for another period of 25 (twenty-five) years. b. Building rights (*hak guna bangunan*), granted to foreign company for a maximum period of 30 (thirty) years and may be extended for another period of 20 (twenty) years. c. Right of use (*hak pakai*) granted to: (1) foreign national for a maximum period of 30 (thirty) years and may be extended for another period of 20 (twenty) years; (2) foreign company for a maximum period of 25 (twenty-five) years and maybe extended for another period of 20 (twenty) years. d. Right of lease (*hak sewa*), accorded to foreign national and foreign company for a definite period as may be agreed by the parties.

Such acquisitions of land and property must be approved by the relevant authority, subject to such conditions and restrictions as may be imposed by that authority.

Source of Measure : Article 33 of *the 1945 Constitution of the Republic of Indonesia;*

Law No. 5 of 1960 concerning Basic Provisions on Agrarian Principles;

Government Regulation No. 40 of 1996 concerning the Right of Cultivation of Land, the Right of Use of Structures, and the Right of Use of Land; and

Government Regulation No. 103 of 2015 concerning Residence or Housing Ownership for Foreigners Domiciled in Indonesia.

2. Sector	:	**All Sectors**
Sub-Sector	:	Registration Requirements for the Establishment of Foreign Investment
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Foreign Investment[1] shall have investment of more than IDR 10 billion (excluding land and building), unless required otherwise by the specific sector in accordance with Indonesia's laws and regulations.
Source of Measure	:	*Law No. 25 of 2007 concerning Investment;* *Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises;* *Minister of Industry Regulation No. 64/M-IND/PER/7/2016 concerning Number of Worker and Value of Investment for Industrial Business Classification;* and *Chairman of Investment Coordinating Board Regulation No. 6 of 2018 concerning Guidelines and Procedures for Investment Licensing and Facilities.*

[1] For purpose of this reservation, the term "foreign investment" is established in accordance with *Law No. 25 of 2007 concerning Investment*.

3. Sector	:	**All Sectors**
Sub-Sector	:	**-**
Industry Classification	:	**-**
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Foreign investment[2] shall be in the form of limited liability company based on the law of the Republic Indonesia. Foreign investor[3] organized under the laws of the other Party seeking to make direct investment in Indonesia must establish as an Indonesian limited liability company (*'Perseroan Terbatas'*) in accordance with *Law No. 25 of 2007 concerning Investment*.
Source of Measure	:	*Law No. 25 of 2007 concerning Investment;* and *Law No. 40 of 2007 concerning Limited Liability Company.*

[2] For purpose of this reservation, the term "foreign investment" is established in accordance with *Law No. 25 of 2007 on Investment.*

[3] For purpose of this reservation, the term "Foreign Investor" can be found in *Law No. 25 of 2007 on Investment.*

4. Sector	:	**All Sectors**
Sub-Sector	:	**-**
Industry Classification	:	**-**
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Foreign investment shall appoint local distribution agents to sell its products to the end-users in Indonesia. For greater certainty, foreign investment means foreign investor or legal entity established as *'Perseroan Terbatas*' in accordance with the source of measures listed under entry 3.
Source of Measure	:	*Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises;* *Ministry of Trade Regulation No. 22 of 2016 concerning General Provisions on the Distribution of Goods;* *Ministry of Trade Regulation No. 11 of 2006 concerning Provisions and Procedures of Issuance of Agents or Distributor of Goods and/or Services Registration;* and *Chairman of Investment Coordinating Board Regulation No. 6 of 2018 concerning Guidelines and Procedures for Investment Licensing and Facilities.*

5. Sector	:	**All Sectors**
Sub-Sector	:	**-**
Industry Classification	:	**-**
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	Foreign investments established under Indonesia's Corporate Law are required to have any positions related to personnel affairs to be occupied by Indonesian nationals.
Source of Measure	:	*Law No. 13 of 2003 concerning Manpower;* *Presidential Decree No. 74 of 2014 concerning the Employment of Expatriates and the Implementation of Education and Training for Labor Companion;* *Minister of Manpower and Transmigration Decree No. 40 of 2012 concerning Certain Positions that are Restricted for Foreign Workers;* and *Presidential Regulation No. 20 of 2018 concerning the Employment of Expatriates.*

6. Sector	:	**Fishery**
Sub-Sector	:	**Capture Fisheries**
Industry Classification	:	ISIC 0500
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Capture fisheries in Indonesia are prohibited for foreign investors.
Source of Measure	:	*Law No. 31 of 2004 as amended by Law No. 45 of 2009 concerning Fisheries;* *Law No. 5 of 1983 concerning Indonesia's Exclusive Economic Zone;* *Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment;* *Minister of Marine Affairs and Fisheries Regulation No. PER.05/MEN/2008 as amended by Minister of Marine Affairs and Fisheries Regulation No. PER.12/MEN/2009 concerning Capture Fishery Business;* and Government policy.

7. Sector	:	**Mining & Quarrying**
Sub-Sector	:	**-**
Industry Classification	:	ISIC (see below)
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	The establishment and operation of foreign investment in Sea Sand Extraction (ISIC 1429) are prohibited for foreign investors.
Source of Measure	:	*Law No. 4 of 2009 concerning Mineral and Coal Mining;* and *Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment.*

8. Sector	:	**All Sectors**
Sub-Sector	:	**Public Enterprise**
Industry Classification	:	**-**
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	National Treatment and Senior Management and Board of Directors may not apply in the event where activities restricted to designated enterprises [4] are liberalized to those other than the designated entities, or in the event where such designated enterprise no longer operate on a non-commercial basis.
Source of Measure	:	*Government Regulation No. 13 of 1998 concerning Public Enterprise.*

[4] For illustrative purposes, this may include State Forestry Public Enterprise, denoted as Perum PERHUTANI, and National Money Printing Public Enterprise, denoted as Perum PERURI.

9. Sector	:	**All Sectors**
Sub-Sector	:	**-**
Industry Classification	:	**-**
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	For companies/projects that are in existence before the entry into force of this Agreement, conditions imposed in their approvals for license/permits shall continue to apply. Any changes to these conditions shall be subject to approval.
Source of Measure	:	*Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment.*

10. Sector	:	**Manufacturing**
Sub-Sector	:	**-**
Industry Classification	:	ISIC (see below)
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Foreign investors are prohibited from establishing the following line of businesses in Indonesia:

a. Reserved for Micro, Small, and Medium Enterprises:
   - Manufacturer of the following agricultural products with an equal or exceeding a certain capacity limit as stipulated in the *Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License* and *Minister of Agriculture Regulation No. 29 of 2016 concerning the Amendment of Minister of Agriculture Regulation No. 98 of 2013*:
     - Dried clove buds; crude vegetable and animal oils; copra, fiber, coconut shell charcoal, dust, nata de coco; coconut oil; palm oil; cotton fiber; cotton seeds; peeling, cleaning, drying, and sorting of plantation products (cocoa beans and coffee beans); cashews for dried cashew nut and cashew nut shell liquid (CNSL); peppercorns for dried white peppercorns and dried black peppercorns; cane sugar, sugar cane top and sugar cane

bagasse; black tea/green tea; dried tobacco leaves; rubber for sheets, concentrated latex; rude jatropha oil (ISIC 0111, 0140, 1513, 1514, 1531, 1542, 1549, 1600, 2429, 2519)

