

**FREE TRADE AGREEMENT**

**between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part**

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBURG,

THE REPUBLIC OF HUNGARY,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty on European Union and the Treaty on the Functioning of the European Union, hereinafter referred to as the 'Member States of the European Union',

and

THE EUROPEAN UNION,

of the one part, and

THE REPUBLIC OF KOREA, hereinafter referred to as 'Korea',

of the other part,

RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the Framework Agreement;

DESIRING to further strengthen their close economic relationship as part of and in a manner coherent with their overall relations, and convinced that this Agreement will create a new climate for the development of trade and investment between the Parties;

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

REAFFIRMING their commitment to the Charter of the United Nations signed in San Francisco on 26 June 1945 and the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948;

REAFFIRMING their commitment to sustainable development and convinced of the contribution of international trade to sustainable development in its economic, social and environmental dimensions, including economic development, poverty reduction, full and productive employment and decent work for all as well as the protection and preservation of the environment and natural resources;

RECOGNISING the right of the Parties to take measures necessary to achieve legitimate public policy objectives on the basis of the level of protection that they deem appropriate, provided that such measures do not constitute a means of unjustifiable discrimination or a disguised restriction on international trade, as reflected in this Agreement;

RESOLVED to promote transparency as regards all relevant interested parties, including the private sector and civil society organisations;

DESIRING to raise living standards, promote economic growth and stability, create new employment opportunities and improve the general welfare by liberalising and expanding mutual trade and investment;

SEEKING to establish clear and mutually advantageous rules governing their trade and investment and to reduce or eliminate the barriers to mutual trade and investment;

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

DESIRING to strengthen the development and enforcement of labour and environmental laws and policies, promote basic workers' rights and sustainable development and implement this Agreement in a manner consistent with these objectives; and

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organisation, done on 15 April 1994 (hereinafter referred to as the 'WTO Agreement') and other multilateral, regional and bilateral agreements and arrangements to which they are party;

HAVE AGREED AS FOLLOWS:

## CHAPTER ONE

### OBJECTIVES AND GENERAL DEFINITIONS

#### Article 1.1

##### Objectives

1. The Parties hereby establish a free trade area on goods, services, establishment and associated rules in accordance with this Agreement.
2. The objectives of this Agreement are:
  - (a) to liberalise and facilitate trade in goods between the Parties, in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as 'GATT 1994');
  - (b) to liberalise trade in services and investment between the Parties, in conformity with Article V of the General Agreement on Trade in Services (hereinafter referred to as 'GATS');
  - (c) to promote competition in their economies, particularly as it relates to economic relations between the Parties;
  - (d) to further liberalise, on a mutual basis, the government procurement markets of the Parties;
  - (e) to adequately and effectively protect intellectual property rights;
  - (f) to contribute, by removing barriers to trade and by developing an environment conducive to increased investment flows, to the harmonious development and expansion of world trade;
  - (g) to commit, in the recognition that sustainable development is an overarching objective, to the development of international trade in such a way as to contribute to the objective of sustainable development and strive to ensure that this objective is integrated and reflected at every level of the Parties' trade relationship; and
  - (h) to promote foreign direct investment without lowering or reducing environmental, labour or occupational health and safety standards in the application and enforcement of environmental and labour laws of the Parties.

#### Article 1.2

##### General definitions

Throughout this Agreement, references to:

the Parties mean, on the one hand, the European Union or its Member States or the European Union and its Member States within their respective areas of competence as derived from the

Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as the 'EU Party'), and on the other hand, Korea;

the Framework Agreement mean the Framework Agreement for Trade and Cooperation between the European Community and its Member States, on the one hand, and the Republic of Korea, on the other hand, signed at Luxembourg on 28 October 1996 or any agreement updating, amending or replacing it; and

the Customs Agreement mean the Agreement between the European Community and the Republic of Korea on Cooperation and Mutual Administrative Assistance in Customs Matters, signed at Brussels on 10 April 1997.

## CHAPTER TWO

### NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

#### SECTION A

##### Common provisions

#### Article 2.1

##### Objective

The Parties shall progressively and reciprocally liberalise trade in goods over a transitional period starting from the entry into force of this Agreement, in accordance with this Agreement and in conformity with Article XXIV of GATT 1994.

#### Article 2.2

##### Scope and coverage

This Chapter shall apply to trade in goods <sup>(1)</sup> between the Parties.

#### Article 2.3

##### Customs duty

For the purposes of this Chapter, a customs duty includes any duty or charge of any kind imposed on, or in connection with, the importation of a good, including any form of surtax or surcharge imposed on, or in connection with, such importation <sup>(2)</sup>. A customs duty does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article 2.8 in respect of the like domestic good or in respect of an article from which the imported good has been manufactured or produced in whole or in part;
- (b) duty imposed pursuant to a Party's law consistently with Chapter Three (Trade Remedies);
- (c) fee or other charge imposed pursuant to a Party's law consistently with Article 2.10; or

<sup>(1)</sup> For the purposes of this Agreement, goods means products as understood in GATT 1994 unless otherwise provided in this Agreement.

<sup>(2)</sup> The Parties understand that this definition is without prejudice to the treatment that the Parties, in line with the WTO Agreement, may accord to trade conducted on a most-favoured-nation basis.

- (d) duty imposed pursuant to a Party's law consistently with Article 5 of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the 'Agreement on Agriculture').

#### Article 2.4

##### **Classification of goods**

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature interpreted in conformity with the Harmonised System of the International Convention on the Harmonised Commodity Description and Coding System, done at Brussels on 14 June 1983 (hereinafter referred to as the 'HS').

#### SECTION B

##### **Elimination of customs duties**

#### Article 2.5

##### **Elimination of customs duties**

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

2. For each good, the base rate of customs duties, to which the successive reductions are to be applied under paragraph 1, shall be that specified in the Schedules included in Annex 2-A.

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

4. Three years after the entry into force of this Agreement, on the request of either Party, the Parties shall consult to consider accelerating and broadening the scope of the elimination of customs duties on imports between them. A decision by the Parties in the Trade Committee, following such consultations, on the acceleration or broadening of the scope of the elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their Schedules included in Annex 2-A for that good.

#### Article 2.6

##### **Standstill**

Except as otherwise provided in this Agreement, including as explicitly set out in each Party's Schedule included in Annex 2-A, neither Party may increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party. This shall not preclude that either Party may raise a

customs duty to the level established in its Schedule included in Annex 2-A following a unilateral reduction.

#### Article 2.7

##### **Administration and implementation of tariff-rate quotas**

1. Each Party shall administer and implement the tariff-rate quotas (hereinafter referred to as 'TRQs') set out in Appendix 2-A-1 of its Schedule included in Annex 2-A in accordance with Article XIII of GATT 1994, including its interpretative notes and the Agreement on Import Licensing Procedures, contained in Annex 1A to the WTO Agreement.

2. Each Party shall ensure that:

(a) its procedures for administering its TRQs are transparent, made available to the public, timely, non-discriminatory, responsive to market conditions, minimally burdensome to trade, and reflect end-user preferences;

(b) any person of a Party that fulfils the importing Party's legal and administrative requirements shall be eligible to apply and to be considered for a TRQ allocation by the Party. Unless the Parties otherwise agree by decision of the Committee on Trade in Goods, any processor, retailer, restaurant, hotel, food service distributor or institution, or any other person is eligible to apply for, and to be considered to receive, a TRQ allocation. Any fees charged for services related to an application for a TRQ allocation shall be limited to the actual cost of the services rendered;

(c) except as specified in Appendix 2-A-1 of its Schedule included in Annex 2-A, it does not allocate any portion of a TRQ to a producer group, condition access to a TRQ allocation on the purchase of domestic production, or limit access to a TRQ allocation to processors; and

(d) it allocates TRQs in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request. Except as otherwise stipulated in the provisions for each TRQ and the applicable tariff line in Appendix 2-A-1 of a Party's Schedule included in Annex 2-A, each TRQ allocation shall be valid for any item or mixture of items subject to a particular TRQ, regardless of the item's or mixture's specification or grade, and shall not be conditioned on the item's or mixture's intended end-use or package size.

3. Each Party shall identify the entities responsible for administering its TRQs.

4. Each Party shall make every effort to administer its TRQs in a manner that allows importers to fully utilise TRQ quantities

5. Neither Party may condition application for, or utilisation of, TRQ allocations on the re-export of a good.

6. On the written request of either Party, the Parties shall consult regarding a Party's administration of its TRQs.

7. Except as otherwise provided in Appendix 2-A-1 of its Schedule included in Annex 2-A, each Party shall make the entire quantity of the TRQ established in that Appendix available to applicants beginning on the date of entry into force of this Agreement during the first year, and on the anniversary of the entry into force of this Agreement of each year thereafter. Over the course of each year, the importing Party's administering authority shall publish, in a timely fashion on its designated publicly available Internet site, utilisation rates and remaining quantities available for each TRQ.

#### SECTION C

##### **Non-tariff measures**

###### *Article 2.8*

##### **National treatment**

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

###### *Article 2.9*

##### **Import and export restrictions**

Neither Party may adopt or maintain any prohibition or restriction other than duties, taxes or other charges on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, in accordance with Article XI of GATT 1994 and its interpretative notes. To this end, Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

###### *Article 2.10*

##### **Fees and other charges on imports**

Each Party shall ensure that all fees and charges of whatever character (other than customs duties and the items that are excluded from the definition of a customs duty under Article 2.3(a), (b) and (d)) imposed on, or in connection with, importation are limited in amount to the approximate cost of services rendered, are not calculated on an ad valorem basis, and do not represent an indirect protection to domestic goods or taxation of imports for fiscal purposes.

###### *Article 2.11*

##### **Duties, taxes or other fees and charges on exports**

Neither Party may maintain or institute any duties, taxes or other fees and charges imposed on, or in connection with, the exportation of goods to the other Party, or any internal taxes, fees and charges on goods exported to the other Party that are in excess of those imposed on like goods destined for internal sale.

###### *Article 2.12*

##### **Customs valuation**

The Agreement on Implementation of Article VII of GATT 1994 contained in Annex 1A to the WTO Agreement (here-

inafter referred to as the 'Customs Valuation Agreement'), is incorporated into and made part of this Agreement, *mutatis mutandis*. The reservations and options provided for in Article 20 and paragraphs 2 through 4 of Annex III of the Customs Valuation Agreement shall not be applicable.

###### *Article 2.13*

##### **State trading enterprises**

1. The Parties affirm their existing rights and obligations under Article XVII of GATT 1994, its interpretative notes and the Understanding on the Interpretation of Article XVII of GATT 1994, contained in Annex 1A to the WTO Agreement which are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Where a Party requests information from the other Party on individual cases of state trading enterprises, the manner of their operation and the effect of their operations on bilateral trade, the requested Party shall have regard to the need to ensure maximum transparency possible without prejudice to Article XVII.4(d) of GATT 1994 on confidential information

###### *Article 2.14*

##### **Elimination of sectoral non-tariff measures**

1. The Parties shall implement their commitments on sector-specific non-tariff measures on goods in accordance with the commitments set out in Annexes 2-B through 2-E.

2. Three years after the entry into force of this Agreement and on the request of either Party, the Parties shall consult to consider broadening the scope of their commitments on sector-specific non-tariff measures on goods.

#### SECTION D

##### **Specific exceptions related to goods**

###### *Article 2.15*

##### **General exceptions**

1. The Parties affirm that their existing rights and obligations under Article XX of GATT 1994 and its interpretative notes, which are incorporated into and made part of this Agreement, shall apply to trade in goods covered by this Agreement, *mutatis mutandis*.

2. The Parties understand that before taking any measures provided for in subparagraphs (i) and (j) of Article XX of GATT 1994, the Party intending to take the measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days of supplying such

information, the Party may apply measures under this Article on the good concerned. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.

#### SECTION E

##### **Institutional provisions**

###### *Article 2.16*

##### **Committee on Trade in Goods**

1. The Committee on Trade in Goods established pursuant to Article 15.2.1 (Specialised Committees) shall meet on the request of a Party or of the Trade Committee to consider any matter arising under this Chapter and comprise representatives of the Parties.

2. The Committee's functions shall include:

- (a) promoting trade in goods between the Parties, including through consultations on accelerating and broadening the scope of tariff elimination and broadening of the scope of commitments on non-tariff measures under this Agreement and other issues as appropriate; and
- (b) addressing tariff and non-tariff measures to trade in goods between the Parties and, if appropriate, referring such matters to the Trade Committee for its consideration,

in so far as these tasks have not been entrusted to the relevant Working Groups established pursuant to Article 15.3.1 (Working Groups).

###### *Article 2.17*

##### **Special provisions on administrative cooperation**

1. The Parties agree that administrative cooperation is essential for the implementation and the control of preferential tariff treatment granted under this Chapter and underline their commitments to combat irregularities and fraud in customs and related matters.

2. Where a Party has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or irregularities or fraud, on the request of that Party, the Customs Committee shall meet within 20 days of such request to seek, as a matter of urgency, to resolve the situation. The consultations held within the framework of the Customs Committee will be considered as fulfilling the same function as consultation under Article 14.3 (Consultations).

#### CHAPTER THREE

##### **TRADE REMEDIES**

#### SECTION A

##### ***Bilateral safeguard measures***

###### *Article 3.1*

##### **Application of a bilateral safeguard measure**

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, originating goods of a Party are being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing like or directly competitive goods, the importing Party may adopt measures provided for in paragraph 2 in accordance with the conditions and procedures laid down in this Section.

2. The importing Party may take a bilateral safeguard measure which:

- (a) suspends further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or
- (b) increases the rate of customs duty on the good to a level which does not exceed the lesser of:
  - (i) the MFN applied rate of customs 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 included in Annex 2-A (Elimination of Customs Duties) pursuant to Article 2.5.2 (Elimination of Customs Duties).

###### *Article 3.2*

##### **Conditions and limitations**

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

2. A Party shall apply a bilateral safeguard measure only following an investigation by its competent authorities in accordance with Articles 3 and 4.2(c) of the Agreement on Safeguards contained in Annex 1A to the WTO Agreement (hereinafter referred to as the 'Agreement on Safeguards') and to this end, Articles 3 and 4.2(c) of the Agreement on Safeguards are incorporated into and made 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 Agreement on Safeguards and to this end, Article 4.2(a) of the Agreement on Safeguards is incorporated into and made part of this Agreement, *mutatis mutandis*.



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

5. Neither Party may apply a bilateral 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 two years 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 four years; or

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

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

#### Article 3.3

##### Provisional measures

In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles 3.2.2 and 3.2.3. The Party shall promptly refund any tariff increases if the investigation described in Article 3.2.2 does not result in a finding that the requirements of Article 3.1 are met. The duration of any provisional measure shall be counted as part of the period prescribed by Article 3.2.5(b).

#### Article 3.4

##### Compensation

1. A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to

result from the safeguard measure. The Party shall provide an opportunity for such consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days after the consultations begin, the Party whose goods are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the Party applying the safeguard measure.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the safeguard measure conforms to the provisions of this Agreement.

#### Article 3.5

##### Definitions

For the purposes of this Section:

serious injury and threat of serious injury shall be understood in accordance with Article 4.1(a) and (b) of the Agreement on Safeguards. To this end, Article 4.1(a) and (b) is incorporated into and made part of this Agreement, *mutatis mutandis*; and

transition period means a period for a good from the date of entry into force of this Agreement until 10 years from the date of completion of tariff reduction or elimination, as the case may be for each good.

#### SECTION B

##### Agricultural safeguard measures

#### Article 3.6

##### Agricultural safeguard measures

1. A Party may apply a measure in the form of a higher import duty on an originating agricultural good listed in its Schedule included in Annex 3, consistent with paragraphs 2 through 8, if the aggregate volume of imports of that good in any year exceeds a trigger level as set out in its Schedule included in Annex 3.

2. The duty under paragraph 1 shall not exceed the lesser of the prevailing MFN applied rate, or the MFN applied rate of duty in effect on the day immediately preceding the date this Agreement enters into force, or the tariff rate set out in the Party's Schedule included in Annex 3.

3. The duties each Party applies under paragraph 1 shall be set according to its Schedules included in Annex 3.

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

- (a) a bilateral safeguard measure in accordance with Article 3.1;
- (b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards; or
- (c) a special safeguard measure under Article 5 of the Agreement on Agriculture.

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

6. The implementation and operation of this Article may be the subject of discussion and review in the Committee on Trade in Goods referred to in Article 2.16 (Committee on Trade in Goods).

7. Neither Party may apply or maintain an agricultural safeguard measure on an originating agricultural good:

- (a) if the period specified in the agricultural safeguard provisions of its Schedule included in Annex 3 has expired; or
- (b) if the measure increases the in-quota duty on a good subject to a TRQ set out in Appendix 2-A-1 of its Schedule included in Annex 2-A (Elimination of Customs Duties).

8. Any supplies of the goods in question which were en route on the basis of a contract made before the additional duty is imposed under paragraphs 1 through 4 shall be exempted from any such additional duty, provided that they may be counted in the volume of imports of the goods in question during the following year for the purpose of triggering paragraph 1 in that year.

#### SECTION C

##### **Global safeguard measures**

###### *Article 3.7*

##### **Global safeguard measures**

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards. Unless otherwise provided in this Article, this Agreement does not confer any additional rights or impose any additional obligations on the Parties with regard to measures taken under Article XIX of GATT 1994 and the Agreement on Safeguards.

2. At the request of the other Party, and provided it has a substantial interest, the Party intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information on the initiation of a safeguard investigation, the provisional findings and the final findings of the investigation.

3. For the purposes of this Article, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the imported goods during the most recent three-year period of time, measured in terms of either absolute volume or value.

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

- (a) a bilateral safeguard measure in accordance with Article 3.1; and
- (b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards.

5. Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) for any matter arising under this Section.

#### SECTION D

##### **Anti-dumping and countervailing duties**

###### *Article 3.8*

##### **General provisions**

1. Except as otherwise provided for in this Chapter, the Parties maintain their rights and obligations under Article VI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the 'Anti-Dumping Agreement') and the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the 'SCM Agreement').

2. The Parties agree that anti-dumping and countervailing duties should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system as regards proceedings affecting goods originating in the other Party. For this purpose 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 allow interested parties sufficient time to make their comments.

3. In order to ensure the maximum efficiency in handling anti-dumping or countervailing duty investigations, and in particular considering the adequate right of defence, the use of English shall be accepted by the Parties for documents filed in anti-dumping or countervailing duty investigations. Nothing in this paragraph shall prevent Korea from requesting a clarification written in Korean if:

- (a) the meaning of the documents filed is not deemed reasonably clear by Korea's investigating authorities for the purposes of the anti-dumping or countervailing duty investigation; and



- (b) the request is strictly limited to the part which is not reasonably clear for the purposes of the anti-dumping or countervailing duty investigation.

4. Provided that it does not unnecessarily delay the conduct of the investigation, interested parties shall be granted the opportunity to be heard in order to express their views during the anti-dumping or countervailing duty investigations.

#### Article 3.9

##### Notification

1. After 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. After 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.

#### Article 3.10

##### Consideration of public interests

The Parties shall endeavour to consider the public interests before imposing an anti-dumping or countervailing duty.

#### Article 3.11

##### Investigation after termination resulting from a review

The Parties agree to examine, with special care, any application for initiation of an anti-dumping investigation on a good originating in the other Party and 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 3.12

##### Cumulative assessment

When imports from more than one country are simultaneously subject to anti-dumping or countervailing duty investigation, a Party shall examine, with special care, whether the cumulative assessment of the effect of the imports of 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 3.13

##### De-minimis standard applicable to review

1. Any measure subject to a review pursuant to Article 11 of the Anti-Dumping Agreement shall be terminated where it is determined that the likely recurring dumping margin is less than the *de-minimis* threshold set out in Article 5.8 of the Anti-Dumping Agreement.

2. When determining individual margins pursuant to Article 9.5 of the Anti-Dumping Agreement, no duty shall be imposed on exporters or producers in the exporting Party for which it is determined, on the basis of representative export sales, that the dumping margin is less than the *de-minimis* threshold set out in Article 5.8 of the Anti-Dumping Agreement.

#### Article 3.14

##### Lesser duty rule

Should a Party decide to impose an anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, and it should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

#### Article 3.15

##### Dispute settlement

Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) for any matter arising under this Section.

#### SECTION E

##### Institutional provisions

#### Article 3.16

##### Working Group on Trade Remedy Cooperation

1. The Working Group on Trade Remedy Cooperation established pursuant to Article 15.3.1 (Working Groups) is a forum for dialogue for trade remedy cooperation.

2. The functions of the Working Group shall be to:

- (a) enhance a Party's knowledge and understanding of the other Party's trade remedy laws, policies and practices;
- (b) oversee the implementation of this Chapter;
- (c) improve cooperation between the Parties' authorities having responsibility for matters on trade remedies;
- (d) provide a forum for the Parties to exchange information on issues relating to anti-dumping, subsidies and countervailing measures and safeguards;

(e) provide a forum for the Parties to discuss other relevant topics of mutual interest including;

(i) international issues relating to trade remedies, including issues relating to the WTO Doha Round Rules negotiations; and

(ii) practices by the Parties' competent authorities in anti-dumping, and countervailing duty investigations such as the application of 'facts available' and verification procedures; and

(f) cooperate on any other matters that the Parties agree as necessary.

3. The Working Group shall normally meet annually and, if necessary, additional meetings could be organised at the request of either Party.

#### CHAPTER FOUR

#### TECHNICAL BARRIERS TO TRADE

##### Article 4.1

#### Affirmation of the TBT Agreement

The Parties affirm their existing rights and obligations with respect to each other under the Agreement on Technical Barriers to Trade, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the 'TBT Agreement') which is incorporated into and made part of this Agreement, *mutatis mutandis*.

##### Article 4.2

#### Scope and definitions

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures as defined in the TBT Agreement that may affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies; or

(b) sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the 'SPS Agreement').

3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply.

##### Article 4.3

#### Joint cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they may establish regulatory dialogues at both the horizontal and sectoral levels.

2. In their bilateral cooperation, the Parties shall seek to identify, develop and promote trade facilitating initiatives which may include, but are not limited to:

(a) reinforcing regulatory cooperation through, for example, the exchange of information, experiences and data and scientific and technical cooperation with a view to improving the quality and level of their technical regulations and making efficient use of regulatory resources;

(b) where appropriate, simplifying technical regulations, standards and conformity assessment procedures;

(c) where the Parties agree, and where appropriate, for example where no international standard exists, avoiding unnecessary divergence in approach to regulations and conformity assessment procedures, and working towards the possibility of converging or aligning technical requirements; and

(d) promoting and encouraging bilateral cooperation between their respective organisations, public or private, responsible for metrology, standardisation, testing, certification and accreditation.

3. On request, a Party shall give due consideration to proposals that the other Party makes for cooperation under the terms of this Chapter.

##### Article 4.4

#### Technical regulations

1. The Parties agree to make best use of good regulatory practice, as provided for in the TBT Agreement. In particular, the Parties agree

(a) to fulfil the transparency obligations of the Parties as indicated in the TBT Agreement;

(b) to use relevant international standards as a basis for technical regulations including conformity assessment procedures, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, and where international standards have not been used as a basis, to explain on request to the other Party the reasons why such standards have been judged inappropriate or ineffective for the aim pursued;

- (c) when a Party has adopted or is proposing to adopt a technical regulation, to provide the other Party on request with available information regarding the objective, legal basis and rationale for the technical regulation;
- (d) to establish mechanisms for providing improved information on technical regulations (including through a public website) to the other Party's economic operators, and in particular to provide written information, and as appropriate and available, written guidance on compliance with their technical regulations to the other Party or its economic operators upon request without undue delay;
- (e) to take appropriate consideration of the other Party's views where a part of the process of developing a technical regulation is open to public consultation, and on request to provide written responses to the comments made by the other Party;
- (f) when making notifications in accordance with the TBT Agreement, to allow at least 60 days following the notification for the other Party to provide comments in writing on the proposal; and
- (g) to leave sufficient time between the publication of technical regulations and their entry into force for economic operators of the other Party to adapt, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise, and where practicable to give appropriate consideration to reasonable requests for extending the comment period.

2. Each Party shall ensure that economic operators and other interested persons of the other Party are allowed to participate in any formal public consultative process concerning development of technical regulations, on terms no less favourable than those accorded to its own legal or natural persons.

3. Each Party shall endeavour to apply technical regulations uniformly and consistently throughout its territory. If Korea notifies the EU Party of an issue of trade that appears to arise from variations in the legislation of the Member States of the European Union that Korea considers not to be compatible with the Treaty on the Functioning of the European Union, the EU Party will make its best endeavours to address the issue in a timely manner.

#### Article 4.5

##### Standards

1. The Parties reconfirm their obligations under Article 4.1 of the TBT Agreement to ensure that their standardising bodies accept and comply with the Code of Good Practice for the Preparation and Adoption of Standards in Annex 3 to the TBT Agreement, and also have regard to the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/rev.8, 23 May 2002, Section IX (Decision of the Committee on Principles

for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement), issued by the WTO Committee on Technical Barriers to Trade.

2. The Parties undertake to exchange information on:

- (a) their use of standards in connection with technical regulations;
- (b) each other's standardisation processes, and the extent of use of international standards as a base for their national and regional standards; and
- (c) cooperation agreements implemented by either Party on standardisation, for example information on standardisation issues in free trade agreements with third parties.

#### Article 4.6

##### Conformity assessment and accreditation

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party, including:

- (a) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;
- (b) accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
- (c) governmental designation of conformity assessment bodies located in the territory of the other Party;
- (d) recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;
- (e) voluntary arrangements between conformity assessment bodies in the territory of each Party; and
- (f) the importing Party's acceptance of a supplier's declaration of conformity.

2. Having regard in particular to those considerations, the Parties undertake:

- (a) to intensify their exchange of information on these and similar mechanisms with a view to facilitating the acceptance of conformity assessment results;
- (b) to exchange information on conformity assessment procedures, and in particular on the criteria used to select appropriate conformity assessment procedures for specific products;

(c) to exchange information on accreditation policy, and to consider how to make best use of international standards for accreditation, and international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation and the International Accreditation Forum; and

(d) in line with Article 5.1.2 of the TBT Agreement, to require conformity assessment procedures that are not more strict than necessary.

3. Principles and procedures established in respect of development and adoption of technical regulations under Article 4.4 with a view to avoiding unnecessary obstacles to trade and ensuring transparency and non-discrimination shall also apply in respect of mandatory conformity assessment procedures.

#### Article 4.7

##### Market surveillance

The Parties undertake to exchange views on market surveillance and enforcement activities.

#### Article 4.8

##### Conformity assessment fees

The Parties reaffirm their obligation under Article 5.2.5 of the TBT Agreement, that fees for mandatory conformity assessment of imported products shall be equitable in relation to the fees charged for conformity assessment of like products of national origin or originating in other countries, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body, and undertake to apply this principle in the areas covered by this Chapter.

#### Article 4.9

##### Marking and labelling

1. The Parties note the provision of paragraph 1 of Annex 1 of the TBT Agreement, that a technical regulation may include or deal exclusively with marking or labelling requirements, and agree that where their technical regulations contain mandatory marking or labelling, they will observe the principles of Article 2.2 of the TBT Agreement, that technical regulations should not be prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfil a legitimate objective.

2. In particular, the Parties agree that where a Party requires mandatory marking or labelling of products:

(a) the Party shall endeavour to minimise its requirements for marking or labelling other than marking or labelling

relevant to consumers or users of the product. Where labelling for other purposes, for example, for fiscal purposes is required, such a requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfil a legitimate objective;

(b) the Party may specify the form of labels or markings, but shall not require any prior approval, registration or certification in this regard. This provision is without prejudice to the right of the Party to require prior approval of the specific information to be provided on the label or marking in the light of the relevant domestic regulation;

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

(d) the Party shall remain free to require that the information on the marks or labels be in a specified language. Where there is an international system of nomenclature accepted by the Parties, this may also be used. The simultaneous use of other languages shall not be prohibited, provided that, either the information provided in the other languages shall be identical to that provided in the specified language, or that the information provided in the additional language shall not constitute a deceptive statement regarding the product; and

(e) the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

#### Article 4.10

##### Coordination mechanism

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

2. The Coordinator's functions shall include:

(a) monitoring the implementation and administration of this Chapter, promptly addressing any issue that either Party raises related to the development, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures, and upon either Party's request, consulting on any matter arising under this Chapter;

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

(c) arranging the establishment of regulatory dialogues as appropriate in accordance with Article 4.3;

(d) arranging the establishment of working groups, which may include or consult with non-governmental experts and stakeholders as mutually agreed by the Parties;

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

(f) reviewing this Chapter in light of any developments under the TBT Agreement.

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

## CHAPTER FIVE

### SANITARY AND PHYTOSANITARY MEASURES

#### Article 5.1

##### Objective

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

2. Furthermore, this Chapter aims to enhance cooperation between the Parties on animal welfare issues, taking into consideration various factors such as livestock industry conditions of the Parties.

#### Article 5.2

##### Scope

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

#### Article 5.3

##### Definition

For the purposes of this Chapter, sanitary or phytosanitary measure means any measure defined in paragraph 1 of Annex A of the SPS Agreement.

#### Article 5.4

##### Rights and obligations

The Parties affirm their existing rights and obligations under the SPS Agreement.

#### Article 5.5

##### Transparency and exchange of information

The Parties shall:

(a) pursue transparency as regards sanitary and phytosanitary measures applicable to trade;

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

(c) exchange information on matters related to the development and application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties with a view to minimising their negative trade effects; and

(d) communicate, upon request of a Party, the requirements that apply to the import of specific products.

#### Article 5.6

##### International standards

The Parties shall:

(a) cooperate, at the request of a Party, to develop a common understanding on the application of international standards in areas which affect, or may affect trade between them with a view to minimising negative effects on trade between them; and

(b) cooperate in the development of international standards, guidelines and recommendations.

#### Article 5.7

##### Import requirements

1. The general import requirements of a Party shall apply to the entire territory of the other Party.

2. Additional specific import requirements may be imposed on the exporting Party or parts thereof based on the determination of the animal or plant health status of the exporting Party or parts thereof made by the importing Party in accordance with the SPS Agreement, the Codex Alimentarius Commission, the World Organisation for Animal Health (hereinafter referred to as the 'OIE') and the International Plant Protection Convention (hereinafter referred to as the 'IPPC') guidelines and standards.



*Article 5.8***Measures linked to animal and plant health**

1. The Parties shall recognise the concept of pest- or disease-free areas and areas of low pest or disease prevalence, in accordance with the SPS Agreement, OIE and IPPC standards, and shall establish an appropriate procedure for the recognition of such areas, taking into account any relevant international standard, guideline or recommendation.

2. When determining such areas, the Parties shall consider factors such as geographical location, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary controls in such areas.

3. The Parties shall establish close cooperation on the determination of pest- or disease-free areas and areas of low pest or disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the determination of such areas. The Parties shall endeavour to complete this confidence-building activity within about two years from the entry into force of this Agreement. The successful completion of the confidence-building cooperation shall be confirmed by the Committee on Sanitary and Phytosanitary Measures referred to in Article 5.10.

4. When determining such areas, the importing Party shall in principle base its own determination of the animal or plant health status of the exporting Party or parts thereof on the information provided by the exporting Party in accordance with the SPS Agreement, OIE and IPPC standards, and take into consideration the determination made by the exporting Party. In this connection, if a Party does not accept the determination made by the other Party, the Party not accepting the determination shall explain the reasons and shall be ready to enter into consultations.

5. The exporting Party shall provide necessary evidence in order to objectively demonstrate to the importing Party that such areas are, and are likely to remain, pest- or disease-free areas and areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.

*Article 5.9***Cooperation on animal welfare**

The Parties shall:

- (a) exchange information, expertise and experiences in the field of animal welfare and adopt a working plan for such activities; and
- (b) cooperate in the development of animal welfare standards in international fora, in particular with respect to the stunning and slaughter of animals.

*Article 5.10***Committee on sanitary and phytosanitary measures**

1. The Committee on Sanitary and Phytosanitary Measures established pursuant to Article 15.2.1 (Specialised Committees) may:

- (a) develop the necessary procedures or arrangements for the implementation of this Chapter;
- (b) monitor the progress of the implementation of this Chapter;
- (c) confirm the successful completion of the confidence-building activity referred to in Article 5.8.3;
- (d) develop procedures for the approval of establishments for products of animal origin and, where appropriate, of production sites for products of plant origin; and
- (e) provide a forum for discussion of problems arising from the application of certain sanitary or phytosanitary measures with a view to reaching mutually acceptable alternatives. In this connection, the Committee shall be convened as a matter of urgency, at the request of a Party, so as to carry out consultations.

2. The Committee shall be comprised of representatives of the Parties and shall meet once a year on a mutually agreed date. The venue of meetings shall also be mutually agreed. The agenda shall be agreed before the meetings. The chairmanship shall alternate between the Parties.

*Article 5.11***Dispute settlement**

Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) for any matter arising under this Chapter.

## CHAPTER SIX

**CUSTOMS AND TRADE FACILITATION***Article 6.1***Objectives and principles**

With the objectives of facilitating trade and promoting customs cooperation on a bilateral and multilateral basis, the Parties agree to cooperate and to adopt and apply their import, export and transit requirements and procedures for goods on the basis of the following objectives and principles:

- (a) in order to ensure that import, export and transit requirements and procedures for goods are efficient and proportionate;
  - (i) each Party shall adopt or maintain expedited customs procedures while maintaining appropriate customs control and selection procedures;

- (ii) import, export and transit requirements and procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives;
  - (iii) each Party shall provide for clearance of goods with a minimum of documentation and make electronic systems accessible to customs users;
  - (iv) each Party shall use information technology that expedites procedures for the release of goods;
  - (v) each Party shall ensure that its customs authorities and agencies involved in border controls including import, export and transit matters, cooperate and coordinate their activities; and
  - (vi) each Party shall provide that the use of customs brokers is optional.
- (b) import, export and transit requirements and procedures shall be based on international trade and customs instruments and standards which the Parties have accepted;
- (i) international trade and customs instruments and standards shall be the basis for import, export and transit requirements and procedures, where such instruments and standards exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued; and
  - (ii) data requirements and processes shall be progressively used and applied in accordance with World Customs Organisation (hereinafter referred to as the 'WCO') Customs Data Model and related WCO recommendations and guidelines;
- (c) requirements and procedures shall be transparent and predictable for importers, exporters and other interested parties;
- (d) each Party shall consult in a timely manner with representatives of the trading community and other interested parties, including on significant new or amended requirements and procedures prior to their adoption;
- (e) risk management principles or procedures shall be applied to focus compliance efforts on transactions that merit attention;
- (f) each Party shall cooperate and exchange information for the purpose of promoting the application of, and compliance with, the trade facilitation measures agreed upon under this Agreement; and
- (g) measures to facilitate trade shall not prejudice the fulfilment of legitimate policy objectives, such as the protection of national security, health and the environment.

#### Article 6.2

##### Release of goods

1. Each Party shall adopt and apply simplified and efficient customs and other trade-related requirements and procedures in order to facilitate trade between the Parties.

2. Pursuant to paragraph 1, each Party shall ensure that its customs authorities, border agencies or other competent authorities apply requirements and procedures that:

- (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs and other trade-related laws and formalities. Each Party shall work to further reduce release time;
- (b) provide for advance electronic submission and eventual processing of information before physical arrival of goods, 'pre-arrival processing', to enable the release of goods on arrival;
- (c) allow importers to obtain the release of goods from customs before, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees <sup>(3)</sup>; and
- (d) allow goods to be released for free circulation at the point of arrival, without temporary transfer to warehouses or other facilities.

#### Article 6.3

##### Simplified customs procedure

The Parties shall endeavour to apply simplified import and export procedures for traders or economic operators which meet specific criteria decided by a Party, providing in particular more rapid release and clearance of goods, including advance electronic submission and processing of information before physical arrival of consignments, a lower incidence of physical inspections, and facilitation of trade with regard to, for example, simplified declarations with a minimum of documentation.

<sup>(3)</sup> A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit or some other appropriate instruments, covering the ultimate payment of the customs duties, taxes and fees in connection with the importation of the goods.

*Article 6.4***Risk management**

Each Party shall apply risk management systems, to the extent possible in an electronic manner, for risk analysis and targeting that enable its customs authorities to focus inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods. Each Party shall draw upon the revised International Convention on the Simplification and Harmonisation of Customs Procedures of 1999 (hereinafter referred to as the 'Kyoto Convention') and WCO Risk Management Guidelines for its risk management procedures.

*Article 6.5***Transparency**

1. Each Party shall ensure that its customs and other trade-related laws, regulations and general administrative procedures and other requirements, including fees and charges, are readily available to all interested parties, via an officially designated medium, and where feasible and possible, official website.

2. Each Party shall designate or maintain one or more inquiry or information points to address inquiries by interested persons concerning customs and other trade-related matters.

3. Each Party shall consult with, and provide information to, representatives of the trading community and other interested parties. Such consultations and information shall cover significant new or amended requirements and procedures and the opportunity to comment shall be provided prior to their adoption.

*Article 6.6***Advance rulings**

1. Upon written request from traders, each Party shall issue written advance rulings, through its customs authorities, prior to the importation of a good into its territory in accordance with its laws and regulations, on tariff classification, origin or any other such matters as the Party may decide.

2. Subject to any confidentiality requirements in its laws and regulations, each Party shall publish, e.g. on the Internet, its advance rulings on tariff classification and any other such matters as the Party may decide.

3. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective legislation on the matters referred to in paragraphs 1 and 2.

*Article 6.7***Appeal procedures**

1. Each Party shall ensure that with respect to its determinations on customs matters and other import, export and

transit requirements and procedures, persons concerned who are the subject of such determinations shall have access to review or appeal of such determinations. A Party may require that an appeal be initially heard by the same agency, its supervisory authority or a judicial authority prior to a review by a higher independent body, which may be a judicial authority or administrative tribunal.

2. The producer or exporter may provide, upon request of the reviewing authority to the producer or exporter, information directly to the Party conducting the administrative review. The exporter or producer providing the information may ask the Party conducting the administrative review to treat that information as confidential in accordance with its laws and regulations.