- Fish processing: boiling of fish (ISIC 1512)
- Manufacture of processed food from soybean in form of tempeh and tofu (ISIC 1513, 1514, 1549)
- Manufacture of foods from soybeans and beans other than soy sauce, tempeh, and tofu (ISIC 1513, 1549)
- Manufacture of perishable prepared cakes (ISIC 1513, 1514, 1549)
- Manufacture of crackers (*krupuk*), flakes (*keripik*), fried and flavors biscuits (*peyek*) and the likes (ISIC 1513, 1514, 1549)
- Manufacture of palm sugar/Javanese sugar/red sugar (ISIC 1542)
- Miling (peeling and cleaning) or roots and tubers (ISIC 0140, 1531)
- Thread coloring from natural and artificial fiber to be patterned/dipped/tied thread, performed by hand-work tools (ISIC 1711)
- Fabrics printing industry (ISIC 1712, 1729)
- Hand painted Batik industry (ISIC 1712, 1729)
- Knitted cloth industry especially Lace (ISIC 1730)
- Moslem woman's praying cloth, scarf, head scarf, and other traditional industries (ISIC 1810)
- Embroidery industry (ISIC 1729)
- Handicrafts industry: Rattan and bamboo plait industry; Plait industry with plant other than rattan and bamboo;

Carving handicraft from wood, except furniture industry; Kitchen household industry from wood, rattan and bamboo; Wood, rattan, cork products industry that is not classified elsewhere (ISIC 2029, 3699)

- Traditional musical instruments (ISIC 3692)
- Rubber curing industry (ISIC 2519)
- Clay made household necessities industry especially pottery (ISIC 2691)
- Hand-tools industry needed for farming to prepare land, process production, post-harvest and processing except hoe and shovel (ISIC 2893)
- Manual or semi mechanical processed hand tool industry for handwork and cutting (ISIC 2893)
- Maintenance and repair of motorcycles other than those integrating with sale of motorcycles (agents/distributor) (ISIC 5040)
- Repair of personal and household goods (ISIC 3610, 5260)
- Primary industry of forests products processing: Pine Sap (*Oleo Pine Resin*) and Bamboo (ISIC 0200)
- Saw Mill or Lumbering industry with production capacity of below or equal to 2,000m^3/year
- Primary industry of processing rattan (ISIC 2010)

b. 100% Domestic Equity Participation:

- Industry of main equipment for defense and security (ISIC 2520, 2893, 2927, 2929, 3530, 3610)
- Traditional medicines and natural extracts processing and industry (ISIC 2423)

Source of Measure	:	*Law No. 25 of 2007 concerning Investment;* *Law No. 39 of 2014 concerning Plantations;* *Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment;* *Presidential Decree No. 21 of 2001 concerning Lubricant Supply and Services;* *Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License j.o. Minister of Agriculture Regulation No. 29 of 2016 concerning the Amendment of Minister of Agriculture Regulation No. 98 of 2013;* and Government policy.

11. Sector	:	**Agriculture**
Sub-Sector	:	**-**
Industry Classification	:	ISIC (see below)
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Foreign investors are prohibited from establishing the following line of business in Indonesia:

a. Reserved for Micro, Small and Medium Enterprises:
   - For each individual crop cultivation in an area less than 25 hectares:
     - Staple food crops (rice, corn, soybeans, groundnuts, green beans, cassava and sweet potatoes) and other food crops not classified elsewhere (ISIC 0111, 0112, 0113, 0200)

   - For each individual plantation seeding business in an area less than 25 hectares:
     - Jatropha curcas, other sweetener crops, sugar canes, tobacco, textile raw materials and cotton, other crops not elsewhere classified, cashews, coconut palms, oil palms, beverage crops (tea, coffee, and cocoa), peppercorns, cloves, essential oil crops, medicinal pharmaceutical crops (other than horticulture), other spice crops, rubber and other trees for extraction of sap (ISIC 0111, 0112, 0113, 0200).

- For each individual plantation business in an area less than 25 hectares:
  - Other sweetener crops, sugar cane, tobacco, textile raw materials and cotton, cashews, coconut palms, oil palms, beverage crops (tea, coffee and cocoa), peppercorns, cloves, essential oil crops, medicinal/pharmaceutical crops other than horticulture, other spice crops, rubber and other trees for extraction of sap, other plantation farming (ISIC 0111, 0112, 0113, 0200).

- Swine breeding and farming with quantity of less than or equal to 125 heads (ISIC 0122)

- Breeding and farming of native chicken *"ayam buras*" and its cross breeding and farming (ISIC 0122)

Source of Measure : *Law No. 39 of 2014 concerning Plantations;*

Law No. 18 of 2009 concerning Livestock and Animal Health as amended by Law No. 41 of 2014;

Law No. 41 of 1999 concerning Forestry;

Law No. 5 of 1990 concerning Conservation of Natural Resources and Its Ecosystems;

Government Regulation No. 6 of 2007 as amended by Government Regulation No. 3 of 2008 concerning Forest Administration and Compilation of Forest Management Planning and Utilization of Forest;

Government Regulation No. 8 of 1999 concerning Utilization of Plant and Wild Animal Species;

Government Regulation No. 18 of 2010 concerning Plant Cultivating Business;

Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open For Investment;

Government Regulation No. 44 of 1995 concerning Seeding of Plantations;

Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License j.o. Minister of Agriculture Regulation No. 21 of 2017 concerning the Second Amendment of Regulation No. 98 of 2013;

Minister of Agriculture Decree No. 404/Kpts/OT.210/6/2002 concerning Guidelines for License and Registration on Livestock Sector;

Minister of Agriculture Regulation No. 70/Permentan/PD.200/6/2014 concerning Licensing Guidelines for Horticulture Cultivation;

Minister of Agriculture Regulation No. 2 of 2009 concerning Guidelines of Veterinary Medical Services;

Minister of Agriculture Regulation No. 39/Permentan/OT.140/6/2010 concerning the Guidelines on Business Licensing for Staple Crops Cultivation; and

Government policy.

12. Sector	:	**Forestry**
Sub-Sector	:	-
Industry Classification	:	ISIC (see below)
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Foreign investors are prohibited from establishing the following line of business in Indonesia: a. Reserved for Micro, Small and Medium Enterprises: • Exploitation of other forest plants (sugar palms, candlenuts, tamarind seeds, charcoal raw materials, cinnamon) (ISIC 0200). • Exploitation of Swallow Nests in nature (ISIC 0122) b. 100% Domestic Equity Participation: • Exploitation of wood forest products from the natural forests (ISIC 0200) • Growing and trading of breeds and seeds of forests trees/plants (export and import of breeds and seeds of forests trees/plants) (ISIC 5121) • Exploitation of water resources in forest area (ISIC 0200) • Capturing and trading of wild plants and wild animals from the natural wildlife habitat (ISIC 0150)
Source of Measure	:	*Law No. 41 of 1999 concerning Forestry;* *Law No. 5 of 1990 concerning Conservation of Natural Resources and Its Ecosystems;*

Government Regulation No. 6 of 2007 as amended by Government Regulation No. 3 of 2008 concerning Forest Administration and Compilation of Forest Management Planning and Utilization of Forest;

Government Regulation No. 36 of 2010 concerning Natural Tourism Concession in the National Park Utilization Zone, Grand Forest Park, Nature Tourism Park;

Government Regulation No. 8 of 1999 concerning Utilization of Plant and Wild Animal Species;

Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment; and

Government policy.

13. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	1. As may be required by the relevant regulatory authorities, a company in which foreign investors[5] own 100% shares, subject to prior notification before the grant of the license, after certain period since commencement of commercial production, the said foreign investors should sell a part of the company's share to domestic incestors[6]. 2. In the case Mineral and Coal subsector[7], mining business license (*Izin Usaha Pertambangan*) for foreign investment [8] shall be given by the Minister of Energy and Mineral Resources of the Republic of Indonesia.

[5] For purpose of this reservation, the term "foreign investor" can be found in *Law No. 25 of 2007 concerning Investment.*

[6] For purpose of this reservation, the term "domestic investor" can be found in *Law No. 25 of 2007 concerning Investment.* For greater certainty, the requirement set out in paragraph 1 of this reservation is based on *Government Regulation No. 20 of 1994 concerning Share Ownership in Companies Set Up Under Foreign Capital Investments* and it will not be applied to investment made after the stipulation *of Law No. 25 of 2007 concerning Investment*.

[7] For purpose of this reservation, the scope of Mineral and Coal Mining subsector is defined in *Law No. 4 of 2009 concerning Mineral and Coal Mining* and *Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities j.o. Government Regulation No. 1 of 2017 concerning Fourth Amendment of Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities*.

[8] For purpose of this reservation, the term "foreign investment" can be found in *Law No. 25 of 2007 concerning Investment.*

Subject to prior notification before the grant of mining business license (*Izin Usaha Pertambangan*), 5 (five) years after the commencement of production, foreign shareholders[9] of foreign investment should sell their shares gradually to Indonesian shareholders[10] according to the following priorities:

[9] For purpose of this reservation, the term "foreign shareholders" can be found in *Government Regulation No. 24 of 2012 concerning Amendment of Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities.*

[10] For purpose of this reservation, the term "Indonesian shareholders" can be found in *Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities j.o. Government Regulation No. 24 of 2012 concerning Amendment of Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities.*

1) central government;
2) provincial government;
3) regencies/municipalities;
4) state owned enterprises (*Badan Usaha Milik Negara* and *Badan Usaha Milik Daerah*);
5) national private business entity[11].

The shares of the said Indonesian shareholders shall reach majority after 10 (ten) years after the commencement of production.

[11] For purpose of this reservation, the term "national private business entity" can be found in *Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities.*

Source of Measure	:	*Law No. 25 of 2007 concerning Investment;* *Law No. 4 of 2009 concerning Mineral and Coal Mining;* *Law No.1 of 2014 concerning Management of Coastal Areas and Small Islands;* *Government Regulation No. 20 of 1994 concerning Share Ownership in Companies Set Up Under Foreign Capital Investments;* *Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities j.o. Government Regulation No. 77 of 2014 concerning Third Amendment j.o. Government Regulation No. 1 of 2017 concerning Fourth Amendment;* *Minister of Energy and Mineral Resources Regulation No. 9 of 2017 concerning Procedures of Divestment of Shares and Mechanism on Divestment Stock Pricing*; and *Minister of Energy and Mineral Resources Regulation No. 25 of 2018 concerning Mineral and Coal Mining Business.*

14. Sector	:	**Mining & Quarrying**
Sub-Sector	:	**-**
Industry Classification	:	ISIC 1010, 1020, 1030, 1310, 1320
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Mining Business License Area, hereinafter referred to as WIUP, refers to an area given to the holder of a Mining Business License. Foreign investor or legal entity organized under the laws of the other Party seeking to make investment in Indonesia is prohibited from participating in the auction of metallic mineral and coal WIUP with the size under 500 Hectares.
Source of Measure	:	*Law No. 4 of 2009 concerning Mineral and Coal Mining;* *Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities j.o. Government Regulation No. 1 of 2017 concerning Fourth Amendment of Government Regulation No. 23 of 2010;* and *Minister of Energy and Mineral Resources Regulation No. 11 of 2018 concerning the Procedure for Granting Area License, and Reporting on Mineral and Coal Mining Activities.*

15. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Non-resident taxpayers will be subject to withholding tax of 20%, if they derive the following income from an Indonesian source: a. Interest; b. Royalty; c. Dividend; d. Fee from service performed in Indonesia.
Source of Measure	:	*Law No. 36 of 2008 concerning the Fourth Amendment to Law No. 7 of 1983 concerning Income Tax.*

16. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	Performance Requirements (Article 7.8)
Description of Measure	:	Obligation under Article 7.8 (Performance Requirements) shall not apply to all existing non-conforming measures, which include measures related to these requirements: a. Local content; b. Trade balancing; c. Foreign exchange restrictions related to the foreign exchange inflows attributable to an enterprise; d. Export controls; and e. Transfer of technology. For specific purpose, foreign investor or legal entity established as '*Perseroan Terbatas*' in accordance with *Law No. 40 of 2007 concerning Limited Liability Company*, which is employing foreign experts, are required to provide trainings and transfer of technology to workers of Indonesian citizen pursuant to the rules of law.
Source of Measure	:	*Law No. 25 of 2007 concerning Investment;* *Law No. 40 of 2007 concerning Limited Liability Company;* and Government policy.

17. Sector	:	**Agriculture, Manufacturing**
Sub-Sector	:	Horticulture
Industry Classification	:	ISIC 0111, 0112, 0113, 0140, 1513, 1514, 1531, 1549, 2423
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Senior Management and Board Directors (Article 7.9)
Description of Measure	:	National Treatment and Senior Management and Board Directors may not apply to the establishment and operation of horticulture business activities in Indonesia, which include the following activities: a. Germination; b. Cultivation; c. Harvest and postharvest; d. Processing; e. Distribution, trading, and marketing; f. Research; and g. Agro tourism. Transition period of four years is provided for existing investors[12] in the Horticulture subsectors to make adjustment to comply with measures stated in the *Law No. 13 of 2010 concerning Horticulture and its implementing regulation.* The definition of Horticulture subsectors can be found in the *Law No. 13 of 2010 concerning Horticulture.*
Source of Measure	:	*Law No. 13 of 2010 concerning Horticulture;* and Government policy.

[12] Existing investors refer to the existing investors before the enactment of Law No. 13 of 2010 concerning Horticulture.

18. Sector	:	**Energy**
Sub-Sector	:	Small Scale Power Plant with Renewable Energy (1 MW – 10 MW)
Industry Classification	:	ISIC 4010
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Foreign equity participation in Small Scale Power Plant with Renewable Energy (1 MW-10 MW) is restricted no more than 49 percent of the capital share.
Source of Measure	:	*Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment.*

ANNEX I
SCHEDULE OF KOREA

EXPLANATORY NOTES

1. The Schedule of Korea to this Annex sets out, pursuant to Article 7.10 (Non-Conforming Measures), Korea's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 7.4 (National Treatment);

(b) Article 7.5 (Most-Favored-Nation Treatment);

(c) Article 7.8 (Performance Requirements); or

(d) Article 7.9 (Senior Management and Board of Directors).

2. Each Schedule entry sets out the following elements:

(a) **Sector** refers to the sector for which the entry is made;

(b) **Obligations Concerned** specifies the article(s) referred to in paragraph 1 that, pursuant to Article 7.10.1(a) (Non-Conforming Measures), do not apply to the non-conforming aspects of the law, regulation, or other measures, as set out in paragraph 3;

(c) **Level of Government**[1] indicates the level of government maintaining the scheduled measure(s);

(d) **Measures**[2] identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the **Measures** element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) **Description** sets out commitments, if any, for liberalization on the date of entry into force of the Agreement, and the remaining non-conforming aspects of the measure for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant articles of the Chapters against which the entry is made. To the extent that:

(a) the **Measures** element is qualified by a liberalization commitment from the **Description** element, the **Measures** element as so qualified shall

[1] If none is specified, the measure is maintained at the central level of government.

[2] For greater certainty, a change in the level of government at which a measure is administered or enforced does not, by itself, decrease the conformity of the measure with the obligations referred to in Article 7.10.1.

prevail over all other elements; and

(b) the **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless any discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Articles 7.10.1(a) (Non-Conforming Measures) and subject to Articles 7.10.1(c) (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the **Measures** element of that entry.

5. A **foreign person** means a foreign national or an enterprise organized under the laws of another country.

1. Sector:	Agriculture and Livestock
Obligations Concerned:	National Treatment (Article 7.4)
Measures:	*Foreign Investment Promotion Act* (Law No. 16479, August 20, 2019), Article 4 *Enforcement Decree of the Foreign Investment Promotion Act* (Presidential Decree No. 30170, October 29, 2019), Article 5 *Regulations on Foreign Investment* (Notice of the Ministry of Trade, Industry, and Energy, No.2018-137, July 6, 2018), Attached Table 2
Description:	Foreign persons may not: (i) invest in an enterprise engaged in rice or barley farming; or (ii) hold 50 percent or more of the equity interest of an enterprise engaged in beef cattle farming.

2. Sector:	Manufacturing of Biological Products
Obligations Concerned:	Performance Requirements (Article 7.8)
Measures:	*Pharmaceutical Affairs Act* (Law No. 16250, January 15, 2019), Article 42 *Regulations on Safety of Pharmaceuticals, Etc*. (Ordinance of the Prime Minister No. 1544, June 12, 2019), Article 11
Description:	A person who manufactures blood products must procure raw blood materials from a blood management body in Korea.

3. Sector:	Energy Industry- Electric Power Generation Other Than Nuclear Power Generation; Electric Power Transmission, Distribution and Sales
Obligations Concerned:	National Treatment (Article 7.4)
Measures:	*Financial Investment Services and Capital Markets Act* (Law No. 16191, December 31, 2018), Article 168 *Enforcement Decree of Financial Investment Services and Capital Markets Act* (Presidential Decree No30118, October 8, 2019), Article 187 *Foreign Investment Promotion Act* (Law No. 16479, August 20, 2019), Articles 4 and 5 *Enforcement Decree of the Foreign Investment Promotion Act* (Presidential Decree No. 30170, October 29, 2019), Article 5 *Regulation on Foreign Investment* (Notice of the Ministry of Trade, Industry and Energy No. 2018-137, July 6, 2018), Attached Table 1 and 2 *Notice of the Ministry of Finance and Economy* (No. 2000-17, September 28, 2000) *Financial Investment Service Regulations* (Notice of the Financial Services Commission No. 2019-8, March 20, 2019), Article 6-2
Description:	The aggregate foreign share of KEPCO's issued stocks may not exceed 40 percent. A foreign person may not become the largest shareholder of KEPCO. The aggregate foreign share of power generation facilities, including cogeneration facilities of heat and power (GHP) for the district heating system (DHS), may not exceed 30 percent of the total facilities in the territory of Korea. The aggregate foreign share of electric power transmission, distribution and sales businesses should be less than 50 percent. A foreign person may not be the largest shareholder.

4. Sector:	Energy Industry - Gas Industry
Obligations Concerned:	National Treatment (Article 7.4)
Measures:	*Act on the Improvement of Managerial Structure and Privatization of Public Enterprises* (Law No. 11845, May 28, 2013), Article 19 *Financial Investment Services and Capital Markets Act* (Law No. 16191, December 31, 2018), Article 168 *Foreign Investment Promotion Act* (Law No. 16479, August 20, 2019), Articles 4 and 5 *Articles of Incorporation of the Korea Gas Corporation* (March 27, 2019), Article 11
Description:	Foreign persons, in the aggregate, may not own more than 30 percent of the equity of KOGAS.

ANNEX II
SCHEDULE OF INDONESIA

EXPLANATORY NOTES

1. Articles 7.4 (National Treatment), 7.5 (Most-Favored-Nation Treatment), 7.8 (Performance Requirements), and 7.9 (Senior Management and Boards of Directors) apply only to the following sectors:

(a) manufacturing;

(b) agriculture;

(c) fisheries;

(d) forestry;

(e) mining and quarrying.

2. This Annex sets out, in accordance with Article 7.10 (Non-conforming Measures), the specific sectors, sub-sectors or activities, within the sectors listed in paragraph 1, for which Indonesia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 7.4 (National Treatment);

(b) Article 7.5 (Most-Favored-Nation Treatment);

(c) Article 7.8 (Performance Requirements); or

(d) Article 7.9 (Senior Management and Boards of Directors).

1. Sector	:	**All Sectors**
Sub-Sector	:	Customary Rights on Land and Properties
Industry Classification	:	-
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measure related to customary rights of land and properties of minorities tribal groups.
Source of Measure	:	Article 33 of *the 1945 Constitution of the Republic of Indonesia;* and Government policy.

2. Sector	:	**Manufacturing**
Sub-Sector	:	-
Industry Classification	:	ISIC (see below)
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Indonesia reserves the right to adopt or maintain measures for the establishment and operation of foreign investment in the following sub-sectors:

a. Limitation on Foreign Equity Participation:
- Cars maintenance and repair (ISIC 5020)
- Patent medicine industry (ISIC 2423)

b. Partnership requirement:
- Manufacturer of copra (ISIC 10421)
- Sweetening and saline fruits and vegetable industry (ISIC 1513)
- Manufacturer of soy sauce (ISIC 10771)
- Milk powder and condensed milk processing and industry (ISIC 1520)
- Stamped Batik Industry (ISIC 1712)
- Rattan processing industry (ISIC 2010)
- Preserving industry of rattan, bamboo, and the likes (ISIC 2010)
- Manufacturer of wooden goods (moulding and construction material components industry) (ISIC 16221)
- Essential Oil Industry (ISIC 2429)
- Tobacco drying and preliminary processing industry (ISIC 1600)
- Bricks and clay/ceramic industry (ISIC 2691, 2692, 2693)
- Goods made from clay/ceramic industry (ISIC 2691, ISIC 2693)