*Article 6.8***Confidentiality**

1. Any information provided by persons or authorities of a Party to the authorities of the other Party pursuant to the provisions of this Chapter shall, including where requested pursuant to Article 6.7, be treated as being of confidential or restricted nature, depending on the laws and regulations applicable in each Party. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws and regulations of the Party that received it.

2. Personal data may be exchanged only where the Party receiving the data undertakes to protect such data in a manner at least equivalent to that applicable to that particular case in the Party that may supply them. The person providing information shall not stipulate any requirements which are more onerous than those applicable to it in its own jurisdiction.

3. Information referred to in paragraph 1 shall not be used by the authorities of the Party which has received it for purposes other than those for which it was provided without the express permission of the person or authority providing it.

4. Other than with the express permission of the person or authority that provided it, the information referred to in paragraph 1 shall not be published or otherwise disclosed to any persons, except where obliged or authorised to do so under the laws and regulations of the Party that received it in connection with legal proceedings. The person or authority that provided the information shall be notified of such disclosure, wherever possible, in advance.

5. Where an authority of a Party requests information pursuant to the provisions of this Chapter, it shall notify the requested persons of any possibility of disclosure in connection with legal proceedings.

6. The requesting Party shall, unless otherwise agreed by the person who provided the information, wherever appropriate, use all available measures under the applicable laws and regulations of that Party to maintain the confidentiality of information and to protect personal data in case of applications by a third party or other authorities for the disclosure of the information concerned.

#### Article 6.9

##### **Fees and charges**

With regard to all fees and charges of whatever character other than customs duties and the items that are excluded from the definition of a customs duty under Article 2.3 (Customs duty) imposed in connection with importation or exportation:

- (a) fees and charges shall only be imposed for services provided in connection with the importation or exportation in question or for any formality required for undertaking such importation or exportation;
- (b) fees and charges shall not exceed the approximate cost of the service provided;
- (c) fees and charges shall not be calculated on an ad valorem basis;
- (d) fees and charges shall not be imposed with respect to consular services;
- (e) the information on fees and charges shall be published via an officially designated medium, and where feasible and possible, official website. This information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made; and
- (f) new or amended fees and charges shall not be imposed until information in accordance with subparagraph (e) is published and made readily available.

#### Article 6.10

##### **Pre-shipment inspections**

Neither Party shall require the use of pre-shipment inspections or their equivalent.

#### Article 6.11

##### **Post-clearance audit**

Each Party shall provide traders with the opportunity to benefit from the application of efficient post clearance audits. The application of post clearance audits shall not impose unwarranted or unjustified requirements or burdens on traders.

#### Article 6.12

##### **Customs valuation**

The Customs Valuation Agreement without the reservations and options provided for in Article 20 and paragraphs 2 through 4 of Annex III of the Customs Valuation Agreement shall be incorporated into and made part of this Agreement, *mutatis mutandis*.

#### Article 6.13

##### **Customs cooperation**

1. The Parties shall enhance their cooperation in customs and customs-related matters.
2. The Parties undertake to develop trade facilitation actions in customs matters taking account of the work done in this connection by international organisations. This may include testing of new customs procedures.
3. The Parties affirm their commitment to the facilitation of the legitimate movement of goods and shall exchange expertise on measures to improve customs techniques and procedures and on computerised systems in accordance with the provisions of this Agreement.
4. The Parties shall commit to:
  - (a) pursuing the harmonisation 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 harmonisation of customs laboratories methods;
  - (c) exchanging customs personnel;
  - (d) jointly organising training programmes 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 for preferential tariff treatment of imported goods;
  - (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, transhipped 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.

5. The Parties recognise that technical cooperation between them is fundamental to facilitating compliance with the obligations set forth in this Agreement and to achieving high levels of trade facilitation. The Parties, through their customs administrations, agree to develop a technical cooperation programme under mutually agreed terms as to the scope, timing and cost of cooperative measures in customs and customs-related areas.

6. Through the Parties' respective customs administrations and other border-related authorities, the Parties shall review relevant international initiatives on trade facilitation, including, inter alia, relevant work in the WTO and WCO, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives. The Parties shall work together to establish, wherever possible, common positions in international organisations in the field of customs and trade facilitation, notably in the WTO and WCO.

7. The Parties shall assist each other in implementation and enforcement of this Chapter, the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation, and their respective customs laws or regulations.

#### *Article 6.14*

##### **Mutual administrative assistance in customs matters**

1. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions laid down in the Protocol on Mutual Administrative Assistance in Customs Matters.

2. Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) under this Agreement for matters covered by Article 9.1 of the Protocol on Mutual Administrative Assistance in Customs Matters.

#### *Article 6.15*

##### **Customs contact points**

1. The Parties shall exchange lists of designated contact points for matters arising under this Chapter and the Protocol

concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation.

2. The contact points shall endeavour to resolve operational matters covered by this Chapter through consultations. If a matter cannot be resolved through the contact points, the matter shall be referred to the Customs Committee referred to in this Chapter.

#### *Article 6.16*

##### **Customs Committee**

1. The Customs Committee established pursuant to Article 15.2.1 (Specialised Committees) shall ensure the proper functioning of this Chapter and the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and the Protocol on Mutual Administrative Assistance in Customs Matters and examine all issues arising from their application. For matters covered by this Agreement, it shall report to the Trade Committee set up under Article 15.1.1 (Trade Committee).

2. The Customs Committee shall consist of representatives of the customs and other competent authorities of the Parties responsible for customs and trade facilitation matters, for the management of the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and the Protocol on Mutual Administrative Assistance in Customs Matters.

3. The Customs Committee shall adopt its rules of procedure and meet annually, the location of the meeting alternating between the Parties.

4. On the request of a Party, the Customs Committee shall meet to discuss and endeavour to resolve any difference that may arise between the Parties on matters as included in this Chapter and the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and the Protocol on Mutual Administrative Assistance in Customs Matters, including trade facilitation, tariff classification, origin of goods and mutual administrative assistance in customs matters, in particular relating to Articles 7 and 8 of the Protocol on Mutual Administrative Assistance in Customs Matters.

5. The Customs Committee may formulate resolutions, recommendations or opinions which it considers necessary for the attainment of the common objectives and sound functioning of the mechanisms established in this Chapter and the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and the Protocol on Mutual Administrative Assistance in Customs Matters.



## CHAPTER SEVEN

TRADE IN SERVICES, ESTABLISHMENT AND ELECTRONIC  
COMMERCE

## SECTION A

**General provisions***Article 7.1***Objective, scope and coverage**

1. The Parties, reaffirming their respective rights and obligations under the WTO Agreement, hereby lay down the necessary arrangements for progressive reciprocal liberalisation of trade in services and establishment and for cooperation on electronic commerce.

2. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement.

3. This Chapter shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

4. Consistent with this Chapter, each Party retains the right to regulate and to introduce new regulations to meet legitimate policy objectives.

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

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

*Article 7.2***Definitions**

For the purposes of this Chapter:

<sup>(4)</sup> 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 the terms of a specific commitment in this Chapter and its Annexes.

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

(b) measures adopted or maintained by a Party means measures taken by:

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

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

(c) person means either a natural person or a juridical person;

(d) natural person means a national of Korea or one of the Member States of the European Union according to its respective legislation;

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

(f) juridical person of a Party means:

(i) a juridical person set up in accordance with the laws of one of the Member States of the European Union or of Korea respectively, and having its registered office, central administration <sup>(5)</sup> or principal place of business in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply, or of Korea respectively. Should the juridical person have only its registered office or central administration in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply or of Korea, it shall not be considered as a juridical person of the European Union or of Korea respectively, unless it engages in substantive business operations <sup>(6)</sup> in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply or of Korea respectively; or

<sup>(5)</sup> Central administration means the head office where ultimate decision-making takes place.

<sup>(6)</sup> In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU Party understands the concept of 'effective and continuous link' with the economy of a Member State of the European Union enshrined in Article 48 of the Treaty as equivalent to the concept of 'substantive business operations' provided for in paragraph 6 of Article V of the GATS. Accordingly, for a juridical person set up in accordance with the laws of Korea and having only its registered office or central administration in the territory of Korea, the EU Party shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous link with the economy of Korea.

- (ii) in the case of establishment in accordance with Article 7.9(a), a juridical person owned or controlled by natural persons of the EU Party or of Korea respectively, or by a juridical person of the European Union or of Korea identified under subparagraph (i) respectively.

A juridical person is:

- (i) owned by persons of the EU Party or of Korea if more than 50 percent of the equity interest in it is beneficially owned by persons of the EU Party or of Korea respectively;
- (ii) controlled by persons of the EU Party or of Korea if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (iii) 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;
- (g) Notwithstanding subparagraph (f), shipping companies established outside the EU Party or Korea and controlled by nationals of a Member State of the European Union or of Korea respectively, shall also be covered by this Agreement, if their vessels are registered in accordance with the respective legislation of that Member State of the European Union or of Korea and carry the flag of a Member State of the European Union or of Korea <sup>(7)</sup>;
- (h) economic integration agreement means an agreement substantially liberalising trade in services and establishment pursuant to the WTO Agreement in particular Articles V and V bis of GATS;
- (i) 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;
- (j) computer reservation system (hereinafter referred to as 'CRS') services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (k) selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market

freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services, nor the applicable conditions; and

- (l) service supplier means any person that supplies or seeks to supply a service, including as an investor.

#### Article 7.3

#### **Committee on Trade in Services, Establishment and Electronic Commerce**

1. The Committee on Trade in Services, Establishment and Electronic Commerce established pursuant to Article 15.2.1 (Specialised Committees) shall comprise representatives of the Parties. The principal representative of the Parties for the Committee shall be an official of its authority responsible for the implementation of this Chapter.

2. The Committee shall:

- (a) supervise and assess the implementation of this Chapter;
- (b) consider issues regarding this Chapter that are referred to it by a Party; and
- (c) provide opportunities for relevant authorities to exchange information on prudential measures with respect to Article 7.46.

#### SECTION B

#### **Cross-border supply of services**

#### Article 7.4

#### **Scope and definitions**

1. This Section applies to measures of the Parties affecting the cross-border supply of all service sectors with the exception of:

- (a) audio-visual services <sup>(8)</sup>;
- (b) national maritime cabotage; and
- (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

<sup>(7)</sup> This subparagraph shall not apply to establishment.

<sup>(8)</sup> The exclusion of audiovisual services from the scope of this Section is without prejudice to the rights and obligations derived from the Protocol on Cultural Cooperation.

(i) aircraft repair and maintenance services;

*Article 7.5*

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

### **Market access**

(iii) CRS services; and

1. With respect to market access through the cross-border supply of services, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex 7-A.

(iv) other services auxiliary to air transport services, such as ground handling services, rental service of aircraft with crew and airport management services.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7-A, are defined as:

2. Measures affecting the cross-border supply of services include measures affecting:

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

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test <sup>(9)</sup>;

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

(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; and

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test <sup>(10)</sup>.

(d) the presence in a Party's territory of a service supplier of the other Party.

3. For the purposes of this Section:

*Article 7.6*

### **National treatment**

(a) cross-border supply of services is defined as the supply of a service:

1. In the sectors where market access commitments are inscribed in Annex 7-A 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 cross-border supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

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

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

2. 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.

(b) services includes any service in any sector except services supplied in the exercise of governmental authority; and

(c) 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.

<sup>(9)</sup> This subparagraph includes measures which require a service supplier of the other Party to have an establishment within the meaning of Article 7.9(a) or to be resident in a Party's territory as a condition for the cross-border supply of services.

<sup>(10)</sup> This subparagraph does not cover measures of a Party which limit inputs for the cross-border supply of services.

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

4. 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.

#### Article 7.7

##### Lists of commitments

1. The sectors liberalised by each Party pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and service suppliers of the other Party in those sectors are set out in the lists of commitments included in Annex 7-A.

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

#### Article 7.8

##### MFN treatment <sup>(11)</sup>

1. With respect to any measures covered by this Section affecting the cross-border supply of services, unless otherwise provided for in this Article, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any third country in the context of an economic integration agreement signed after the entry into force of this Agreement.

2. Treatment arising from a regional economic integration agreement granted by either Party to services and service suppliers of a third party shall be excluded from the obligation in paragraph 1, only if this treatment is granted under sectoral or horizontal commitments for which the regional economic integration agreement stipulates a significantly higher level of obligations than those undertaken in the context of this Section as set out in Annex 7-B.

3. Notwithstanding paragraph 2, the obligations arising from paragraph 1 shall not apply to treatment granted:

- (a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of GATS or its Annex on Financial Services;
- (b) under any international agreement or arrangement relating wholly or mainly to taxation; or
- (c) under measures covered by the MFN exemptions listed in Annex 7-C.

4. This Chapter shall not be so construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zone of services that are both locally produced and consumed.

#### SECTION C

##### Establishment

#### Article 7.9

##### Definitions

For the purposes of this Section:

- (a) establishment means:
  - (i) the constitution, acquisition or maintenance of a juridical person <sup>(12)</sup>; or
  - (ii) the creation or maintenance of a branch or representative office
    - within the territory of a Party for the purpose of performing an economic activity;
- (b) investor means any person that seeks to perform or performs an economic activity through setting up an establishment <sup>(13)</sup>;
- (c) economic activity includes any activities of an economic nature except activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators;
- (d) subsidiary of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party; and

<sup>(12)</sup> The terms 'constitution' and 'acquisition' of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

<sup>(13)</sup> Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor including the juridical person shall, nonetheless, through such establishment be accorded the treatment provided for investors under this Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the investor located outside the territory where the economic activity is performed.

<sup>(11)</sup> Nothing in this Article shall be interpreted as extending the scope of this Section.

- (e) branch of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

#### Article 7.10

##### Scope

With a view to improving the investment environment, and in particular the conditions of establishment between the Parties, this Section applies to measures by the Parties affecting establishment <sup>(14)</sup> in all economic activities with the exception of:

- (a) mining, manufacturing and processing <sup>(15)</sup> of nuclear materials;
- (b) production of, or trade in, arms, munitions and war material <sup>(16)</sup>;
- (c) audio-visual services <sup>(17)</sup>;
- (d) national maritime cabotage; and
- (e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services;
  - (iii) CRS services; and
  - (iv) other services auxiliary to air transport services, such as ground handling services, rental service of aircraft with crew and airport management services.

#### Article 7.11

##### Market access

1. With respect to market access through establishment, each Party shall accord to establishments and investors of the other Party treatment no less favourable than that provided for under

the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex 7-A.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7-A, are defined as:

- (a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or other establishment requirements such as economic needs test;
- (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test <sup>(18)</sup>;
- (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholdings or the total value of individual or aggregate foreign investment;
- (e) measures which restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity; and
- (f) limitations on the total number of natural persons, other than key personnel and graduate trainees as defined in Article 7.17, that may be employed in a particular sector or that an investor may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test.

#### Article 7.12

##### National treatment <sup>(19)</sup>

1. In the sectors inscribed in Annex 7-A, and subject to any conditions and qualifications set out therein, with respect to all measures affecting establishment, each Party shall accord to establishments and investors of the other Party treatment no less favourable than that it accords to its own like establishments and investors.

<sup>(14)</sup> Investment protection, other than the treatment deriving from Article 7.12, including investor-state dispute settlement procedures, is not covered by this Chapter.

<sup>(15)</sup> For greater certainty, processing of nuclear materials covers all the activities included in the International Standard Industrial Classification of all Economic Activities as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N 4, ISIC REV 3.1, 2002 code 2330.

<sup>(16)</sup> War material is limited to any product which is solely intended and made for military use in connection with the conduct of war or defence activities.

<sup>(17)</sup> The exclusion of audiovisual services from the scope of this Section is without prejudice to the rights and obligations derived from the Protocol on Cultural Cooperation.

<sup>(18)</sup> Subparagraphs (a) through (c) do not cover measures taken in order to limit the production of an agricultural product.

<sup>(19)</sup> This Article applies to measures governing the composition of boards of directors of an establishment, such as nationality and residency requirements.



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

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments or investors of the Party compared to like establishments or investors of the other Party.

4. 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 establishments or investors.

#### *Article 7.13*

##### **Lists of commitments**

1. The sectors liberalised by each Party pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to establishments and investors of the other Party in those sectors are set out in the lists of commitments included in Annex 7-A.

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

#### *Article 7.14*

##### **MFN treatment <sup>(20)</sup>**

1. With respect to any measures covered by this Section affecting establishment, unless otherwise provided for in this Article, each Party shall accord to establishments and investors of the other Party treatment no less favourable than that it accords to like establishments and investors of any third country in the context of an economic integration agreement signed after the entry into force of this Agreement <sup>(21)</sup>.

2. Treatment arising from a regional economic integration agreement granted by either Party to establishments and investors of a third party shall be excluded from the obligation in paragraph 1, only if this treatment is granted under sectoral or horizontal commitments for which the regional economic

integration agreement stipulates a significantly higher level of obligations than those undertaken in the context of this Section as set out in Annex 7-B.

3. Notwithstanding paragraph 2, the obligations arising from paragraph 1 shall not apply to treatment granted:

- (a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of GATS or its Annex on Financial Services;
- (b) under any international agreement or arrangement relating wholly or mainly to taxation; or
- (c) under measures covered by an MFN exemption listed in Annex 7-C.

4. This Chapter shall not be so construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zone of services that are both locally produced and consumed.

#### *Article 7.15*

##### **Other agreements**

Nothing in this Chapter shall be deemed to:

- (a) limit the rights of investors of the Parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which one of the Member States of the European Union and Korea are party; and
- (b) derogate from the international legal obligations of the Parties under those agreements that provide investors of the Parties with more favourable treatment than that provided for under this Agreement.

#### *Article 7.16*

##### **Review of the investment legal framework**

1. With a view to progressively liberalising investments, the Parties shall review the investment legal framework <sup>(22)</sup>, the investment environment and the flow of investment between them consistently with their commitments in international agreements no later than three years after the entry into force of this Agreement and at regular intervals thereafter.

<sup>(20)</sup> Nothing in this Article shall be interpreted as extending the scope of this Section.

<sup>(21)</sup> The obligation contained in this paragraph does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures.

<sup>(22)</sup> This includes this Chapter and Annexes 7-A and 7-C.

2. In the context of the review referred to in paragraph 1, the Parties shall assess any obstacles to investment that have been encountered and shall undertake negotiations to address such obstacles, with a view to deepening the provisions of this Chapter, including with respect to general principles of investment protection.

#### SECTION D

### *Temporary presence of natural persons for business*

#### Article 7.17

#### **Scope and definitions**

1. This Section applies to measures of the Parties concerning the entry into, and temporary stay in, their territories of key personnel, graduate trainees, business services sellers, contractual service suppliers and independent professionals subject to Article 7.1.5.

2. For the purposes of this Section:

(a) key personnel means natural persons employed within a juridical person of a Party other than a non-profit organisation and who are responsible for the setting up or the proper control, administration and operation of an establishment. Key personnel comprise business visitors responsible for setting up an establishment and intra-corporate transferees;

(i) business visitors means natural persons working in a senior position who are responsible for setting up an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party; and

(ii) intra-corporate transferees means natural persons who have been employed by a juridical person of a Party or have been partners in it (other than as majority shareholders) for at least one year and who are temporarily transferred to an establishment (including subsidiaries, affiliates or branches) in the territory of the other Party. The natural person concerned shall belong to one of the following categories.