- Lime industry (ISIC 2694)
- Goods made from cement industry (ISIC 2695)
- Good made from lime industry (ISIC 2695)
- Other goods made from cement and lime industry (ISIC 2695)
- Nails, nuts and bolts industry, component and spare parts to start up motor industry, pumps and compressor industry, component and two and three wheels vehicles accessories industry, bike and pedicab/*becak* accessories industry (ISIC 2899, 2911, 2912, 3591, 3592)
- Agricultural machinery industry using medium technology such as rice peeler, corn peeler and handy-tractor (ISIC 2921)
- Manufacturer of wooden ships for marine tourism and fishing (ISIC 3511, 3512)
- Manufacturer of devices and fittings of wooden ships for marine tourism and fishing (ISIC 3511)
- Manufacturer of jewelry products from precious metal for personal use (ISIC 3330, 3691)
- Manufacturer of jewelry products from precious metal for non-personal use (ISIC 3330, 3691)
- Manufacturer of jewelry products from non-precious metal for non-personal use (ISIC 3330, 3699)
- Manufacture of precious stones (ISIC 3691)
- Manufacture of handicraft not elsewhere classified (ISIC 3699)
- Non-metal waste recycle (ISIC 3720)
- Sugar industry from sugar cane (White Crystal Sugar, Refined Crystal Sugar and Raw Crystal Sugar) (ISIC 1542)
- Fishery Processing Industry: Salting and drying of fish and biota from

other waters (ISIC 1512); Smoking of fish and biota from other waters (ISIC 1512); Fish yeasting/fermentation, and other cooked products for extraction and fish jelly (ISIC 1512, 1549); Processing of minced fish and surimi (ISIC 1512)

c. Recommendation or specific requirements by relevant authorities:
   - Cigarette Industries:
     - Clove cigarette industry (ISIC 1600)
     - Regular non-clove cigarette industry (ISIC 1600)
     - Other cigarette industries (ISIC 1600)
   - Manufacturer of securities (inter alia, bank notes paper, cheque paper, watermark paper) (ISIC 2101)
   - Money printing and special printing industry/security documents such as stamp, stamp duty, valuable paper such as Bank Note Paper, Cheque Paper, Watermark paper, passport, demography document and hologram. Special permit is required from the Minister of Industry and from the National Intelligence Agency (ISIC 2221)
   - Cyclamate and Saccharin Industry (ISIC 2411)
   - Special Ink Industry (ISIC 2429)
   - Lead smelting industry (ISIC 2720)
   - Saw Mill or Lumbering industry with production/output capacity above 2.000 M^3/year (ISIC 2010)
   - Veneer Industry, Plywood industry, Laminated Veneer Lumber (LVL) Industry (ISIC 2021)
   - Wood chip industry and Wood Pellet Industry (ISIC 2029)
   - Narcotics for Pharmaceutical Industry (Pharmaceutical Industry) (ISIC 2423)
   - Medical Equipment Industry:

- Class B (surgical masks, syringe, patient monitor, condom, surgical gloves, hemodialysis fluids, PACS, surgical knives) (ISIC 2423)
- Class C (IV Catheter, X Ray, ECG, Patient Monitor, Orthopedic Implants, Contact Lens, Oximeters, Densitometers) (ISIC 2423)
- Class D (CT Scan, MRI, Cardiac Catheter, Cardiac Stent, HIV Test, Pacemaker, Dermal Fillers, Ablation Catheters) (ISIC 2423)

d. Requirement on source of raw material:
   - Pulp industry (from wood) (ISIC 2101)

e. Combination of the above requirements:
   - Crumb rubber industry (ISIC 2519)
   - Industry of raw materials for explosives (ISIC 2411)
   - Industry of explosive materials and its components for industry (ISIC 2429)
   - Medical equipment industry:
     - Class A (Cotton, bandage, stick, IV pole, sanitary napkins, adult diapers, patient's bed, wheelchair) (ISIC 2423)
   - Crops plantation seeding business industry for the following crops in an area of 25 hectares or more, until a certain area as stipulated in the *Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License* and *Minister of Agriculture Regulation No. 29 of 2016 concerning the Amendment of Minister of Agriculture Regulation No. 98 of 2013*:
     - Jatropha curcas, other sweetener crops, sugar cane, tobacco, textile raw materials and cotton, cashews, coconut palms, oil palms, beverage crops (tea, coffee and cocoa), peppercorns, cloves, essential oil

crops, medicinal pharmaceutical crops, other spice crops, rubber and other trees for extraction of sap, and other crops not elsewhere classified (ISIC 0111, 0112, 0113, 0200).

- Plantation business for the following crops which are integrated with processing industry in an area of 25 hectares or over with a capacity equivalent to or exceeding a certain limit as stipulated in the *Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License* and *Minister of Agriculture Regulation No. 29 of 2016 concerning the Amendment of Minister of Agriculture Regulation No. 98 of 2013*:
  - Cashews plantation and manufacture of dried cashew nuts and cashew nut shell liquid (CNSL) (ISIC 0113, 1513, 1549);
  - Peppercorns plantation and manufacture of dried white peppercorns and dried black peppercorns (ISIC 0112, 1513, 1549);
  - Jatropha plantation and manufacture of jatropha oil (ISIC 0111, 0112, 2429);
  - Sugar cane and manufacture of cane sugar, sugar cane top and sugar cane bagasse (ISIC 0111, 1542);
  - Tobacco and manufacture of dried tobacco leaves (ISIC 0111, 1600);
  - Cotton plantation and manufacture of cotton fiber (ISIC 0111);
  - Coconut palms plantation and manufacture of coconut oil (ISIC 0113, 1514);
  - Coconut palms plantation and manufacture of copra, fiber, coconut shell charcoal, dust, and nata de coco (ISIC 0113, 1514,

1549);
- Oil palms plantation and manufacture of palm oil (CPO) (ISIC 0113, 1514, 1549);
- Coffee plantation and manufacture of coffee bean peeling, cleaning and sorting (ISIC 0113, 1513);
- Cocoa plantation and manufacture of cocoa bean peeling, cleaning and drying (ISIC 0113, 1513, 1549);
- Tea and manufacture of black tea/green tea (ISIC 0113, 1513, 1549);
- Cloves plantation and manufacture of dried clove buds (ISIC 0113, 0140, 1549);
- Essential oil crops plantation and manufacture of essential oil (ISIC 0111, 0112, 0113, 2429);
- Rubber plantation and manufacture of sheets, concentrated latex (ISIC 0111, 2519);
- Plantation of grains other than coffee and cocoa beans and manufacture of grain peeling and cleaning other than coffee beans and cocoa beans (ISIC 1513, 1549).

- Manufacturer of the following agricultural products with an equal or exceeding a certain limit as stipulated in the *Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License* and *Minister of Agriculture Regulation No. 29 of 2016 concerning the Amendment of Minister of Agriculture Regulation No. 98 of 2013*:
  - Crude vegetable and animal oils (edible oils); copra, fiber, coconut shell charcoal, dust, nata de coco; coconut oil; palm oil; peeling, cleaning, drying and sorting of cocoa beans and coffee beans products; cane sugar, sugar cane top

and sugar cane bagasse; black tea/green tea; dried tobacco leaves; rude jatropha oil; cotton fiber and cotton seeds; rubber for sheets, concentrated latex; cashews for dried cashew nut and cashew nut shell liquid (CNSL); peppercorns for dried white peppercorns and dried black peppercorns; dried clove buds (ISIC 0111, 0140, 1513, 1514, 1531, 1542, 1549, 1600, 2429, 2519).

Source of Measure : *Law No. 25 of 2007 concerning Investment;*

Law No. 39 of 2014 concerning Plantations;

Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment;

Presidential Decree No. 21 of 2001 concerning Lubricant Supply and Services;

Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License j.o Minister of Agriculture Regulation No. 29 of 2016 concerning the Amendment of Minister of Agriculture Regulation No. 98 of 2013;

Minister of Health Regulation No. 62 of 2017 concerning Medical Devices and Household Health Products Distribution Authorization; and

Government policy.