#### Managers

Natural persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction

principally from the board of directors or shareholders of the business or their equivalents, including:

(A) directing the establishment or a department or sub-division thereof;

(B) supervising and controlling the work of other supervisory, professional or managerial employees; and

(C) having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

#### Specialists

Natural persons working within a juridical person who possess uncommon knowledge essential to the establishment's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

(b) graduate trainees means natural persons who have been employed by a juridical person of a Party for at least one year, who possess a university degree and who are temporarily transferred to an establishment in the territory of the other Party for career development purposes or to obtain training in business techniques or methods <sup>(23)</sup>;

(c) business service sellers means natural persons who are representatives of a service supplier of a Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party;

(d) contractual service suppliers means natural persons employed by a juridical person of a Party which has no establishment in the territory of the other Party and which has concluded a bona fide contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services <sup>(24)</sup>; and

<sup>(23)</sup> The recipient establishment may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training corresponding to the level of a university degree.

<sup>(24)</sup> The service contract referred to under this subparagraph shall comply with the laws, regulations and requirements of the Party where the contract is executed.

- (e) independent professionals means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a bona fide contract to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services <sup>(25)</sup>.

#### Article 7.18

##### Key personnel and graduate trainees

1. For every sector liberalised in accordance with Section C and subject to any reservations listed in Annex 7-A, each Party shall allow investors of the other Party to transfer to their establishment natural persons of that other Party, provided that such employees are key personnel or graduate trainees as defined in Article 7.17. The temporary entry and stay of key personnel and graduate trainees shall be permitted for a period of up to three years for intra-corporate transferees <sup>(26)</sup>, 90 days in any 12 month period for business visitors <sup>(27)</sup>, and one year for graduate trainees.

2. For every sector liberalised in accordance with Section C, the measures which a Party shall not maintain or adopt, unless otherwise specified in Annex 7-A, are defined as limitations on the total number of natural persons that an investor may transfer as key personnel or graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations <sup>(28)</sup>.

#### Article 7.19

##### Business service sellers

For every sector liberalised in accordance with Section B or C and subject to any reservations listed in Annex 7-A, each Party shall allow the temporary entry and stay of business service sellers for a period of up to 90 days in any 12 month period <sup>(29)</sup>.

#### Article 7.20

##### Contractual service supplier and independent professionals

1. The Parties reaffirm their respective obligations arising from their commitments under the GATS as regards the

<sup>(25)</sup> The service contract referred to under this subparagraph shall comply with the laws, regulations and requirements of the Party where the contract is executed.

<sup>(26)</sup> A Party may authorise an extension for the period allowed in conformity with the laws and regulations in force in its territory.

<sup>(27)</sup> This paragraph is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between Korea and one of the Member States of the European Union.

<sup>(28)</sup> Unless otherwise provided in Annex 7-A, neither Party may require that an establishment appoints to senior management positions natural persons of any particular nationality or having residency in its territory.

<sup>(29)</sup> This Article is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between Korea and one of the Member States of the European Union.

temporary entry and stay of contractual service suppliers and independent professionals.

2. No later than two years after the conclusion of the negotiations pursuant to Article XIX of GATS and to the Ministerial Declaration of the WTO Ministerial Conference adopted on 14 November 2001, the Trade Committee shall adopt a decision containing a list of commitments concerning the access of contractual service suppliers and independent professionals of a Party to the territory of the other Party. Taking into account the results of those GATS negotiations, the commitments shall be mutually beneficial and commercially meaningful.

#### SECTION E

##### Regulatory framework

##### Sub-section A

##### Provisions of general application

#### Article 7.21

##### Mutual recognition

1. Nothing in this Chapter shall prevent a Party from requiring that natural persons possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant representative professional bodies in their respective territories to jointly develop and provide recommendations on mutual recognition to the Trade Committee, for the purpose of the fulfilment, in whole or in part, by service suppliers and investors in services sectors, of the criteria applied by each Party for the authorisation, licensing, operation and certification of service suppliers and investors in services sectors and, in particular, professional services, including temporary licensing.

3. On receipt of a recommendation referred to in paragraph 2, the Trade Committee shall, within a reasonable time, review the recommendation with a view to determining whether it is consistent with this Agreement.

4. When, in conformity with the procedure set out in paragraph 3, a recommendation referred to in paragraph 2 has been found to be consistent with this Agreement and there is a sufficient level of correspondence between the relevant regulations of the Parties, the Parties shall, with a view to implementing that recommendation, negotiate, through their competent authorities, an agreement on mutual recognition (hereinafter referred to as an 'MRA') of requirements, qualifications, licences and other regulations.

5. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

6. The Working Group on MRA established pursuant to Article 15.3.1 (Working Groups) shall operate under the Trade Committee and shall comprise representatives of the Parties. With a view to facilitating the activities referred to in paragraph 2, the Working Group shall meet within one year of the entry into force of this Agreement, unless the Parties agree otherwise

(a) The Working Group should consider, for services generally, and as appropriate for individual services, the following matters:

(i) procedures for encouraging the relevant representative bodies in their respective territories to consider their interest in mutual recognition; and

(ii) procedures for fostering the development of recommendations on mutual recognition by the relevant representative bodies.

(b) The Working Group shall function as a contact point for issues relating to mutual recognition raised by relevant professional bodies of either Party.

#### Article 7.22

##### Transparency and confidential information

1. The Parties, through the mechanisms established pursuant to Chapter Twelve (Transparency), shall respond promptly to all requests by the other Party for specific information on:

(a) international agreements or arrangements, including on mutual recognition, which pertain to or affect matters falling under this Chapter; and

(b) standards and criteria for licensing and certification of service suppliers, including information concerning the appropriate regulatory or other body to consult regarding such standards and criteria. Such standards and criteria include requirements regarding education, examination, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge and consumer protection.

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

3. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation

required, for completing applications relating to the supply of services.

4. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

5. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.

6. A Party's regulatory authority shall make an administrative decision on a completed application of an investor or a cross-border service supplier of the other Party relating to the supply of a service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not possible for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

#### Article 7.23

##### Domestic regulation

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

2. Each Party shall institute or maintain judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross-border supply of services or temporary presence of natural persons for business purpose. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Parties shall ensure that the procedures in fact provide for an objective and impartial review.

3. 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 recognising the right to regulate and to introduce new regulations on the supply of services in order to meet public policy objectives, each Party shall endeavour to ensure, as appropriate for individual sectors, that such measures are:

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

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

4. This Article shall be amended, as appropriate, after consultations between the Parties, to bring under this Agreement the results of the negotiations pursuant to paragraph 4 of Article VI of GATS or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate once they become effective.

#### *Article 7.24*

##### **Governance**

Each Party shall, to the extent practicable, ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, inter alia, the Core Principle for Effective Banking Supervision of the Basel Committee on Banking Supervision, the Insurance Core Principles and Methodology, approved in Singapore on 3 October 2003 of the International Association of Insurance Supervisors, the Objectives and Principles of Securities Regulation of the International Organisation of Securities Commissions, the Agreement on Exchange of Information on Tax Matters of the Organisation for Economic Cooperation and Development (hereinafter referred to as the 'OECD'), the Statement on Transparency and Exchange of Information for Tax Purposes of the G20, and the Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force.

#### **Sub-section B**

##### **Computer services**

#### *Article 7.25*

##### **Computer services**

1. In liberalising trade in computer services in accordance with Sections B through D, the Parties subscribe to the understanding set out in the following paragraphs.

2. CPC <sup>(30)</sup> 84, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services including computer

programs defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing consist of a combination of basic computer services functions respectively.

3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:

(a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance or management of or for computers or computer systems;

(b) computer programs plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs;

(c) data processing, data storage, data hosting or database services;

(d) maintenance and repair services for office machinery and equipment, including computers; or

(e) training services for staff of clients, related to computer programs, computers or computer systems, and not elsewhere classified.

4. Computer and related services enable the provision of other services such as banking by both electronic and other means. The Parties recognise that there is an important distinction between the enabling service such as web-hosting or application hosting and the content or core service that is being delivered electronically such as banking, and that in such cases the content or core service is not covered by CPC 84.

<sup>(30)</sup> CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No 77, CPC Prov, 1991.



## Sub-section C

**Postal and courier services**

## Article 7.26

**Regulatory principles**

No later than three years after the entry into force of this Agreement, with a view to ensuring competition in postal and courier services not reserved to a monopoly in each Party, the Trade Committee shall set out the principles of the regulatory framework applicable to those services. Those principles shall aim to address issues such as anti-competitive practices, universal service, individual licences and nature of the regulatory authority <sup>(31)</sup>.

## Sub-section D

**Telecommunications services**

## Article 7.27

**Scope and definitions**

1. This Sub-section sets out the principles of the regulatory framework for the basic telecommunications services <sup>(32)</sup>, other than broadcasting, liberalised pursuant to Sections B through D of this Chapter.

2. For the purposes of this Sub-section:

- (a) telecommunications services means all services consisting of the transmission and reception of electromagnetic signals and does not cover the economic activity consisting of the provision of content which requires telecommunications for its transport;
- (b) public telecommunications transport service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally;
- (c) public telecommunications transport network means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (d) regulatory authority in the telecommunication sector means the body or bodies charged with the regulation of telecommunications mentioned in this Sub-section;
- (e) essential facilities means facilities of a public telecommunications transport network or service that:
  - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
  - (ii) cannot feasibly be economically or technically substituted in order to provide a service;

<sup>(31)</sup> For greater certainty, nothing in this Article shall be interpreted as intending to change the regulatory framework of the existing regulatory body in Korea which regulates private delivery service suppliers upon the entry into force of this Agreement.

<sup>(32)</sup> These include services listed in items from a through g under C. Telecommunication Services of 2. Communication Services in the MTN/GNS/W/120.

(f) major supplier in the telecommunication sector means a supplier that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications services as a result of its control over essential facilities or the use of its position in the market;

(g) interconnection means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken;

(h) universal service means the set of services that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price <sup>(33)</sup>;

(i) end-user means a final consumer of or subscriber to a public telecommunications transport service, including a service supplier other than a supplier of public telecommunications transport services;

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

(k) number portability means the ability of end-users of public telecommunications transport services to retain, at the same location, the same telephone numbers without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications transport services.

## Article 7.28

**Regulatory authority**

1. A regulatory authority for telecommunications services shall be legally distinct from and functionally independent of any supplier of telecommunications services.

2. The regulatory authority shall be sufficiently empowered to regulate the telecommunications services sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.

3. The decisions of, and the procedures used by, the regulatory authority shall be impartial with respect to all market participants.

<sup>(33)</sup> The scope and implementation of universal services shall be decided by each Party.

*Article 7.29***Authorisation to provide telecommunications services**

1. Provision of services shall, to the extent practicable, be authorised following a simplified authorisation procedure.
2. A licence can be required to address issues of attributions of frequencies, numbers and rights of way. The terms and conditions for such licence shall be made publicly available.
3. Where a licence is required:
  - (a) all the licensing criteria and the reasonable period of time normally required to reach a decision concerning an application for a licence shall be made publicly available;
  - (b) the reasons for the denial of a licence shall be made known in writing to the applicant upon request; and
  - (c) licence fees <sup>(34)</sup> required by any Party for granting a licence shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences <sup>(35)</sup>.

*Article 7.30***Competitive safeguards on major suppliers**

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- (a) engaging in anti-competitive cross-subsidisation <sup>(36)</sup>;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

*Article 7.31***Interconnection**

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services in its territory provide, directly or indirectly within the same territory, to suppliers of public telecommunications transport services of

<sup>(34)</sup> Licence fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

<sup>(35)</sup> This subparagraph shall take effect no later than five years after the entry into force of this Agreement. Each Party shall ensure that licence fees are imposed and applied in a non-discriminatory manner upon the entry into force of this Agreement.

<sup>(36)</sup> Or margin squeeze for the EU Party.

the other Party the possibility to negotiate interconnection. Interconnection should in principle be agreed on the basis of commercial negotiations between the companies concerned.

2. Regulatory authorities shall ensure that suppliers that acquire information from another undertaking during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

3. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:

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

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

- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

4. The procedures applicable for interconnection with a major supplier shall be made publicly available.

5. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers <sup>(37)</sup>.

*Article 7.32***Number portability**

Each Party shall ensure that suppliers of public telecommunications transport services in its territory, other than suppliers of voice over internet protocol services, provide number portability to the extent technically feasible, and on reasonable terms and conditions.

<sup>(37)</sup> Each Party will implement this obligation in accordance with its relevant legislation.

*Article 7.33***Allocation and use of scarce resources**

1. Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner.
2. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

*Article 7.34***Universal service**

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by each Party.

*Article 7.35***Confidentiality of information**

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunications transport network and publicly available telecommunications services without restricting trade in services.

*Article 7.36***Resolution of telecommunications disputes****Recourse**

1. Each Party shall ensure that:
  - (a) service suppliers may have recourse to a regulatory authority or other relevant body of the Party to resolve disputes between service suppliers or between service suppliers and users regarding matters set out in this Sub-section; and
  - (b) in the event of a dispute arising between suppliers of public telecommunications transport networks or services in connection with rights and obligations that arise from this Sub-section, a regulatory authority concerned shall, at the request of either party to the dispute issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within a reasonable period of time.

**Appeal and Judicial Review**

2. Any service supplier whose legally protected interests are adversely affected by a determination or decision of a regulatory authority:
  - (a) shall have a right to appeal against that determination or decision to an appeal body<sup>(38)</sup>. Where the appeal body is not judicial in character, written reasons for its determination or decision shall always be given and its determination or decision shall also be subject to review by an impartial and independent judicial authority. Determinations or decisions taken by appeal bodies shall be effectively enforced; and
  - (b) may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial body stays such determination or decision.

**Sub-section E****Financial services***Article 7.37***Scope and definitions**

1. This Sub-section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections B through D.
2. For the purposes of this Sub-section:
 

financial services means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:

- (a) Insurance and insurance-related services:
  - (i) direct insurance (including co-insurance):
    - (A) life;
    - (B) non-life;
  - (ii) reinsurance and retrocession;
  - (iii) insurance inter-mediation, such as brokerage and agency; and
  - (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and
- (b) Banking and other financial services (excluding insurance):
  - (i) acceptance of deposits and other repayable funds from the public;

<sup>(38)</sup> For disputes between service suppliers or between service suppliers and users, the appeal body shall be independent of the parties involved in the dispute.

- (ii) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (iii) financial leasing;
- (iv) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (v) guarantees and commitments;
- (vi) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (A) money market instruments (including cheques, bills and certificates of deposits);
  - (B) foreign exchange;
  - (C) derivative products including, but not limited to, futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (E) transferable securities; and
  - (F) other negotiable instruments and financial assets, including bullion;
- (vii) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (viii) money broking;
- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (x) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (xi) provision and transfer of financial information, and financial data processing and related software; and
- (xii) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (i)

through (xi), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier means any natural person or juridical person of a Party that seeks to provide or provides financial services and does not include a public entity;

public entity means:

(a) a government, a central bank or a monetary authority of a Party or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;

new financial service means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

#### Article 7.38

##### Prudential carve-out <sup>(39)</sup>

1. Each Party may adopt or maintain measures for prudential reasons <sup>(40)</sup>, including:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; and
- (b) ensuring the integrity and stability of the Party's financial system.

2. These measures shall not be more burdensome than necessary to achieve their aim, and where they do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding each Party's commitments or obligations under such provisions.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

<sup>(39)</sup> Any measure which is applied to financial service suppliers established in a Party's territory that are not regulated and supervised by the financial supervisory authority of that Party would be deemed to be a prudential measure for the purposes of this Agreement. For greater certainty, any such measure shall be taken in line with this Article.

<sup>(40)</sup> It is understood that the term 'prudential reasons' may include the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.

4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

#### Article 7.39

##### **Transparency**

The Parties recognise that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating access of foreign financial service suppliers to, and their operations in, each other's markets. Each Party commits to promoting regulatory transparency in financial services.

#### Article 7.40

##### **Self-regulatory organisations**

When a Party requires membership or participation in, or access to, any self-regulatory organisations, securities or futures exchange or market, clearing agency or any other organisation or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis to financial service suppliers of the Party, or when the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Articles 7.6, 7.8, 7.12 and 7.14 by such self-regulatory organisation.

#### Article 7.41

##### **Payment and clearing systems**

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to a Party's lender of last resort facilities.

#### Article 7.42

##### **New financial services**

Each Party shall permit a financial service supplier of the other Party established in its territory to provide any new financial service that the Party would permit its own financial service suppliers to supply, in like circumstances, under its domestic law, provided that the introduction of the new financial service does not require a new law or modification of an existing law. A Party may determine the institutional and juridical form

through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable period of time and the authorisation may be refused only for prudential reasons.

#### Article 7.43

##### **Data processing**

No later than two years after the entry into force of this Agreement, and in no case later than the effective date of similar commitments stemming from other economic integration agreements:

- (a) each Party shall permit a financial service supplier of the other Party established in its territory to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier; and
- (b) each Party, reaffirming its commitment <sup>(41)</sup> to protect fundamental rights and freedom of individuals, shall adopt adequate safeguards to the protection of privacy, in particular with regard to the transfer of personal data.

#### Article 7.44

##### **Specific exceptions**

1. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Agreement shall apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.

<sup>(41)</sup> For greater certainty, this commitment indicates the rights and freedoms set out in the Universal Declaration of Human Rights, the Guidelines for the Regulation of Computerised Personal Data Files (adopted by the United General Assembly Resolution 45/95 of 14 December 1990), and the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (adopted by the OECD Council on 23 September 1980).



*Article 7.45***Dispute settlement**

1. Chapter Fourteen (Dispute Settlement) shall apply to the settlement of disputes on financial services arising exclusively under this Chapter, except as otherwise provided in this Article.

2. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of 15 individuals. Each Party shall propose five individuals respectively and the Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the arbitration panel. Those individuals shall have expertise or experience in financial services law or practice, which may include the regulation of financial service suppliers, and shall comply with Annex 14-C (Code of Conduct for Members of Arbitration Panels and Mediators).

3. When panellists are selected by lot pursuant to Article 14.5.3 (Establishment of the Arbitration Panel), Article 14.9.3 (The Reasonable Period of Time for Compliance), Article 14.10.3 (Review of any Measure Taken to Comply with the Arbitration Panel Ruling), Article 14.11.4 (Temporary Remedies in case of Non-compliance), Article 14.12.3 (Review of any Measure Taken to Comply after the Suspension of Obligations), Articles 6.1, 6.3 and 6.4 (Replacement) of Annex 14-B (Rules of Procedure for Arbitration), the selection shall be made in the list established pursuant to paragraph 2.

4. Notwithstanding Article 14.11, where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in its financial services sector. Where such measure affects only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

*Article 7.46***Recognition**

1. A Party may recognise prudential measures of the other Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties, 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 with a third party, whether at the time of entry into force of this Agreement or thereafter, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recog-

inition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

**Sub-section F****International maritime transport services***Article 7.47***Scope, definitions and principles**

1. This Sub-section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Sections B through D.

2. For the purposes of this Sub-section:

(a) international maritime transport includes door to door transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect includes the right to directly contract with providers of other modes of transport;

(b) maritime cargo handling services means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

(i) the loading/discharging of cargo to/from a ship;

(ii) the lashing/unlashing of cargo; and

(iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;

(c) customs clearance services (alternatively 'customs house brokers services') means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;

(d) container station and depot services means activities consisting in storing containers in port areas with a view to their stuffing/stripping, repairing and making them available for shipments; and

(e) maritime agency services means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

(i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and

- (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and
- (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships with regard to, inter alia, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

4. In applying these principles, the Parties shall:

- (a) not introduce cargo-sharing arrangements in future bilateral agreements with third parties concerning maritime transport services, including dry and liquid bulk and liner trade, and not activate such cargo-sharing arrangements in case they exist in previous bilateral agreements; and
- (b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could restrict free and fair competition or constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

5. Each Party shall permit international maritime service suppliers of the other Party to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third party, whichever are the better, in accordance with the conditions inscribed in its list of commitments.

6. Each Party shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port:

- (a) pilotage;
- (b) towing and tug assistance;
- (c) provisioning;
- (d) fuelling and watering;
- (e) garbage collecting and ballast waste disposal;

- (f) port captain's services;

- (g) navigation aids; and

- (h) shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

## SECTION F

### **Electronic commerce**

#### *Article 7.48*

#### **Objective and principles**

1. The Parties, recognising the economic growth and trade opportunities that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce, agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under this Chapter.

2. The Parties agree that the development of electronic commerce must be fully compatible with the international standards of data protection, in order to ensure the confidence of users of electronic commerce.

3. The Parties agree not to impose customs duties on deliveries by electronic means <sup>(42)</sup>.

#### *Article 7.49*

#### **Cooperation on regulatory issues**

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will, inter alia, address the following issues:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
- (b) the liability of intermediary service providers with respect to the transmission or storage of information;
- (c) the treatment of unsolicited electronic commercial communications;
- (d) the protection of consumers in the ambit of electronic commerce;
- (e) the development of paperless trading; and

<sup>(42)</sup> The inclusion of the provisions on electronic commerce in this Chapter is made without prejudice to Korea's position on whether deliveries by electronic means should be categorised as trade in services or goods.

- (f) any other issues relevant for the development of electronic commerce.

2. The dialogue can include exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

#### SECTION G

##### **Exceptions**

##### *Article 7.50*

##### **Exceptions**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order <sup>(43)</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

<sup>(43)</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (iii) safety;

- (f) inconsistent with Articles 7.6 and 7.12, provided that the difference in treatment is aimed at ensuring the equitable or effective <sup>(44)</sup> imposition or collection of direct taxes in respect of economic activities, investors or service suppliers of the other Party.

#### CHAPTER EIGHT

##### **PAYMENTS AND CAPITAL MOVEMENTS**

##### *Article 8.1*

##### **Current payments**

The Parties undertake to impose no restrictions on, and to allow, all payments and transfers on the current account of balance of payments between residents of the Parties to be made in freely convertible currency, in accordance with the Articles of Agreement of the International Monetary Fund.

##### *Article 8.2*

##### **Capital movements**

1. With regard to transactions on the capital and financial account of balance of payments, the Parties undertake to impose no restrictions on the free movement of capital relating to direct investments made in accordance with the laws of the host country, to investments and other transactions liberalised in accordance with Chapter Seven (Trade in Services, Establishment and Electronic Commerce) and to the liquidation and repatriation of such invested capital and of any profit generated therefrom.

2. Without prejudice to other provisions in this Agreement, the Parties shall ensure, with regard to transactions not covered by paragraph 1 on the capital and financial account of balance of payments, in accordance with the laws of the host country, the free movement by investors of the other Party of capital relating to, inter alia:

<sup>(44)</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (a) apply to non-resident investors and service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (d) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (e) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in this paragraph and this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

(a) credits related to commercial transactions including the provision of services in which a resident of a Party is participating;

(b) financial loans and credits; or

(c) capital participation in a juridical person with no intention of establishing or maintaining lasting economic links.

3. Without prejudice to other provisions in this Agreement, the Parties shall not introduce any new restrictions on the movement of capital between residents of the Parties and shall not make the existing arrangements more restrictive.

4. The Parties may hold consultations with a view to further facilitating the movement of capital between them in order to promote the objectives of this Agreement.

#### Article 8.3

##### Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on capital movements, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security and public morals or to maintain public order; or

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

(i) the prevention of criminal or penal offences, deceptive and fraudulent practices or to deal with the effects of a default on contracts (bankruptcy, insolvency and protection of the right of creditors);

(ii) measures adopted or maintained to ensure the integrity and stability of a Party's financial system;

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

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

(v) ensuring compliance with orders or judgements in juridical or administrative proceedings.

#### Article 8.4

##### Safeguard measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy<sup>(45)</sup> in Korea or one or more Member States of the European Union, safeguard measures with regard to capital movements that are strictly necessary<sup>(46)</sup> may be taken by the Parties concerned<sup>(47)</sup> for a period not exceeding six months<sup>(48)</sup>.

2. The Trade Committee shall be informed forthwith of the adoption of any safeguard measure and, as soon as possible, of a time schedule for its removal

#### CHAPTER NINE

##### GOVERNMENT PROCUREMENT

#### Article 9.1

##### General provisions

1. The Parties reaffirm their rights and obligations under the Agreement on Government Procurement contained in Annex 4 to the WTO Agreement (hereinafter referred to as the 'GPA 1994') and their interest in further expanding bilateral trading opportunities in each Party's government procurement market.

2. The Parties recognise their shared interest in promoting international liberalisation of government procurement markets in the context of the rules-based international trading system. The Parties shall continue to cooperate in the review under Article XXIV:7 of the GPA 1994 and in other appropriate international fora.

<sup>(45)</sup> 'serious difficulties for the operation of monetary policy or exchange rate policy' shall include, but not be limited to, serious balance of payments or external financial difficulties, and the safeguard measures under this Article shall not apply with respect to foreign direct investments.

<sup>(46)</sup> In particular, safeguard measures provided for in this Article should be applied in such a way that they:

- (a) are not confiscatory;
- (b) do not constitute a dual or multiple exchange rate practice;
- (c) do not otherwise interfere with investors' ability to earn a market rate of return in the territory of the Party who took safeguard measures on any restricted assets;
- (d) avoid unnecessary damage to the commercial, economic or financial interests of the other Party;
- (e) are temporary and phased out progressively as the situation calling for imposition of such measures improves; and
- (f) are promptly published by the competent authorities responsible for foreign exchange policy.

<sup>(47)</sup> The European Union or Member States of the European Union or Korea.

<sup>(48)</sup> As long as the circumstances present at the time of initial adoption of safeguard measures or any equivalent thereto still exist, the application of safeguard measures can be extended once for another six months by the Party concerned. However, if extremely exceptional circumstances arise such that a Party seeks further extension of the safeguard measures, it will coordinate in advance with the other Party concerning the implementation of any proposed extension.

3. Nothing in this Chapter shall be construed to derogate from either Party's rights or obligations under the GPA 1994, or from an agreement which replaces it.

4. For all procurement covered by this Chapter, the Parties shall apply the provisionally agreed revised GPA text <sup>(49)</sup> (hereinafter referred to as the 'revised GPA'), with the exception of the following:

- (a) most favoured treatment for goods, services and suppliers of any other Party (subparagraph 1(b) and paragraph 2 of Article IV of the revised GPA);
- (b) special and differential treatment for developing countries (Article V of the revised GPA);
- (c) conditions for participation (paragraph 2 of Article VIII of the revised GPA) which shall be replaced by: 'shall not impose the condition that, in order for a supplier of a Party to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of the other Party or that the supplier has prior work experience in the territory of that Party, except when prior work experience is essential to meet the requirements of the procurement';
- (d) institutions (Article XXI of the revised GPA); and
- (e) final provisions (Article XXII of the revised GPA).

5. For the purposes of the application of the revised GPA under paragraph 4:

- (a) 'Agreement' in the revised GPA means 'Chapter,' except that 'countries not Parties to this Agreement' means 'non-Parties' and 'Party to the Agreement' means 'Party';
- (b) 'other Parties' in the revised GPA means 'the other Party'; and
- (c) 'the Committee' in the revised GPA means 'the Working Group'.

#### Article 9.2

##### Scope and coverage

1. The procurement covered by this Chapter shall be all procurement covered by each Party's Annexes to the GPA 1994 and any note attached thereto, including their amendments or replacements.

2. For the purposes of this Agreement, build-operate-transfer contracts (hereinafter referred to as 'BOT contracts') and public works concessions, as defined in Annex 9, shall be subject to Annex 9.

#### Article 9.3

##### Government Procurement Working Group

The Working Group on Government Procurement established pursuant to Article 15.3.1 (Working Groups) shall meet, as mutually agreed or upon request of a Party, to:

- (a) consider issues regarding government procurement and BOT contracts or public works concessions that are referred to it by a Party;
- (b) exchange information relating to the government procurement and BOT contracts or public works concessions opportunities in each Party; and
- (c) discuss any other matters related to the operation of this Chapter.

#### CHAPTER TEN

##### INTELLECTUAL PROPERTY

##### SECTION A

##### General provisions

#### Article 10.1

##### Objectives

The objectives of this Chapter are to:

- (a) facilitate the production and commercialisation of innovative and creative products in the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

#### Article 10.2

##### Nature and scope of obligations

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are party including the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement (hereinafter referred to as the 'TRIPS Agreement'). The provisions of this Chapter shall complement and specify the rights and obligations between the Parties under the TRIPS Agreement.

2. For the purposes of this Agreement, intellectual property rights embody:

- (a) copyright, including copyright in computer programs and in databases, and related rights;
- (b) the rights related to patents;
- (c) trademarks;
- (d) service marks;

<sup>(49)</sup> Contained in WTO Document negs 268 (Job No[1].8274) dated 19 November 2007.



- (e) designs;
  - (f) layout-designs (topographies) of integrated circuits;
  - (g) geographical indications;
  - (h) plant varieties; and
  - (i) protection of undisclosed information.
3. Protection of intellectual property includes protection against unfair competition as referred to in article 10 bis of the Paris Convention for the Protection of Industrial Property (1967) (hereinafter referred to as the 'Paris Convention').

#### Article 10.3

##### Transfer of technology

1. The Parties agree to exchange views and information on their practices and policies affecting transfer of technology, both within their respective territories and with third countries. This shall in particular include measures to facilitate information flows, business partnerships, licensing and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including, inter alia, issues such as development of human capital and legal framework.
2. Each Party shall take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of technology and which constitute an abuse of intellectual property rights by right holders.

#### Article 10.4

##### Exhaustion

The Parties shall be free to establish their own regime for the exhaustion of intellectual property rights.

#### SECTION B

##### Standards concerning intellectual property rights

##### Sub-section A

##### Copyright and related rights

#### Article 10.5

##### Protection granted

The Parties shall comply with:

- (a) Articles 1 through 22 of the International Convention for the Protection of Performers, Producers of Phonograms and

Broadcasting Organisations (1961) (hereinafter referred to as the 'Rome Convention');

- (b) Articles 1 through 18 of the Berne Convention for the Protection of Literary and Artistic Works (1971) (hereinafter referred to as the 'Berne Convention');
- (c) Articles 1 through 14 of the World Intellectual Property Organisation (hereinafter referred to as the 'WIPO') Copyright Treaty (1996) (hereinafter referred to as the 'WCT'); and
- (d) Articles 1 through 23 of the WIPO Performances and Phonograms Treaty (1996) (hereinafter referred to as the 'WPPT').

#### Article 10.6

##### Duration of authors' rights

Each Party shall provide that, where the term of protection of a work is to be calculated on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death.

#### Article 10.7

##### Broadcasting organisations

1. The rights of broadcasting organisations shall expire not less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.
2. Neither Party may permit the retransmission of television signals (whether terrestrial, cable or satellite) on the Internet without the authorisation of the right holder or right holders, if any, of the content of the signal and of the signal <sup>(50)</sup>.

#### Article 10.8

##### Cooperation on collective management of rights

The Parties shall endeavour to facilitate the establishment of arrangements between their respective collecting societies for the purposes of mutually ensuring easier access and delivery of content between the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other copyright-protected subject matters. The Parties shall endeavour to achieve a high level of rationalisation and to improve transparency with respect to the execution of the task of their respective collecting societies.

#### Article 10.9

##### Broadcasting and communication to the public

1. For the purposes of this Article:

<sup>(50)</sup> For the purposes of this paragraph, retransmission within a Party's territory over a closed and defined subscriber network that is not accessible from outside the Party's territory does not constitute retransmission on the Internet.

(a) broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also 'broadcasting'; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organisation or with its consent; and

(b) communication to the public means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of paragraph 5, 'communication to the public' includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

2. Each Party shall provide performers with the exclusive right to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

3. Each Party shall provide performers and producers of phonograms with the right to a single equitable remuneration, if a phonogram published for commercial purposes or a reproduction of such phonogram is used for broadcasting by wireless means or for any communication to the public.

4. Each Party shall establish in its legislation that the single equitable remuneration shall be claimed from the user by performers or producers of phonograms, or by both. The Parties may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

5. Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

- (a) the re-broadcasting of their broadcasts;
- (b) the fixation of their broadcasts; and
- (c) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. It shall be a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised.

#### *Article 10.10*

##### **Artists' resale right in works of Art**

The Parties agree to exchange views and information on the practices and policies concerning the artists' resale right. Within two years of the entry into force of this Agreement, the Parties shall enter into consultations to review the desirability and

feasibility of introducing an artists' resale right in works of art in Korea.

#### *Article 10.11*

##### **Limitations and exceptions**

The Parties may, in their legislation, provide for limitations of, or exceptions to, the rights granted to the right holders referred to in Articles 10.5 through 10.10 in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holders.

#### *Article 10.12*

##### **Protection of technological measures**

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that such person is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes, of devices, products or components, or the provision of services which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of;
- (b) have only a limited commercially significant purpose or use other than to circumvent; or
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

any effective technological measures.

3. For the purposes of this Agreement, technological measure means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right holder of any copyright or any right related to copyright as provided for by each Party's legislation. Technological measures shall be deemed effective where the use of a protected work or other subject matter is controlled by the right holders through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter, or a copy control mechanism, which achieves the objective of protection.

4. Each Party may provide for exceptions and limitations to measures implementing paragraphs 1 and 2 in accordance with its legislation and the relevant international agreements referred to in Article 10.5.

*Article 10.13***Protection of rights management information**

1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights management information; or
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Agreement from which electronic rights management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by doing so it is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by the law of the relevant Party.

2. For the purposes of this Agreement, rights management information means any information provided by right holders which identifies the work or other subject matter referred to in this Agreement, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

3. Paragraph 2 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Agreement.

*Article 10.14***Transitional provision**

Korea shall fully implement the obligations of Articles 10.6 and 10.7 within two years of the entry into force of this Agreement.

*Sub-section B***Trademarks***Article 10.15***Registration procedure**

The European Union and Korea shall provide for a system for the registration of trademarks in which the reasons for a refusal

to register a trademark shall be communicated in writing and may be provided electronically to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal judicially. The European Union and Korea shall also introduce the possibility for interested parties to oppose trademark applications. The European Union and Korea shall provide a publicly available electronic database of trademark applications and trademark registrations.

*Article 10.16***International agreements**

The European Union and Korea shall comply with the Trademark Law Treaty (1994) and make all reasonable efforts to comply with the Singapore Treaty on the Law of Trademarks (2006).

*Article 10.17***Exceptions to the rights conferred by a trademark**

Each Party shall provide for the fair use of descriptive terms as a limited exception to the rights conferred by a trademark and may provide for other limited exceptions, provided that limited exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

*Sub-section C***Geographical indications<sup>(51)</sup>, <sup>(52)</sup>***Article 10.18***Recognition of geographical indications for agricultural products and foodstuffs and wines**

1. Having examined the Agricultural Products Quality Control Act, with its implementing rules, in so far as it relates to the registration, control and protection of geographical indications for agricultural products and foodstuffs in Korea, the European Union concludes that this legislation meets the elements laid down in paragraph 6.

2. Having examined Council Regulation (EC) No 510/2006, with its implementing rules, for the registration, control and protection of geographical indications of agricultural products and foodstuffs in the European Union, and Council Regulation (EC) No 1234/2007 on the common organisation of the market in wine, Korea concludes that this legislation meets the elements laid down in paragraph 6.

<sup>(51)</sup> 'Geographical indication' in this Sub-section refers to:

(a) geographical indications, designations of origin, quality wines produced in a specified region and table wines with geographical indication as referred to in Council Regulation (EC) No 510/2006 of 20 March 2006; Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008; Council Regulation (EEC) No 1601/1991 of 10 June 1991; Council Regulation (EC) No 1493/1999 of 17 May 1999; and Council Regulation (EC) No 1234/2007 of 22 October 2007, or provisions replacing these regulations; and

(b) geographical indications as covered by the Agricultural Products Quality Control Act (Act No. 9759, Jun. 9, 2009) and the Liquor Tax Act (Act No. 8852, Feb. 29, 2008) of Korea.

<sup>(52)</sup> The protection of a geographical indication under this Sub-section is without prejudice to other provisions in this Agreement.

3. Having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of Korea listed in Annex 10-A, which have been registered by Korea under the legislation referred to in paragraph 1, the European Union undertakes to protect the geographical indications of Korea listed in Annex 10-A according to the level of protection laid down in this Chapter.

4. Having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the European Union listed in Annex 10-A, which have been registered by the European Union under the legislation referred to in paragraph 2, Korea undertakes to protect the geographical indications of the European Union listed in Annex 10-A according to the level of protection laid down in this Chapter.

5. Paragraph 3 shall apply to geographical indications for wines with respect to geographical indications added pursuant to Article 10.24.

6. The European Union and Korea agree that the elements for the registration and control of geographical indications referred to in paragraphs 1 and 2 are the following:

- (a) a register listing geographical indications protected in their respective territories;
- (b) an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of either Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
- (c) a requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down which may only be amended by due administrative process;
- (d) control provisions applying to production;
- (e) legal provisions laying down that a registered name may be used by any operator marketing the agricultural product or foodstuff conforming to the corresponding specification; and

- (f) an objection procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

#### Article 10.19

##### **Recognition of specific geographical indications for wines <sup>(53)</sup>, aromatised wines <sup>(54)</sup> and spirits <sup>(55)</sup>**

1. In Korea, the geographical indications of the European Union listed in Annex 10-B shall be protected for those products which use these geographical indications in accordance with the relevant laws of the European Union on geographical indications.

2. In the European Union, the geographical indications of Korea listed in Annex 10-B shall be protected for those products which use these geographical indications in accordance with the relevant laws of Korea on geographical indications.

#### Article 10.20

##### **Right of use**

A name protected under this Sub-section may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

#### Article 10.21

##### **Scope of protection**

1. Geographical indications referred to in Articles 10.18 and 10.19 shall be protected against:

<sup>(53)</sup> Wines within the meaning of this Sub-section are products falling under heading 22.04 of the HS and which:

- (a) comply with Council Regulation (EC) 1234/2007 of 22 October 2007, Commission Regulation (EC) 606/2009 of 10 July 2009 and Commission Regulation (EC) 607/2009 of 14 July 2009, or legislation replacing it; or
- (b) comply with the Agricultural Products Quality Control Act (Act No. 9759, Jun. 9, 2009) and the Liquor Tax Act (Act No. 8852, Feb. 29, 2008) of Korea.