3. Sector	:	**Agriculture**
Sub-Sector	:	-
Industry Classification	:	ISIC (see below)
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Indonesia reserves the right to adopt or maintain measures for the establishment and operation of foreign investment in the following sub-sectors:

a. Limitation on Foreign Equity Participation:
   - For each individual crop seeding or seedling business in an area of more than 25 hectares:
     - Staple food crops (rice, corn, soybeans, groundnuts, green beans, including cassava and sweet potatoes) and other food crops not classified elsewhere (ISIC 0111, 0112, 0113, 0200)
     - Seasonal fruits crops, grapes, tropical fruits crops, citrus fruits, apples, pome and stone fruits, berries, annual vegetables, perennial vegetables, drug crops, mushrooms, floriculture crops (ISIC 0111, 0112, 0113, 0200)
   - For each individual crop cultivation business in an area of more than 25 hectares:
     - Staple food crops (rice, corn, soybeans, groundnuts, green beans and other food crops including cassava and sweet potatoes) (ISIC 0111, 0112, 0113, 0200)
     - Seasonal fruits crops, grapes, tropical fruits crops, citrus fruits, apples, pome and stone fruits,

berries, leafy vegetables (cabbages, mustard, scallion, celery), root vegetables (shallot, garlic, potatoes, carrots), fruit-bearing vegetables (tomatoes, cucumber), chili peppers, paprika, mushrooms, ornamental plants, non-flower ornamental plants (ISIC 0111, 0112, 0113, 0200, 1513)

- Each of the following agriculture related activities:
  - Horticultural research and quality test laboratories, horticultural agro tourism activities, horticultural post- harvest services, retail sale of flower, horticultural development consultants, horticultural landscaping, and horticultural courses services (ISIC 0140, 2022, 7310, 9219, 9241, 9249, 5239, 7414, 7421, 8090, 9241)
  - Research and development on agricultural and development resources and engineering, and research and development on genetically modified organisms (GMO) products sciences and engineering (genetic engineering) (ISIC 7310)

b. Locational requirement:
   - Swine breeding and farming with quantity of more than 125 heads (ISIC 0122)

c. Combination of the above requirements
   - Plantation business for the following crops without any processing unit in an area of 25 hectares or more, until a certain area as stipulated in the *Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License j.o Minister of Agriculture Regulation No. 29 of 2016 concerning the*

Amendment of Minister of Agriculture Regulation No. 98 of 2013:

- Jatropha curcas, other sweetener crops, sugar cane, tobacco, textile raw materials and cotton, cashews, coconut palms, oil palms, beverage crops (tea, coffee and cocoa), peppercorns, cloves, essential oil crops, medicinal pharmaceutical crops, other spice crops, rubber and other trees for extraction of sap, and other crops not elsewhere classified (ISIC 0111, 0112, 0113, 0200)

Source of Measure : *Law No. 39 of 2014 concerning Plantations;*

Law No. 18 of 2009 concerning Livestock and Animal Health and Law No. 41 of 2014 concerning the Amendment to Law No. 18 of 2009;

Law No. 41 of 1999 concerning Forestry;

Law No. 5 of 1990 concerning Conservation of Natural Resources and Its Ecosystems;

Government Regulation No. 6 of 2007 as amended by Government Regulation No. 3 of 2008 concerning Forest Administration and Compilation of Forest Management Planning and Utilisation of Forest;

Government Regulation No. 8 of 1999 concerning Utilization of Plant and Wild Animal Species;

Government Regulation No. 18 of 2010 concerning Plant Cultivating Business;

Government Regulation No. 44 of 1995 concerning Seeding of Plantations;

Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open

for Investment;

Minister of Agriculture Regulation No. 98 of 2013 concerning Guidance of Plantation Business License j.o Minister of Agriculture Regulation No. 29 of 2016 concerning the Amendment of Minister of Agriculture Regulation No. 98 of 2013;

Minister of Agriculture Decree No. 404 of 2002 concerning Guidelines for License and Registration on Livestock Sector;

Minister of Agriculture Decree No. 348 of 2003 concerning Guidelines for License on Horticulture Sector;

Minister of Agriculture Regulation No 2 of 2009 concerning Guidelines of Veterinary Medical Services;

Minister of Agriculture Regulation No. 39 of 2010 concerning the Guidelines on Business Licensing for Staple Crops Cultivation; and

Government policy.

4. Sector	:	**Forestry**
Sub-Sector	:	-
Industry Classification	:	ISIC (see below)
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Indonesia reserves the right to adopt or maintain measures for the establishment and operation of foreign investment in the following sub-sectors:

a. Limitation on Foreign Equity Participation:
   - Hunting business in Hunting Parks and Hunting Blocks (ISIC 0150, 9219, 9241, 9249)
   - Captive breeding of animals and plants, and conservation institutions (ISIC 0150)

b. Partnership requirement:
   - Exploitation of forests plants: Rattan (ISIC 2010), Pine Sap (Oleo Pine Resin) (ISIC 0200), Bamboo (ISIC 0200), Wood Rosin/Shorea Javanica (Damar) (ISIC 0200), Eaglewood/Aquilaria Malaccensis (Gaharu) (ISIC 0200)
   - Exploitation of shellac, alternative food crops (sagoo), gums, and honeybee farming (ISIC 0200)
   - Production of silkworm cocoon (natural silk farming) (ISIC 0122)

c. Recommendation or specific requirements by relevant authorities:
   - Development of Technology used on plant and wildlife genetics (ISIC 0200)

Source of Measure : *Law No. 41 of 1999 concerning Forestry;*

Law No. 5 of 1990 concerning Conservation of Natural Resources and Its Ecosystems;

Government Regulation No. 6 of 2007 as amended by Government Regulation No. 3 of 2008 concerning Forest Administration and Compilation of Forest Management Planning and Utilisation of Forest;

Government Regulation No. 36 of 2010 concerning Natural Tourism Concession in the National Park Utilisation Zone, Grand Forest Park, Nature Tourism Park;

Government Regulation No. 8 of 1999 concerning Utilization of Plant and Wild Animal Species;

Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment; and

Government policy.

5. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment (Article 7.4) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measure relating to the privatization, corporatization, commercialization or divestment of Government assets, entities or agencies, including: (a) limitations on ownership of assets; (b) transfer or disposal of equity interests or their assets; (c) the right of foreign investors or their investments to control their assets; and (d) nationality of the senior management or members of the board of directors. For greater certainty: (a) where Indonesia transfers an interest in an existing state enterprise to another state enterprise, such transfer shall not be considered to be an initial transfer or disposal of the interest for purposes of this entry; and (b) where Indonesia transfers or disposes of an interest in an existing state enterprise in multiple phases, subparagraph (a) shall apply separately to each such phase.
Source of Measure	:	*Law No. 19 of 2003 concerning State Owned Enterprises;* *Law No. 40 of 2007 concerning Limited*

Liability Company; and

Government policy.

6. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment (Article 7.4) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measures with respect to special preferences given for Small and Medium Enterprises and Cooperatives (*'Usaha Mikro, Kecil, Menengah dan Koperasi'* or UMKMK) in Indonesia[1].
Source of Measure	:	*Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises;* *Law No. 25 of 1992 concerning Cooperatives;* and Government policy.

[1] For purpose of this reservation, the definition of Micro, Small, and Medium Sized Enterprises (UMKM) can be found in *Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises*, and the definition of Cooperatives can be found in *Law No. 25 of 1992 concerning Cooperatives.*

For illustrative purpose, the criteria for Micro, Small, and Medium Sized Enterprises, as stipulated in *Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises*, are as follows:

(1) Criteria for Micro Enterprise are as follows:
   a. has a net asset, excluding land and building, up to IDR 50 million; or
   b. has an annual sales up to IDR 300 million.

(2) Criteria for Small Enterprise are as follows:
   a. has a net asset, excluding land and building, more than IDR 50 million up to IDR 500 million; or
   b. has an annual sales more than IDR 300 million up to IDR 2.5 billion.

(3) Criteria for Medium Enterprise are as follows:
   a. has a net asset, excluding land and building, more than IDR 500 million up to IDR 10 billion; or
   b. has an annual sales more than IDR 2.5 billion up to IDR 50 billion.

(4) The nominal amount as determined in paragraph 1, 2, and 3 above may be changed due to the economic condition by the Presidential Regulation.

7. Sector	:	**Fishery**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Indonesia reserves the right to adopt or maintain measures for the establishment and operation of foreign investment in the following sub-sectors: a. Partnership requirement: • Fish hatcheries and fish rearings: Sea Fish, Brackishwater Fish, Freshwater Fish (ISIC 0502) b. Recommendation or specific requirements by relevant authorities: • Cultivation of coral/ornamental coral reef (ISIC 0150)
Source of Measure	:	*Law No. 31 of 2004 as amended by Law No. 45 of 2009 concerning Fishery;* *Law No. 5 of 1983 concerning Indonesia's Exclusive Economic Zone;* *Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment;* *Minister of Marine Affairs and Fisheries Regulation No. PER.05/MEN/2008 as amended by No. PER.12/MEN/2009 regarding Capture Fishery Business;* *Minister of Marine Affairs and Fisheries Regulation No. PER.12/MEN/2007 regarding Aquaculture Business Licensing;*

Minister of Marine Affairs and Fisheries Regulation No. PER.05/MEN/2009 concerning Aquaculture Business Scale;

Minister of Forestry Decree No. 447/Kpts-II/2003 concerning Procedures on Exploitation or Capturing and Distribution of Wild Plants and Animals; and

Government policy.

8. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Most-Favored Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measure relating to sectors other than those recognized or that should have been recognized owing to the circumstances at the time of entry into force of Investment Chapter by the Government of Indonesia. Any sector classified explicitly in ISIC Rev.3 at the date of entry into force of this Agreement should have been recognized by the Government of Indonesia at that time.
Source of Measure	:	Government policy.

9. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	Indonesia reserves the right to maintain any existing measures with respect to foreign investors or investments that have been overlooked, provided that the measures involved are already in force at the date of entry into force of this Agreement. When an overlooked measure is identified, it will be promptly inserted into Annex 1 of Indonesia's Schedule. If an overlooked measure referred to in paragraph 1 is identified, Indonesia will provide the other Party with details of the measure and the opportunity for consultations at least 90 days before including it in its Schedule. Indonesia will not withdraw a right or benefit from an investor that has made an investment in accordance with its laws and regulations, through the addition of an overlooked measure to its Schedule.
Source of Measure	:	Government policy.

10. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Regional
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	National Treatment may not apply to measures relating to the procedural aspect of investment implementation licenses/permits [2] at the provincial level[3].
Source of Measure	:	*Law No. 23 of 2014 concerning Local Government;* *Provincial Regulations;* and Government policy.

[2] For illustrative purposes, this may include location permit and building permit.

[3] For purpose of this reservation, provincial level means the regional level of government.

11. Sector	:	**Manufacturing, Agriculture, Fishery, Forestry**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measure to address a food security emergency as declared under relevant legislation and only for the duration of the declared food security emergency.
Source of Measure	:	Article 33 of *the 1945 Constitution of the Republic of Indonesia;* *Law No. 18 of 2012 concerning Foods;* *Government Regulation No. 17 of 2015 concerning Food Security and Nutrition;* and Government policy.

12. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measure with respect to mode 3 of services.
Source of Measure	:	Government policy.

13. Sector	:	**All Sectors**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central and Regional
Type of Obligation	:	Most-Favored-Nation Treatment (Article 7.5)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measure related to more favorable treatment accorded to investors of a non-party and their investment resulting from: a) any existing or future preferential agreement or arrangement between or among ASEAN Member States. b) any existing agreement in force or signed prior to the date of entry into force of this Agreement; and c) any international agreement in force or signed after the date of entry into force of this Agreement, involving: i. aviation; ii. fisheries; or iii. maritime matters, including salvage.
Source of Measure	:	Government policy.

14. Sector	:	**Manufacturing, Agriculture, Fishery, Forestry**
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4) Most-Favored-Nation (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measures on the following line of business: • Cultivation of marijuana (ISIC 0111) • Catching of fish species listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (ISIC 0500) • Lifting of valuable artifacts from shipwrecks (ISIC 6303) • Utilization (collection) of coral from nature for construction materials/lime/calcium, aquarium, and souvenirs/jewelry as well as living coral or dead coral (recently dead) coral from nature (ISIC 0500) • Chloral alkali making industry under mercury process (ISIC 2411) • Industry of pesticide active substances: Dichloro Diphenyl Trichloroethane (DDT), Aldrin, Endrin, Dieldrin, Chlordane, Heptachlor, Mirex, and Toxaphene (ISIC 2421) • Industrial chemical industry and Ozone Depleting Substances (BPO) : Polychlorinated Biphenyl (PCB), Hexachlorobenzene and Carbon Tetrachloride (CTC), Mthyl Chloroform, Methyl Bromide, Trichloro Fluoro

Methane (CFC-11), Dichloro Trifluoro Ethane (CFC-12), Trichloro Trifluoro Ethane (CFC-113), Dichloro Tetra Fluoro Ethane (CFC-114), Chloro Pentafluoro Ethane (CFC-115), Chloro Trifluoro Methane (CFC-13), Tetrachloro Difluoro Ethane (CFC-112), Pentachloro Fluoro Ethane (CFC-111), Chloro Heptafluoro Propane (CFC-217), Dichloro Hexafluoro Propane (CFC-216), Trichloro Pentafluoro Propane (CFC-215), Tetrachloro Tetrafluoro Propane (CFC-214), Pentachloro Trifluoro Propane (CFC-213), Hexchloro Difluoro Propane (CFC-211), Bromo Chloro Difluoro Methane (Halon-1211), Bromo Trifluoro Methane (Halon 1301), Dibromo Tetrafluoro Ethane (Halon-2402), R-500, R502 (ISIC 2411)

- Industry of chemicals listed in Schedule I of the Chemical Weapons Convention as incorporated in Appendix I to Law No. 9 of 2008 concerning Use of Chemicals as Chemical Weapons (ISIC 2411)
- Alcoholic hard liquor industry (ISIC 1551)
- Alcoholic beverages industry: Wine (ISIC 1552)
- Malt beverages industry (ISIC 1553).

Source of Measure : *Presidential Regulation of the Republic of Indonesia No. 44 of 2016 concerning Lists of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment;* and

Government policy.

15. Sector	:	**Energy**
Sub-Sector	:	Small Scale Power Plant (less than or equal to 10 MW) other than those provided in Entry 18 of Annex I
Industry Classification	:	ISIC 4010
Level of Government	:	Central
Type of Obligation	:	National Treatment (Article 7.4)
Description of Measure	:	Indonesia reserves the right to adopt or maintain any measure with respect to investment in small scale power plant (less than or equal to 10 MW).
Source of Measure	:	Government policy.

ANNEX II
SCHEDULE OF KOREA

EXPLANATORY NOTES

1. The Schedule of Korea to this Annex sets out, pursuant to Article 7.10 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which that Korea may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 7.4 (National Treatment);

(b) Article 7.5 (Most-Favored-Nation Treatment);

(c) Article 7.8 (Performance Requirements); or

(d) Article 7.9 (Senior Management and Board of Directors).