<sup>(54)</sup> Aromatised wines within the meaning of this Sub-section are products falling under heading 22.05 of the HS and which:

- (a) comply with Council Regulation (EEC) No 1601/1991 of 10 June 1991, or legislation replacing it; or
- (b) comply with the Agricultural Products Quality Control Act (Act No. 9759, Jun. 9, 2009) and the Liquor Tax Act (Act No. 8852, Feb. 29, 2008) of Korea.

<sup>(55)</sup> Spirits within the meaning of this Sub-section are products falling under heading 22.08 of the HS and which:

- (a) comply with Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008, and Commission Regulation (EEC) No 1014/90 of 24 April 1990, or legislation replacing it; or
- (b) comply with the Agricultural Products Quality Control Act (Act No. 9759, Jun. 9, 2009) and the Liquor Tax Act (Act No. 8852, Feb. 29, 2008) of Korea.

- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
- (b) the use of a geographical indication identifying a good for a like good<sup>(56)</sup> not originating in the place indicated by the geographical indication in question, even where the true origin of the good is indicated or the geographical indication is used in translation or transcription or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like; and
- (c) any other use which constitutes an act of unfair competition within the meaning of Article 10 bis of the Paris Convention.

2. This Agreement shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead consumers.

3. If geographical indications of the Parties are homonymous, protection shall be granted to each indication provided that it has been used in good faith. The Working Group on Geographical Indications shall decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. If a geographical indication protected through this Agreement is homonymous with a geographical indication of a third country, each Party shall decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. Nothing in this Agreement shall oblige the European Union or Korea to protect a geographical indication which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country.

5. The protection of a geographical indication under this Article is without prejudice to the continued use of a trademark which has been applied for, registered or established

by use, if that possibility is provided for by the legislation concerned, in the territory of a Party before the date of the application for protection or recognition of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation of the Party concerned. The date of application for protection or recognition of the geographical indication is determined in accordance with Article 10.23.2.

#### Article 10.22

##### Enforcement of protection

The Parties shall enforce the protection provided for in Articles 10.18 through 10.23 on their own initiative by appropriate intervention of their authorities. They shall also enforce such protection at the request of an interested party.

#### Article 10.23

##### Relationship with trademarks

1. The registration of a trademark that corresponds to any of the situations referred to in Article 10.21.1 in relation to a protected geographical indication for like goods, shall be refused or invalidated by the Parties, provided an application for registration of the trademark is submitted after the date of application for protection or recognition of the geographical indication in the territory concerned.

2. For the purposes of paragraph 1:

- (a) for geographical indications referred to in Articles 10.18 and 10.19, the date of application for protection or recognition shall be the date when this Agreement enters into force; and
- (b) for geographical indications referred to in Article 10.24, the date of application for protection or recognition shall be the date of a Party's receipt of a request by the other Party to protect or recognise a geographical indication.

#### Article 10.24

##### Addition of geographical indications for protection<sup>(57)</sup>

1. The European Union and Korea agree to add geographical indications to be protected to the Annexes 10-A and 10-B in accordance with the procedure set out in Article 10.25.

<sup>(57)</sup> If a proposal is made by:

- (a) Korea for an originating product falling into the scope of the legislation of the European Union set out under Article 10.18.2 and footnotes of Article 10.19; or
- (b) the European Union for an originating product falling into the scope of the legislation of Korea set out under Article 10.18.1 and footnotes of Article 10.19,

to add a name of origin to this Agreement which has been recognised by either Party as a geographical indication within the meaning of Article 22.1 of the TRIPS Agreement through laws of either Party other than those referred to in Articles 10.18.1 and 10.18.2 and footnotes of Article 10.19, the Parties agree to examine whether the geographical indication can be added to this Agreement pursuant to this Sub-section.

<sup>(56)</sup> For all goods, the term 'like good' shall be interpreted in line with Article 23.1 of the TRIPS Agreement relating to the use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question.



2. The European Union and Korea agree to process, without undue delay, the other's requests for adding geographical indications to be protected to the Annexes.

3. A name may not be registered as a geographical indication where it conflicts with the name of a plant variety, including a grape variety, or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

#### Article 10.25

##### Working Group on Geographical Indications

1. The Working Group on Geographical Indications established pursuant to Article 15.3.1 (Working Groups) shall meet, as mutually agreed or upon request of a Party, for the purpose of intensifying cooperation between the Parties and dialogue on geographical indications. The Working Group may make recommendations and adopt decisions by consensus.

2. The location of the meeting shall alternate between the Parties. The Working Group shall meet at a time and a place and in a manner which may include by videoconference, mutually determined by the Parties, but no later than 90 days after the request.

3. The Working Group may decide:

(a) to modify Annexes 10-A and 10-B to add individual geographical indications of the European Union or Korea that, after having completed the relevant procedure referred to in Articles 10.18.3 and 10.18.4, where applicable, are also determined by the other Party to constitute geographical indications and will be protected in the territory of that other Party;

(b) to modify <sup>(58)</sup> the Annexes referred to in subparagraph (a) to remove individual geographical indications that cease to be protected in the Party of origin <sup>(59)</sup> or that, in accordance with the applicable legislation, no longer meet the conditions to be considered a geographical indication in the other Party; and

(c) that a reference to legislation in this Agreement should be taken to be a reference to that legislation as amended and

<sup>(58)</sup> This refers to the modification of the geographical indication as such, including the name and product category. Modifications of specifications as referred to in Articles 10.18.3 and 10.18.4 or modifications of the responsible control bodies as referred to in Article 10.18.6(d) remain the sole responsibility of the Party where a geographical indication originates. Such modifications may be communicated for information purposes.

<sup>(59)</sup> A decision to cease protection of a geographical indication remains the sole responsibility of the Party where the geographical indication originates.

replaced and in force at a particular date after the entry into force of this Agreement.

4. The Working Group shall also ensure the proper functioning of this Sub-section and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

(a) exchanging information on legislative and policy developments on geographical indications;

(b) exchanging information on individual geographical indications for the purpose of considering their protection in accordance with this Agreement; and

(c) exchanging information to optimise the operation of this Agreement.

5. The Working Group may discuss any matter of mutual interest in the area of geographical indications.

#### Article 10.26

##### Individual applications for protection of geographical indications

The provisions of this Sub-section are without prejudice to the right to seek recognition and protection of a geographical indication under the relevant legislation of the European Union or Korea.

#### Sub-section D

##### Designs

#### Article 10.27

##### Protection of registered designs

1. The European Union and Korea shall provide for the protection of independently created designs that are new and that are original or have individual character <sup>(60)</sup>.

2. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with this Sub-section.

<sup>(60)</sup> Korea considers designs not to be new if an identical or similar design has been publicly known or publicly worked before the application for design registration is filed. Korea considers designs not to be original if they could have been easily created from the combinations of designs that have been publicly known or publicly worked before the application for design registration is filed. The European Union considers designs not to be new if an identical design has been made available to the public before the filing date of a registered design or before the date of disclosure of an unregistered design. The European Union considers design not to have individual character if the overall impression it produces on the informed users does not differ from the overall impression produced on such a user by any design which has been made available to the public.

*Article 10.28***Rights conferred by registration**

The owner of a protected design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing, exporting or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.

*Article 10.29***Protection conferred to unregistered appearance**

The European Union and Korea shall provide the legal means to prevent the use of the unregistered appearance of a product, only if the contested use results from copying the unregistered appearance of such product <sup>(61)</sup>. Such use shall at least cover presenting <sup>(62)</sup>, importing or exporting goods.

*Article 10.30***Term of protection**

1. The duration of protection available in the Parties following registration shall amount to at least 15 years.

2. The duration of protection available in the European Union and Korea for unregistered appearance shall amount to at least three years.

*Article 10.31***Exceptions**

1. The European Union and Korea may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

<sup>(61)</sup> For the purposes of this Article, the European Union and Korea consider that 'unregistered design' and 'unregistered appearance' have a similar meaning. The conditions for protection of 'unregistered design' or 'unregistered appearance' are provided for:

(a) by Korea in the Unfair Competition Prevention and Trade Secret Protection Act (Act No. 8767, Dec. 21, 2007); and  
(b) by the European Union in Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, as last amended by Council Regulation (EC) No 1891/2006 of 18 December 2006.

<sup>(62)</sup> For the purposes of this Article, the European Union considers 'presenting' as 'offering' or 'putting on the market' and Korea considers 'presenting' as 'assigning, leasing or exhibition for assigning or leasing'.

2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.

3. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

*Article 10.32***Relationship with copyright**

A design protected by a design right registered in the European Union or in Korea in accordance with this Sub-section shall also be eligible for protection under the law of copyright applicable in the territory of the Parties as from the date on which the design was created or fixed in any form <sup>(63)</sup>.

**Sub-section E****Patents***Article 10.33***International agreement**

The Parties shall make all reasonable efforts to comply with articles 1 through 16 of the Patent Law Treaty (2000).

*Article 10.34***Patents and public health**

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the 'Doha Declaration') by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Sub-section, the Parties are entitled to rely upon the Doha Declaration.

2. Each Party shall contribute to the implementation of and shall respect the Decision of the WTO General Council of 30 August 2003 on paragraph 6 of the Doha Declaration, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.

<sup>(63)</sup> The protection of a design under the law of copyright is not granted automatically, but granted only if a design qualifies for protection in accordance with the law of copyright.

*Article 10.35***Extension of the duration of the rights conferred by patent protection**

1. The Parties recognise that pharmaceutical products <sup>(64)</sup> and plant protection products <sup>(65)</sup> protected by a patent in their respective territories are subject to an administrative authorisation or registration procedure before being put on their markets.

2. The Parties shall provide, at the request of the patent owner, for the extension of the duration of the rights conferred by the patent protection to compensate the patent owner for the reduction in the effective patent life as a result of the first authorisation to place the product on their respective markets. The extension of the duration of the rights conferred by the patent protection may not exceed five years <sup>(66)</sup>.

*Article 10.36***Protection of data submitted to obtain a marketing authorisation for pharmaceutical <sup>(67)</sup> products**

1. The Parties shall guarantee the confidentiality, non-disclosure of and non-reliance on data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.

2. For that purpose, the Parties shall ensure in their respective legislation that data, as referred to in Article 39 of the TRIPS Agreement, concerning safety and efficacy, submitted for the first time by an applicant to obtain a marketing authorisation for a new pharmaceutical product in the territory of the respective Parties, is not used for granting another marketing authorisation for a pharmaceutical product, unless proof of the explicit consent of the marketing authorisation holder to use these data is provided.

3. The period of data protection should be at least five years starting from the date of the first marketing authorisation obtained in the territory of the respective Parties.

<sup>(64)</sup> As defined in Annex 2-D (Pharmaceutical Products and Medical Devices).

<sup>(65)</sup> Plant protection products, in the form in which they are supplied to the user, consist of or contain active substances, safeners or synergists, and are intended for one of the following uses:

- (a) protecting plants or plant products against all harmful organisms or preventing the action of such organisms, unless the main purpose of these products is considered to be for reasons of hygiene rather than for the protection of plants or plant products;
- (b) influencing the life processes of plants, such as substances influencing their growth, other than as a nutrient;
- (c) preserving plant products, in so far as such substances or products are not subject to the European Union's special provisions on preservatives;
- (d) destroying undesired plants or parts of plants, except algae unless the products are applied on soil or water to protect plants; or
- (e) checking or preventing undesired growth of plants, except algae unless the products are applied on soil or water to protect plants.

<sup>(66)</sup> This is without prejudice to a possible extension for paediatric use, if provided for by the Parties.

<sup>(67)</sup> As defined in Annex 2-D (Pharmaceutical Products and Medical Devices).

*Article 10.37***Protection of data submitted to obtain a marketing authorisation for plant protection products**

1. The Parties shall determine safety and efficacy requirements before authorising the placing on their respective markets of plant protection products.

2. The Parties shall ensure that tests, study reports or information submitted for the first time by an applicant to obtain a marketing authorisation for a plant protection product are not used by third parties or relevant authorities for the benefit of any other person aiming at achieving a marketing authorisation for a plant protection product, unless proof of the explicit consent of the first applicant to use these data is provided. This protection will be hereinafter referred to as data protection.

3. The period of data protection should be at least 10 years starting from the date of the first marketing authorisation in the respective Parties.

*Article 10.38***Implementation**

The Parties shall take the necessary measures to ensure full effectiveness of the protection foreseen in this Sub-section and actively cooperate and engage in a constructive dialogue in that regard.

**Sub-section F****Other provisions***Article 10.39***Plant varieties**

Each Party shall provide for the protection of plant varieties and comply with the International Convention for the Protection of New Varieties of Plants (1991).

*Article 10.40***Genetic resources, traditional knowledge and folklore**

1. Subject to their legislation, the Parties shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

2. The Parties agree to regularly exchange views and information on relevant multilateral discussions:

- (a) in WIPO, on the issues dealt with in the framework of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore;
- (b) in the WTO, on the issues related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity (hereinafter referred to as the 'CBD'), and the protection of traditional knowledge and folklore; and
- (c) in the CBD, on the issues related to an international regime on access to genetic resources and benefit sharing.

3. Following the conclusion of the relevant multilateral discussions referred to in paragraph 2, the Parties agree, at the request of either Party, to review this Article in the Trade Committee in the light of the results and conclusion of such multilateral discussions. The Trade Committee may adopt any decision necessary to give effect to the results of the review.

#### SECTION C

### **Enforcement of intellectual property rights**

#### *Article 10.41*

#### **General obligations**

1. The Parties reaffirm their commitments under the TRIPS Agreement, and in particular Part III thereof and shall ensure that the following complementary measures, procedures and remedies are available under their legislation so as to permit effective action against any act of infringement of intellectual property rights<sup>(68)</sup> covered by this Agreement.
2. Those measures, procedures and remedies shall:
  - (a) include expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements;
  - (b) be fair and equitable;
  - (c) not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays; and
  - (d) be effective, proportionate and dissuasive, and be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

#### *Article 10.42*

#### **Entitled applicants**

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

- (a) the holders of intellectual property rights in accordance with the provisions of the applicable law;
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by, and in accordance with, the provisions of the applicable law;
- (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, the provisions of the applicable law; and
- (d) a federation or an association having the legal standing and authority to assert those rights, in so far as permitted by, and in accordance with, the provisions of the applicable law.

#### Sub-section A

### **Civil measures, procedures and remedies**

#### *Article 10.43*

#### **Evidence**

Each Party shall take such measures as necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following a party's application, the submission of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

#### *Article 10.44*

#### **Provisional measures for preserving evidence**

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support its claims that its intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.
2. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and in appropriate cases, the materials and implements used in the production or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

<sup>(68)</sup> As defined in Article 10.2.2(a) through (h).

*Article 10.45***Right of information**

1. Each Party shall ensure that, during civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer and/or any other person which is party to a litigation or a witness therein to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

(a) 'Any other person' in this paragraph means a person who:

- (i) was found in possession of the infringing goods on a commercial scale;
- (ii) was found to be using the infringing services on a commercial scale;
- (iii) was found to be providing on a commercial scale services used in infringing activities; or
- (iv) was indicated by the person referred to in this subparagraph as being involved in the production, manufacture or distribution of the goods or the provision of the services.

(b) Information shall, as appropriate, comprise:

- (i) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; or
- (ii) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

2. This Article shall apply without prejudice to other statutory provisions which:

- (a) grant the right holder rights to receive fuller information;
- (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- (c) govern responsibility for misuse of the right of information;
- (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

*Article 10.46***Provisional and precautionary measures**

1. Each Party shall ensure that the judicial authorities may, at the request of the applicant, issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by its legislation, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued against an intermediary<sup>(69)</sup> whose services are being used by a third party to infringe copyright, related rights, trademarks or geographical indications.

2. An interlocutory injunction may also be issued to order the seizure of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an infringement committed on a commercial scale, each Party shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of bank accounts and other assets.

*Article 10.47***Corrective measures**

1. Each Party shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages to the right holder by reason of the infringement, and without compensation of any sort, destruction of goods that they have found to be infringing an intellectual property right or any other measures to definitively remove those goods from the channels of commerce. If appropriate, the competent judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.

2. The judicial authorities shall order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

<sup>(69)</sup> For the purposes of this paragraph, the scope of 'intermediary' is determined in each Party's legislation, but shall include those who deliver or distribute infringing goods, and also where appropriate, include online service providers.



3. In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

#### *Article 10.48*

##### **Injunctions**

1. Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement.

2. Where provided for by law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. Each Party shall also ensure that right holders are in a position to apply for an injunction against intermediaries<sup>(70)</sup> whose services are being used by a third party to infringe copyright, related rights, trademarks or geographical indications.

#### *Article 10.49*

##### **Alternative measures**

Each Party may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 10.47 or 10.48, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 10.47 or 10.48 if that person acted unintentionally and without negligence, if execution of the measures in question would cause him or her disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

#### *Article 10.50*

##### **Damages**

1. Each Party shall ensure that when the judicial authorities set damages:

- (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or
- (b) as an alternative to subparagraph (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

<sup>(70)</sup> For the purposes of this paragraph, the scope of 'intermediary' is determined in each Party's legislation, but shall include those who deliver or distribute infringing goods, and also where appropriate, include online service providers.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may provide that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

3. In civil judicial proceedings, each Party, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, may establish or maintain pre-established damages, which shall be available on the election of the right holder.

#### *Article 10.51*

##### **Legal costs**

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow as such.

#### *Article 10.52*

##### **Publication of judicial decisions**

In cases of infringement of an intellectual property right, each Party shall ensure that the judicial authorities may order, where appropriate, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. Each Party may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

#### *Article 10.53*

##### **Presumption of authorship or ownership**

In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person or entity whose name is indicated as the author or related right holder of the work or subject matter in the usual manner is the designated right holder in such work or subject matter.

#### **Sub-section B**

##### **Criminal enforcement**

#### *Article 10.54*

##### **Scope of criminal enforcement**

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting and copyright and related rights<sup>(71)</sup> piracy on a commercial scale.

<sup>(71)</sup> The term 'related rights' is defined by each Party in accordance with its international obligations.

*Article 10.55***Geographical indications and designs counterfeiting**

Subject to its national or constitutional law and regulations, each Party shall consider adopting measures to establish the criminal liability for counterfeiting geographical indications and designs.

*Article 10.56***Liability of legal persons**

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the offences referred to in Article 10.54.

2. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

*Article 10.57***Aiding and abetting**

The provisions of this Sub-section shall apply to aiding and abetting of the offences referred to in Article 10.54.

*Article 10.58***Seizure**

In case of an offence referred to in Article 10.54, each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements predominantly used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and any assets derived from, or obtained directly or indirectly through, the infringing activity.

*Article 10.59***Penalties**

For the offences referred to in Article 10.54, each Party shall provide for penalties that include sentences of imprisonment and/or monetary fines that are effective, proportionate and dissuasive.

*Article 10.60***Confiscation**

1. For the offences referred to in Article 10.54, each Party shall provide that its competent authorities shall have the authority to order confiscation and/or destruction of all counterfeit trademark goods or pirated copyright goods, materials and implements predominantly used in the creation

of counterfeit trademark goods or pirated copyright goods and the assets derived from, or obtained directly or indirectly through, the infringing activity.

2. Each Party shall ensure that the counterfeit trademark goods and pirated copyright goods that have been confiscated under this Article shall, if not destroyed, be disposed of outside the channels of commerce, under the condition that the goods are not dangerous for the health and security of persons.

3. Each Party shall further ensure that confiscation and destruction under this Article shall occur without compensation of any kind of the defendant.

4. Each Party may provide that its judicial authorities have the authority to order the confiscation of assets the value of which corresponds to that of such assets derived from, or obtained directly or indirectly through, the infringing activity.

*Article 10.61***Rights of third parties**

Each Party shall ensure that the rights of third parties shall be duly protected and guaranteed.

*Sub-section C***Liability of online service providers***Article 10.62***Liability of online service providers <sup>(72)</sup>**

The Parties recognise that the services of intermediaries may be used by third parties for infringing activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, each Party shall provide for the measures set out in Articles 10.63 through 10.66 for intermediary service providers where they are in no way involved with the information transmitted.

*Article 10.63***Liability of online service providers: 'mere conduit'**

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

(a) does not initiate the transmission;

(b) does not select the receiver of the transmission; and

<sup>(72)</sup> For the purposes of the function referred to in Article 10.63, service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for the purpose of the functions referred to in Articles 10.64 and 10.65 service provider means a provider or operator of facilities for online services or network access.

- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as such storage takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility, in accordance with the Parties' legal systems, of a judicial or administrative authority requiring the service provider to terminate or prevent an infringement.

#### Article 10.64

##### Liability of online service providers: 'caching'

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that the provider:

- (a) does not modify the information;
- (b) complies with conditions on access to the information;
- (c) complies with rules regarding updating of the information, specified in a manner widely recognised and used by industry;
- (d) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- (e) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a judicial or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility, in accordance with the Parties' legal systems, of a judicial or administrative

authority requiring the service provider to terminate or prevent an infringement.

#### Article 10.65

##### Liability of online service providers: 'hosting'

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that the provider:

- (a) does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- (b) upon obtaining such knowledge or awareness acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility, in accordance with the Parties' legal systems, of a judicial or administrative authority requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility of the Parties establishing procedures governing the removal or disabling of access to information.

#### Article 10.66

##### No general obligation to monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 10.63 through 10.65, to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating illegal activity.

2. The Parties may establish obligations for information society service providers to promptly inform the competent authorities of alleged illegal activities undertaken or information provided by recipients of their service, or to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

## Sub-section D

**Other provisions***Article 10.67***Border measures**

1. Each Party shall, unless otherwise provided for in this Section, adopt procedures <sup>(73)</sup> to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, customs transit, transshipment, placement under a free zone <sup>(74)</sup>, placement under a suspensive procedure <sup>(75)</sup> or a bonded warehouse of goods infringing an intellectual property right <sup>(76)</sup> may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation or the detention of such goods.

2. The Parties shall provide that when the customs authorities, in the course of their actions and before an application has been lodged by a right holder or granted, have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them in order to enable the right holder to submit an application for action in accordance with the paragraph 1.

3. Any rights or obligations established in the implementation of Section 4 of Part III of the TRIPS Agreement concerning the importer shall also be applicable to the exporter or if necessary to the holder <sup>(77)</sup> of the goods.

<sup>(73)</sup> It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder.

<sup>(74)</sup> 'customs transit, transshipment and placement under a free zone' as defined in the Kyoto Convention.

<sup>(75)</sup> For Korea, 'placement under a suspensive procedure' includes temporary importation and bonded factory. For the European Union, 'placement under a suspensive procedure' includes temporary importation, inward processing and processing under customs control.

<sup>(76)</sup> For the purposes of this Article, goods infringing an intellectual property right means:

(a) counterfeit goods, which are:

(i) goods, including packaging, bearing without authorisation a trademark identical to the trademark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark holder's rights;

(ii) any trademark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as the goods referred to in subparagraph (a)(i); or

(iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in subparagraph (a)(i);

(b) pirated copyright goods, which are or contain copies made without the consent of the right holder, or of a person duly authorised by the right holder in the country of production, of a copyright or related right, regardless of whether it is registered in each Party's legislation; or

(c) goods which, according to the legislation of the Party in which the application for customs action is made, infringe:

(i) a patent;

(ii) a plant variety right;

(iii) a registered design; or

(iv) a geographical indication.

<sup>(77)</sup> Including at least the person who is the owner of the goods or the person who has a similar right of disposal over them.

4. Korea shall fully implement the obligation under paragraphs 1 and 2 with respect to subparagraph (c)(i) and (c)(iii) of footnote 27 within two years of the entry into force of this Agreement.

*Article 10.68***Codes of conduct**

The Parties shall encourage:

- (a) the development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture; and
- (b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.

*Article 10.69***Cooperation**

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter. Areas of cooperation include, but are not limited to, the following activities:

- (a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences on legislative progress;
- (b) exchange of experiences on enforcement of intellectual property rights;
- (c) exchange of experiences on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies; coordination to prevent exports of counterfeit goods, including with other countries;
- (d) capacity-building; and
- (e) promotion and dissemination of information on intellectual property rights in, inter alia, business circles and civil society; promotion of public awareness of consumers and right holders.

2. Without prejudice and as a complement to paragraph 1, the European Union and Korea agree to establish and maintain an effective dialogue on intellectual property issues (IP Dialogue) to address topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issue.

## CHAPTER ELEVEN

### COMPETITION

#### SECTION A

#### **Competition**

##### *Article 11.1*

#### **Principles**

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties undertake to apply their respective competition laws so as to prevent the benefits of the trade liberalisation process in goods, services and establishment from being removed or eliminated by anti-competitive business conduct or anti-competitive transactions.

2. The Parties shall maintain in their respective territories comprehensive competition laws which effectively address restrictive agreements, concerted practices<sup>(78)</sup> and abuse of dominance by one or more enterprises, and which provide effective control of concentrations between enterprises.

3. The Parties agree that the following activities restricting competition are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between them:

- (a) agreements between enterprises, decisions by associations of enterprises and concerted practices, which have as their object or effect the prevention, restriction or distortion of competition in the territory of either Party as a whole or in a substantial part thereof;
- (b) any abuse by one or more enterprises of a dominant position in the territory of either Party as a whole or in a substantial part thereof; or
- (c) concentrations between enterprises, which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the territory of either Party as a whole or in a substantial part thereof.

<sup>(78)</sup> The application of this Article to concerted practices is determined by each Party's competition laws.

##### *Article 11.2*

#### **Definitions**

For the purposes of this Section, competition laws means:

- (a) for the European Union, Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union, Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, and their implementing regulations and amendments;
- (b) for Korea, the Monopoly Regulation and Fair Trade Act and its implementing regulations and amendments; and
- (c) any changes that instruments set out in this Article may undergo after the entry into force of this Agreement.

##### *Article 11.3*

#### **Implementation**

1. The Parties shall maintain an authority or authorities responsible for, and appropriately equipped for, the implementation of the competition laws set out in Article 11.2.

2. The Parties recognise the importance of applying their respective competition laws in a transparent, timely and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence of the parties concerned.

3. Upon request of a Party, the other Party shall make available to the requesting Party public information concerning its competition law enforcement activities and legislation related to the obligations covered by this Section.

##### *Article 11.4*

#### **Public enterprises and enterprises entrusted with special rights<sup>(79)</sup> or exclusive rights**

1. With respect to public enterprises and enterprises entrusted with special rights or exclusive rights:

- (a) neither Party shall adopt or maintain any measure contrary to the principles contained in Article 11.1; and
- (b) the Parties shall ensure that such enterprises are subject to the competition laws set out in Article 11.2,

<sup>(79)</sup> Special rights are granted by a Party when it designates or limits to two or more the number of enterprises authorised to provide goods or services, other than according to objective, proportional and non-discriminatory criteria, or confers on enterprises legal or regulatory advantages which substantially affect the ability of any other enterprise to provide the same goods or services.



in so far as the application of these principles and competition laws does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

2. Nothing in paragraph 1 shall be construed to prevent a Party from establishing or maintaining a public enterprise, entrusting enterprises with special or exclusive rights or maintaining such rights.

#### *Article 11.5*

#### **State monopolies**

1. Each Party shall adjust state monopolies of a commercial character so as to ensure that no discriminatory measure<sup>(80)</sup> regarding the conditions under which goods are procured and marketed exists between natural or legal persons of the Parties.

2. Nothing in paragraph 1 shall be construed to prevent a Party from establishing or maintaining a state monopoly.

3. This Article is without prejudice to the rights and obligations set out under Chapter Nine (Government Procurement).

#### *Article 11.6*

#### **Cooperation**

1. The Parties recognise the importance of cooperation and coordination between their respective competition authorities to further enhance effective competition law enforcement and to fulfil the objectives of this Agreement through the promotion of competition and the curtailment of anti-competitive business conduct or anti-competitive transactions.

2. The Parties shall cooperate in relation to their respective enforcement policies and in the enforcement of their respective competition laws, including through enforcement cooperation, notification, consultation and exchange of non-confidential information based on the Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities signed on 23 May 2009.

#### *Article 11.7*

#### **Consultation**

1. In the absence of more specific rules in the agreement referred to in Article 11.6.2, a Party shall, on request of the other Party, enter into consultations regarding representations made by the other Party, to foster mutual understanding or to

<sup>(80)</sup> Discriminatory measure means a measure which does not comply with national treatment, as set out in the relevant provisions of this Agreement, including the terms and conditions set out in the relevant Annexes thereto.

address specific matters that arise under this Section. In its request, the other Party shall indicate, if relevant, how the matter affects trade between the Parties.

2. The Parties shall promptly discuss, at the request of a Party, any questions arising from the interpretation or application of this Section.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavour to provide relevant non-confidential information to the other Party.

#### *Article 11.8*

#### **Dispute settlement**

Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) for any matter arising under this Section.

#### *SECTION B*

#### **Subsidies**

#### *Article 11.9*

#### **Principles**

The Parties agree to use their best endeavours to remedy or remove through the application of their competition laws or otherwise, distortions of competition caused by subsidies in so far as they affect international trade, and to prevent the occurrence of such situations.

#### *Article 11.10*

#### **Definitions of a subsidy and specificity**

1. A subsidy is a measure which fulfils the conditions set out in Article 1.1 of the SCM Agreement.

2. A subsidy is specific if it falls within the meaning of Article 2 of the SCM Agreement. A subsidy shall be subject to this Section only if it is specific within the meaning of Article 2 of the SCM Agreement.

#### *Article 11.11*

#### **Prohibited subsidies<sup>(81), (82)</sup>**

The following subsidies shall be deemed to be specific under the conditions of Article 2 of the SCM Agreement and shall be prohibited for the purposes of this Agreement in so far as they adversely affect international trade of the Parties<sup>(83)</sup>:

<sup>(81)</sup> The Parties hereby agree that this Article applies to subsidies received only after the date when this Agreement enters into force.

<sup>(82)</sup> For the purposes of this Agreement, subsidies for small and medium-sized enterprises granted in accordance with objective criteria or conditions as provided for in Article 2.1 (b) and footnote 2 attached thereto of the SCM Agreement shall not be subject to this Article.

<sup>(83)</sup> International trade of the Parties comprises both domestic and exports markets.

- (a) subsidies granted under any legal arrangement whereby a government or any public body is responsible for covering debts or liabilities of certain enterprises within the meaning of Article 2.1 of the SCM Agreement without any limitation, in law or in fact, as to the amount of those debts and liabilities or the duration of such responsibility; and
- (b) subsidies (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices or tax exemptions) to insolvent or ailing enterprises, without a credible restructuring plan based on realistic assumptions with a view to ensuring the return of the insolvent or ailing enterprise within a reasonable period of time to long-term viability and without the enterprise significantly contributing itself to the costs of restructuring. This does not prevent the Parties from providing subsidies by way of temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely keep an ailing enterprise in business for the time necessary to work out a restructuring or liquidation plan.

This subparagraph does not apply to subsidies granted as compensation for carrying out public service obligations and to the coal industry.

#### Article 11.12

##### Transparency

1. Each Party shall ensure transparency in the area of subsidies. To this end, each Party shall report annually to the other Party on the total amount, types and the sectoral distribution of subsidies which are specific and may affect international trade. Reporting should contain information concerning the objective, form, the amount or budget and where possible the recipient of the subsidy granted by a government or any public body.
2. Such report is deemed to have been provided if it is sent to the other Party, or if the relevant information is made available on a publicly accessible Internet website, by 31 December of the subsequent calendar year.
3. Upon request by a Party, the other Party shall provide further information on any subsidy schemes and particular individual cases of subsidy which is specific. The Parties shall exchange this information, taking into account the limitations imposed by the requirements of professional and business secrecy.

#### Article 11.13

##### Relation with the WTO Agreement

The provisions in this Section are without prejudice to the rights of a Party in accordance with the relevant provisions of the WTO Agreement to apply trade remedies or to take dispute settlement or other appropriate action against a subsidy granted by the other Party.

#### Article 11.14

##### Monitoring and review

The Parties shall keep under constant review the matters to which reference is made in this Section. Each Party may refer such matters to the Trade Committee. The Parties agree to review progress in implementing this Section every two years after the entry into force of this Agreement, unless both Parties agree otherwise.

#### Article 11.15

##### Scope

1. The provisions of Articles 11.9 through 11.14 shall apply to subsidies for goods with the exception of fisheries subsidies, subsidies related to products covered by Annex 1 of the Agreement on Agriculture and other subsidies covered by the Agreement on Agriculture.

2. The Parties shall use their best endeavours to develop rules applicable to subsidies to services, taking into account developments at the multilateral level, and to exchange information upon the request of either Party. The Parties agree to hold the first exchange of views on subsidies to services within three years after the entry into force of this Agreement.

#### CHAPTER TWELVE

##### TRANSPARENCY

#### Article 12.1

##### Definitions

For the purposes of this Chapter:

measure of general application means any general or abstract act, procedure, interpretation or other requirement, including non-binding measures. It does not include a ruling that applies to a particular person; and

interested person means any natural or legal person that may be subject to any rights or obligations under measures of general application, within the meaning of Article 12.2.

#### Article 12.2

##### Objective and scope

Recognising the impact which their respective regulatory environment may have on trade between them, the Parties shall pursue an efficient and predictable regulatory environment for economic operators, especially small ones doing business in their territories. The Parties, reaffirming their respective commitments under the WTO Agreement, hereby lay down clarifications and improved arrangements for transparency, consultation and better administration of measures of general application, in so far as these may have an impact on any matter covered by this Agreement.

*Article 12.3***Publication**

1. Each Party shall ensure that measures of general application that may have an impact on any matter covered by this Agreement:

- (a) are readily available to interested persons, in a non-discriminatory manner, via an officially designated medium, and where feasible and possible, electronic means, in such a manner as to enable interested persons and the other Party to become acquainted with them;
- (b) provide an explanation of the objective of, and rationale for, such measures; and
- (c) allow for sufficient time between publication and entry into force of such measures, taking due account of the requirements of legal certainty, legitimate expectations and proportionality.

2. Each Party shall:

- (a) endeavour to publish in advance any measure of general application that it proposes to adopt or to amend, including an explanation of the objective of, and rationale for the proposal;
- (b) provide reasonable opportunities for interested persons to comment on such proposed measure, allowing, in particular, for sufficient time for such opportunities; and
- (c) endeavour to take into account the comments received from interested persons with respect to such proposed measure.

*Article 12.4***Enquiries and contact points**

1. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any interested person regarding any measures of general application which may have an impact on matters covered by this Agreement which are proposed or in force, and how they would be applied. Enquiries may be addressed through enquiry or contact points established under this Agreement or any other mechanism as appropriate.

2. The Parties recognise that such response provided for in paragraph 1 may not be definitive or legally binding but for information purposes only, unless otherwise provided for in their laws and regulations.

3. Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure of general application that the requesting Party considers might affect the operation of this

Agreement, regardless of whether the requesting Party has been previously notified of that measure.

4. Each Party shall endeavour to identify or create enquiry or contact points for interested persons of the other Party with the task of seeking to effectively resolve problems for them that may arise from the application of measures of general application. Such processes should be easily accessible, time-bound, result-oriented and transparent. They shall be without prejudice to any appeal or review procedures which the Parties establish or maintain. They shall also be without prejudice to the Parties' rights and obligations under Chapter Fourteen (Dispute Settlement) and Annex 14-A (Mediation Mechanism for Non-Tariff Measures).

*Article 12.5***Administrative proceedings**

With a view to administering in a consistent, impartial and reasonable manner all measures of general application which may have an impact on matters covered by this Agreement, each Party in applying such measures to particular persons, goods or services of the other Party in specific cases, shall:

- (a) endeavour to provide interested persons of the other Party, who are directly affected by a proceeding, with reasonable notice, in accordance with its procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) afford such interested persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, in so far as time, the nature of the proceeding and the public interest permit; and

- (c) ensure that its procedures are based on, and in accordance with its law.

*Article 12.6***Review and appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative action relating to matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

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

3. Each Party shall ensure, subject to appeal or further review as provided for in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

#### Article 12.7

##### **Regulatory quality and performance and good administrative behaviour**

1. The Parties agree to cooperate in promoting regulatory quality and performance, including through exchange of information and best practices on their respective regulatory reform processes and regulatory impact assessments.

2. The Parties subscribe to the principles of good administrative behaviour, and agree to cooperate in promoting it, including through exchange of information and best practices.

#### Article 12.8

##### **Non-discrimination**

Each Party shall apply to interested persons of the other Party transparency standards no less favourable than those accorded to its own interested persons, to the interested persons of any third country, or to any third country, whichever are the best.

### CHAPTER THIRTEEN

#### **TRADE AND SUSTAINABLE DEVELOPMENT**

#### Article 13.1

##### **Context and objectives**

1. Recalling Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002 and the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work, the Parties reaffirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.

2. The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. They underline the benefit of cooperation on trade-related social and environmental issues as part of a global approach to trade and sustainable development.

3. The Parties recognise that it is not their intention in this Chapter to harmonise the labour or environment standards of the Parties, but to strengthen their trade relations and cooperation in ways that promote sustainable development in the context of paragraphs 1 and 2.

#### Article 13.2

##### **Scope**

1. Except as otherwise provided in this Chapter, this Chapter applies to measures adopted or maintained by the Parties affecting trade-related aspects of labour<sup>(84)</sup> and environmental issues in the context of Articles 13.1.1 and 13.1.2.

2. The Parties stress that environmental and labour standards should not be used for protectionist trade purposes. The Parties note that their comparative advantage should in no way be called into question.

#### Article 13.3

##### **Right to regulate and levels of protection**

Recognising the right of each Party to establish its own levels of environmental and labour protection, and to adopt or modify accordingly its relevant laws and policies, each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental and labour protection, consistent with the internationally recognised standards or agreements referred to in Articles 13.4 and 13.5, and shall strive to continue to improve those laws and policies.

#### Article 13.4

##### **Multilateral labour standards and agreements**

1. The Parties recognise the value of international cooperation and agreements on employment and labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalisation. They commit to consulting and cooperating as appropriate on trade-related labour and employment issues of mutual interest.