2. Each Schedule entry sets out the following elements:

(a) **Sector** refers to the sector for which the entry is made;

(b) **Obligations Concerned** specifies the article(s) referred to in paragraph 1 that, pursuant to Articles 7.10.2(Non-Conforming Measures), do not apply to the sectors, subsectors, or activities scheduled in the entry;

(c) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry; and

(d) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Articles 7.10.2(Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, subsectors, and activities identified in the **Description** element of that entry.

4. A **foreign person** means a foreign national or an enterprise organized under the laws of another country.

1. Sector: All Sectors

Obligations Concerned: National Treatment (Article 7.4)
Performance Requirements (Article 7.8)

Description: Korea reserves the right to adopt, with respect to the establishment or acquisition of an investment, any measure that is necessary for the maintenance of public order pursuant to Article 4 of the *Foreign Investment Promotion* Act (2018) and Article 5 of the *Enforcement Decree of the Foreign Investment Promotion Act* (2018), provided that the measure:

(a) is applied in accordance with the procedural requirements set out in the *Foreign Investment Promotion Act* (2018), *Enforcement Decree of the Foreign Investment Promotion Act* (2018), and other applicable law;

(b) is adopted or maintained only where the investment poses a genuine and sufficiently serious threat to the fundamental interests of society;

(c) is not applied in an arbitrary or unjustifiable manner;

(d) does not constitute a disguised restriction on investment; and

(e) is proportional to the objective it seeks to achieve.

Existing Measures: *Foreign Investment Promotion Act* (Law No. 16479, August 20, 2019), Article 4

Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 30170, October 29, 2019), Article 5

2. Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the transfer or disposition of equity interests or assets held by state enterprises or governmental authorities. This entry does not apply to former private enterprises that are owned by the state as a result of corporate reorganization processes. For the purposes of this entry, a state enterprise shall include any enterprise created for the sole purpose of selling or disposing of equity interests or assets of state enterprise or governmental authorities.
Existing Measures:	*Financial Investment Services and Capital Markets Act* (Law No. 16191, December 31, 2018), Article 168

3. Sector:	All sectors
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the defense industry.
Existing Measures:	*Foreign Investment Promotion Act* *Defense Acquisition Program Act*

4. Sector:	All sectors
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the critical technology, which is defined in *Act on Prevention of Divulgence and Protection of Industrial Technology*.
Existing Measures:	*Act on Prevention of Divulgence and Protection of Industrial Technology* *Enforcement Decree of the Act on Prevention of Divulgence and Protection of Industrial Technology* *Foreign Investment Promotion Act* *Enforcement Decree of the Foreign Investment Promotion Act*

5. Sector:	All (Unrecognized or Technically Unfeasible Services)
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure relating to investment in or the supply of services other than those recognized or other than those that should have been recognized by the Government of Korea owing to the circumstances at the time of entry into force of this Agreement. Any services classified positively and explicitly in KSIC or CPC, at the time of entry into force of the Agreement should have been recognized by the Government of Korea at that time. Korea reserves the right to adopt or maintain any measure relating to investment in or the supply of services which were not technically feasible at the time of entry into force of this Agreement.

6. Sector: Acquisition of Land

Obligations Concerned: National Treatment (Article 7.4)

Description: Korea reserves the right to adopt or maintain any measure with respect to the acquisition of land by foreign persons, except that a juridical person shall continue to be permitted to acquire land where the juridical person:

1. is not deemed foreign under Article 2 of the *Act on Report on Real Estate Transactions, etc.*, and

2. is deemed foreign under the *Act on Report on Real Estate Transactions, etc.* or is a branch of a foreign juridical person subject to approval or notification in accordance with the *Act on Report on Real Estate Transactions, etc.*, if the land is to be used for any of the following legitimate business purposes:

    (a) land used for ordinary business activities;

    (b) land used for housing for senior management; and

    (c) land used for fulfilling land-holding requirements stipulated by pertinent laws.

Korea reserves the right to adopt or maintain any measure with respect to the acquisition of farmland by foreign persons.

Existing Measures: *Act on Report on Real Estate Transactions, etc.* (Law No. 14569, February 8, 2017), Articles 2, 3, 7, 8, 9 and 11

Farmland Act (Law No. 16652, November 26, 2019), Article 6

7. Sector:	Firearms, Swords, Explosives, and Similar Items
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the firearms, swords, explosives, gas sprays, electric shocks, and crossbows sector, including the manufacture, use, sale, storage, transport, import, export, and possession of firearms, swords, explosives, gas sprays, electric shocks, and crossbows.

8. Sector:	Disadvantaged Groups
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure that accords rights or preferences to socially or economically disadvantaged groups, such as the disabled, persons who have rendered distinguished services to the state, and ethnic minorities.

9. Sector:	State-Owned National Electronic/Information System
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure affecting the administration and operation of any state-owned electronic information system that contains proprietary government information or information gathered pursuant to the regulatory functions and powers of the government.

10. Sector: All Sectors

Obligations Concerned: Most-Favored-Nation Treatment (Article 7.5)

Description: Korea reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement[1].

Korea reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries;

(c) maritime matters, including salvage;

(d) railroad transportation; or

(e) telecommunications.

[1] For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

11. Sector:	Atomic Energy - Nuclear Power Generation; Manufacturing and Supply of Nuclear Fuel; Nuclear Materials; Radioactive Waste Treatment and Disposal (including treatment and disposal of spent and irradiated nuclear fuel); Radioisotope and Radiation Generation Facilities; Monitoring Services for Radiation; Services Related to Nuclear Energy; Planning, Maintenance, and Repair Services
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the atomic energy industry.

12. Sector:	Energy Industry - Electric Power Generation other than Nuclear Power Generation; Electric Power Transmission, Distribution, and Sales; Electricity Business
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to electric power generation, transmission, distribution, and sales. Any such measure shall not decrease the level of foreign ownership permitted in the electric power industry as provided by the entry in Korea's Schedule to Annex I related to Energy Industry (electric power). Notwithstanding this entry, Korea shall not adopt or maintain any measure inconsistent with Article 7.8.1(f) (Performance Requirement – technology transfer).

13. Sector:	Energy Industry - Gas Industry
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the import and wholesale distribution of natural gas and the operation of terminals and the national high-pressure pipeline network. Any such measure shall not decrease the level of foreign ownership permitted in the gas industry as provided by the entry in Korea's Schedule to Annex I related to Energy Industry (gas industry).

14. Sector:	Fishing
Obligations Concerned:	National Treatment (Article 7.4)
Description:	Korea reserves the right to adopt or maintain any measure with respect to fishing activities in Korea's territorial waters and Exclusive Economic Zone.

15. Sector:	Cultural Heritage
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the conservation, reconstruction, and restoration of cultural heritage and properties, including the excavation, appraisal, or dealing of cultural heritage and properties.

16. Sector:	Manufacturing of Liquor
Obligations Concerned:	Performance Requirements (Article 7.8)
Description:	Korea reserves the right to adopt or maintain any measure with respect to manufacturing of liquor.

17. Sector:	All Services Sectors
Obligations Concerned:	National Treatment (Articles 7.4) Most-Favored-Nation Treatment (Articles 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure relating to investments in services sectors subject to the condition that they do not violate the obligations under the Chapter on Trade in Services.