<sup>(84)</sup> When labour is referred to in this Chapter, it includes the issues relevant to the Decent Work Agenda as agreed on in the International Labour Organisation (hereinafter referred to as the 'ILO') and in the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work.

2. The Parties reaffirm the commitment, under the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work, to recognising full and productive employment and decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation and to promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all, including men, women and young people.

3. The Parties, in accordance with the obligations deriving from membership of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, commit to respecting, promoting and realising, in their laws and practices, the principles concerning the fundamental rights, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

The Parties reaffirm the commitment to effectively implementing the ILO Conventions that Korea and the Member States of the European Union have ratified respectively. The Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions as well as the other Conventions that are classified as 'up-to-date' by the ILO.

#### *Article 13.5*

##### **Multilateral environmental agreements**

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and they commit to consulting and cooperating as appropriate with respect to negotiations on trade-related environmental issues of mutual interest.

2. The Parties reaffirm their commitments to the effective implementation in their laws and practices of the multilateral environmental agreements to which they are party.

3. The Parties reaffirm their commitment to reaching the ultimate objective of the United Nations Framework Convention on Climate Change and its Kyoto Protocol. They commit to

cooperating on the development of the future international climate change framework in accordance with the Bali Action Plan <sup>(85)</sup>.

#### *Article 13.6*

##### **Trade favouring sustainable development**

1. The Parties reconfirm that trade should promote sustainable development in all its dimensions. The Parties recognise the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity, and they highlight the value of greater policy coherence between trade policies, on the one hand, and employment and labour policies on the other.

2. The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods and services, including environmental technologies, sustainable renewable energy, energy efficient products and services and eco-labelled goods, including through addressing related non-tariff barriers. The Parties shall strive to facilitate and promote trade in goods that contribute to sustainable development, including goods that are the subject of schemes such as fair and ethical trade and those involving corporate social responsibility and accountability.

#### *Article 13.7*

##### **Upholding levels of protection in the application and enforcement of laws, regulations or standards**

1. A Party shall not fail to effectively enforce its environmental and labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

2. A Party shall not weaken or reduce the environmental or labour protections afforded in its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties.

#### *Article 13.8*

##### **Scientific information**

The Parties recognise the importance, when preparing and implementing measures aimed at protecting the environment and social conditions that affect trade between the Parties, of taking account of scientific and technical information, and relevant international standards, guidelines or recommendations.

<sup>(85)</sup> UNFCCC Decision-1/CP.13 adopted by the thirteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.



*Article 13.9***Transparency**

The Parties, in accordance with their respective domestic laws, agree to develop, introduce and implement any measures aimed at protecting the environment and labour conditions that affect trade between the Parties in a transparent manner, with due notice and public consultation, and with appropriate and timely communication to and consultation of non-state actors including the private sector.

*Article 13.10***Review of sustainability impacts**

The Parties commit to reviewing, monitoring and assessing the impact of the implementation of this Agreement on sustainable development, including the promotion of decent work, through their respective participative processes and institutions, as well as those set up under this Agreement, for instance through trade-related sustainability impact assessments.

*Article 13.11***Cooperation**

Recognising the importance of cooperating on trade-related aspects of social and environmental policies in order to achieve the objectives of this Agreement, the Parties commit to initiating cooperative activities as set out in Annex 13.

*Article 13.12***Institutional mechanism**

1. Each Party shall designate an office within its administration which shall serve as a contact point with the other Party for the purpose of implementing this Chapter.
2. The Committee on Trade and Sustainable Development established pursuant to Article 15.2.1 (Specialised Committees) shall comprise senior officials from within the administrations of the Parties.
3. The Committee shall meet within the first year of the entry into force of this Agreement, and thereafter as necessary, to oversee the implementation of this Chapter, including cooperative activities undertaken under Annex 13.
4. Each Party shall establish a Domestic Advisory Group(s) on sustainable development (environment and labour) with the task of advising on the implementation of this Chapter.
5. The Domestic Advisory Group(s) comprise(s) independent representative organisations of civil society in a balanced representation of environment, labour and business organisations as well as other relevant stakeholders.

*Article 13.13***Civil society dialogue mechanism**

1. Members of Domestic Advisory Group(s) of each Party will meet at a Civil Society Forum in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties. The Civil Society Forum will meet once a year unless otherwise agreed by the Parties. The Parties shall agree by decision of the Committee on Trade and Sustainable Development on the operation of the Civil Society Forum no later than one year after the entry into force of this Agreement.
2. The Domestic Advisory Group(s) will select the representatives from its members in a balanced representation of relevant stakeholders as set out in Article 13.12.5.
3. The Parties can present an update on the implementation of this Chapter to the Civil Society Forum. The views, opinions or findings of the Civil Society Forum can be submitted to the Parties directly or through the Domestic Advisory Group(s).

*Article 13.14***Government consultations**

1. A Party may request consultations with the other Party regarding any matter of mutual interest arising under this Chapter, including the communications of the Domestic Advisory Group(s) referred to in Article 13.12, by delivering a written request to the contact point of the other Party. Consultations shall commence promptly after a Party delivers a request for consultations.
2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter. The Parties shall ensure that the resolution reflects the activities of the ILO or relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations. Where relevant, subject to the agreement of the Parties, they can seek advice of these organisations or bodies.
3. If a Party considers that the matter needs further discussion, that Party may request that the Committee on Trade and Sustainable Development be convened to consider the matter by delivering a written request to the contact point of the other Party. The Committee shall convene promptly and endeavour to agree on a resolution of the matter. The resolution of the Committee shall be made public unless the Committee otherwise decides.
4. The Committee may seek the advice of either or both Domestic Advisory Group(s) and each Party may seek the advice of its own Domestic Advisory Group(s). A Domestic Advisory Group of a Party may also submit communications on its own initiative to that Party or to the Committee.

*Article 13.15***Panel of experts**

1. Unless the Parties otherwise agree, a Party may, 90 days after the delivery of a request for consultations under Article 13.14.1, request that a Panel of Experts be convened to examine the matter that has not been satisfactorily addressed through government consultations. The Parties can make submissions to the Panel of Experts. The Panel of Experts should seek information and advice from either Party, the Domestic Advisory Group(s) or international organisations as set out in Article 13.14, as it deems appropriate. The Panel of Experts shall be convened within two months of a Party's request.

2. The Panel of Experts that is selected in accordance with the procedures set out in paragraph 3, shall provide its expertise in implementing this Chapter. Unless the Parties otherwise agree, the Panel of Experts shall, within 90 days of the last expert being selected, present to the Parties a report. The Parties shall make their best efforts to accommodate advice or recommendations of the Panel of Experts on the implementation of this Chapter. The implementation of the recommendations of the Panel of Experts shall be monitored by the Committee on Trade and Sustainable Development. The report of the Panel of Experts shall be made available to the Domestic Advisory Group(s) of the Parties. As regards confidential information, the principles in Annex 14-B (Rules of Procedure for Arbitration) apply.

3. Upon the entry into force of this Agreement, the Parties shall agree on a list of at least 15 persons with expertise on the issues covered by this Chapter, of whom at least five shall be non-nationals of either Party who will serve as chair of the Panel of Experts. The experts shall be independent of, and not be affiliated with or take instructions from, either Party or organisations represented in the Domestic Advisory Group(s). Each Party shall select one expert from the list of experts within 30 days of the receipt of the request for the establishment of a Panel of Experts. If a Party fails to select its expert within such period, the other Party shall select from the list of experts a national of the Party that has failed to select an expert. The two selected experts shall decide on the chair who shall not be a national of either Party.

*Article 13.16***Dispute settlement**

For any matter arising under this Chapter, the Parties shall only have recourse to the procedures provided for in Articles 13.14 and 13.15.

## CHAPTER FOURTEEN

**DISPUTE SETTLEMENT**

## SECTION A

**Objective and scope***Article 14.1***Objective**

The objective of this Chapter is to avoid and settle any dispute between the Parties concerning the good faith application of this Agreement and to arrive at, where possible, a mutually agreed solution.

*Article 14.2***Scope**

This Chapter applies to any dispute concerning the interpretation and application of the provisions of this Agreement unless otherwise provided <sup>(86)</sup>.

## SECTION B

**Consultations***Article 14.3***Consultations**

1. The Parties shall endeavour to resolve any dispute regarding the interpretation and application of the provisions referred to in Article 14.2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request to the other Party identifying any measure at issue and the provisions of the Agreement that it considers applicable. A copy of the request for consultations shall be delivered to the Trade Committee.

3. Consultations shall be held within 30 days of the date of the submission of the request and take place, unless the Parties agree otherwise, in the territory of the Party complained against. The consultations shall be deemed concluded within 30 days of the date of the submission of the request, unless the Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential.

4. Consultations on matters of urgency, including those regarding perishable or seasonal goods <sup>(87)</sup> shall be held within 15 days of the date of the submission of the request, and shall be deemed concluded within 15 days of the date of the submission of the request.

<sup>(86)</sup> For disputes relating to the Protocol on Cultural Cooperation all references in this Chapter to the Trade Committee shall be understood as referring to the Committee on Cultural Cooperation.

<sup>(87)</sup> Seasonal goods are goods whose imports, over a representative period, are not spread over the whole year but concentrated on specific times of the year as a result of seasonal factors.

5. If consultations are not held within the time frames laid down in paragraph 3 or 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 14.4.

#### SECTION C

### **Dispute settlement procedures**

#### Sub-section A

### **Arbitration procedure**

#### *Article 14.4*

#### **Initiation of the arbitration procedure**

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 14.3, the complaining Party may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Trade Committee. The complaining Party shall identify in its request the specific measure at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 14.2.

#### *Article 14.5*

#### **Establishment of the arbitration panel**

1. An arbitration panel shall be composed of three arbitrators.

2. Within 10 days of the date of the submission of the request for the establishment of an arbitration panel to the Trade Committee, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.

3. In the event that the Parties are unable to agree on the composition of the arbitration panel within the time frame laid down in paragraph 2, either Party may request the chair of the Trade Committee, or the chair's delegate, to select all three members by lot from the list established under Article 14.18, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure.

4. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected.

#### *Article 14.6*

#### **Interim panel report**

1. The arbitration panel shall issue to the Parties an interim report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings

and recommendations that it makes, within 90 days of the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade Committee in writing, 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.

2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within 14 days of its issuance.

3. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to issue its interim report and any Party may submit a written request for the arbitration panel to review precise aspects of the interim report, within half of the respective time frames under paragraphs 1 and 2.

4. 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. The final arbitration panel ruling shall include a discussion of the arguments made at the interim review stage.

#### *Article 14.7*

### **Arbitration panel ruling**

1. The arbitration panel shall issue its ruling to the Parties and to the Trade Committee within 120 days of the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Trade Committee in writing, stating the reasons for the delay and the date on which the panel plans to issue its ruling. Under no circumstances should the ruling be issued later than 150 days after the date of the establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to issue its ruling within 60 days of the date of its establishment. Under no circumstances should it take longer than 75 days after its establishment. The arbitration panel may give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

#### Sub-section B

### **Compliance**

#### *Article 14.8*

#### **Compliance with the arbitration panel ruling**

Each Party shall take any measure necessary to comply in good faith with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

*Article 14.9***The reasonable period of time for compliance**

1. No later than 30 days after the issuance of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the Trade Committee of the time it will require for compliance.

2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the notification made under paragraph 1 by the Party complained against, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified to the other Party and to the Trade Committee. The arbitration panel shall issue its ruling to the Parties and to the Trade Committee within 20 days of the date of the submission of the request.

3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 14.5 shall apply. The time limit for issuing the ruling shall be 35 days from the date of the submission of the request referred to in paragraph 2.

4. The Party complained against will inform the complaining Party in writing of its progress to comply with the arbitration panel ruling at least one month before the expiry of the reasonable period of time.

5. The reasonable period of time may be extended by mutual agreement of the Parties.

*Article 14.10***Review of any measure taken to comply with the arbitration panel ruling**

1. The Party complained against shall notify the complaining Party and the Trade Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2. Where there is disagreement between the Parties as to the existence of a measure or consistency with the provisions referred to in Article 14.2 of any measure notified under paragraph 1, the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is incompatible with the provisions referred to in Article 14.2. The arbitration panel shall issue its ruling within 45 days of the date of the submission of the request.

3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 14.5 shall apply. The time limit for issuing the ruling

shall be 60 days from the date of the submission of the request referred to in paragraph 2.

*Article 14.11***Temporary remedies in case of non-compliance**

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure taken to comply exists or that the measure notified under Article 14.10.1 is inconsistent with that Party's obligations under the provisions referred to in Article 14.2, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.

2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 14.10 that no measure taken to comply exists or the measure notified under Article 14.10.1 is inconsistent with the provisions referred to in Article 14.2, the complaining Party shall be entitled, upon notification to the Party complained against and to the Trade Committee, to suspend obligations arising from any provision referred to in Article 14.2 at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify the level of obligations that the complaining Party intends to suspend. The complaining Party may implement the suspension 10 days after the date of the notification, unless the Party complained against has requested arbitration under paragraph 4.

3. In suspending obligations, the complaining Party may choose to increase its tariff rates to the level applied to other WTO Members on a volume of trade to be determined in such a way that the volume of trade multiplied by the increase of the tariff rates equals the value of the nullification or impairment caused by the violation.

4. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the complaining Party and to the Trade Committee before the expiry of the 10 day period referred to in paragraph 2. The original arbitration panel shall issue its ruling on the level of the suspension of obligations to the Parties and to the Trade Committee within 30 days of the date of the submission of the request. Obligations shall not be suspended until the original arbitration panel has issued its ruling, and any suspension shall be consistent with the arbitration panel ruling.

5. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 14.5 shall apply. The period for issuing the ruling shall be 45 days from the date of the submission of the request referred to in paragraph 4.



6. The suspension of obligations shall be temporary and apply only until any measure found to be inconsistent with the provisions referred to in Article 14.2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Article 14.12, or until the Parties have agreed to settle the dispute.

#### *Article 14.12*

### **Review of any measure taken to comply after the suspension of obligations**

1. The Party complained against shall notify the complaining Party and the Trade Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for the termination of the suspension of obligations applied by the complaining Party.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 14.2 within 30 days of the date of the notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the Party complained against and to the Trade Committee. The arbitration panel ruling shall be issued to the Parties and to the Trade Committee within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 14.2, the suspension of obligations shall be terminated.

3. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 14.5 shall apply. The period for issuing the ruling shall be 60 days from the date of the submission of the request referred to in paragraph 2.

#### *Sub-section C*

### **Common provisions**

#### *Article 14.13*

### **Mutually agreed solution**

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the Trade Committee of any such solution. Upon notification of the mutually agreed solution, the procedure shall be terminated.

#### *Article 14.14*

### **Rules of procedure**

1. Dispute settlement procedures under this Chapter shall be governed by Annex 14-B.

2. Any hearing of the arbitration panel shall be open to the public in accordance with Annex 14-B.

#### *Article 14.15*

### **Information and technical advice**

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source,

including the Parties involved in the dispute, as it deems appropriate for the arbitration panel proceeding. The arbitration panel also has the right to seek the relevant opinion of experts as it deems appropriate. Any information obtained in this manner must be disclosed to both Parties which may submit comments. Interested natural or legal persons of the Parties are authorised to submit amicus curiae briefs to the arbitration panel in accordance with Annex 14-B.

#### *Article 14.16*

### **Rules of interpretation**

Any arbitration panel shall interpret the provisions referred to in Article 14.2 in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. Where an obligation under this Agreement is identical to an obligation under the WTO Agreement, the arbitration panel shall adopt an interpretation which is consistent with any relevant interpretation established in rulings of the WTO Dispute Settlement Body (hereinafter referred to as the 'DSB'). The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in the provisions referred to in Article 14.2.

#### *Article 14.17*

### **Arbitration panel decisions and rulings**

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. In no case shall dissenting opinions of arbitrators be published.

2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations for natural or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the basic rationale behind any findings and conclusions that it makes. The Trade Committee shall make the arbitration panel rulings publicly available in its entirety unless it decides not to do so.

#### *SECTION D*

### **General provisions**

#### *Article 14.18*

### **List of arbitrators**

1. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each Party shall propose five individuals to serve as arbitrators. The Parties shall also select five individuals who are not nationals of either Party and shall act as chairperson to the arbitration panel. The Trade Committee will ensure that the list is always maintained at this level.



2. Arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute, or be affiliated with the government of any Party, and shall comply with Annex 14-C.

#### Article 14.19

##### Relation with WTO obligations

1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.

2. However, where a Party has, with regard to a particular measure, initiated a dispute settlement proceeding, either under this Chapter or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded. In addition, a Party shall not seek redress of an obligation which is identical under this Agreement and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress of the identical obligation under the other Agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.

3. For the purposes of paragraph 2:

- (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement (hereinafter referred to as the 'DSU') and are deemed to be concluded when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and
- (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 14.4.1 and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Trade Committee under Article 14.7.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.

#### Article 14.20

##### Time limits

1. All time limits laid down in this Chapter, including the limits for the arbitration panels to issue their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

2. Any time limit referred to in this Chapter may be extended by mutual agreement of the Parties.

#### CHAPTER FIFTEEN

##### INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

#### Article 15.1

##### Trade Committee

1. The Parties hereby establish a Trade Committee<sup>(88)</sup> comprising representatives of the EU Party and representatives of Korea.

2. The Trade Committee shall meet once a year in Brussels or Seoul alternately or at the request of either Party. The Trade Committee shall be co-chaired by the Minister for Trade of Korea and the Member of the European Commission responsible for Trade, or their respective designees. The Trade Committee shall agree on its meeting schedule and set its agenda.

3. The Trade Committee shall:

- (a) ensure that this Agreement operates properly;
- (b) supervise and facilitate the implementation and application of this Agreement, and further its general aims;
- (c) supervise the work of all specialised committees, working groups and other bodies established under this Agreement;
- (d) consider ways to further enhance trade relations between the Parties;
- (e) without prejudice to the rights conferred in Chapter Fourteen (Dispute Settlement) and Annex 14-A (Mediation Mechanism for Non-Tariff Measures), seek appropriate ways and methods of forestalling problems which might arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement;

<sup>(88)</sup> As set out in the Protocol on Cultural Cooperation, the Trade Committee shall have no jurisdiction over the Protocol and the Committee on Cultural Cooperation shall exercise all functions of the Trade Committee as regards that Protocol, where such functions are relevant for the purposes of implementing that Protocol.

- (f) study the development of trade between the Parties; and
- (g) consider any other matter of interest relating to an area covered by this Agreement.

4. The Trade Committee may:

- (a) decide to establish and delegate responsibilities to specialised committees, working groups or other bodies;
- (b) communicate with all interested parties including private sector and civil society organisations;
- (c) consider amendments to this Agreement or amend provisions of this Agreement in cases specifically provided for in this Agreement;
- (d) adopt interpretations of the provisions of this Agreement;
- (e) make recommendations or adopt decisions as envisaged by this Agreement;
- (f) adopt its own rules of procedure; and
- (g) take such other action in the exercise of its functions as the Parties may agree.

5. The Trade Committee shall report to the Joint Committee on its activities and those of its specialised committees, working groups and other bodies at each regular meeting of the Joint Committee.

6. Without prejudice to the rights conferred in Chapter Fourteen (Dispute Settlement) and Annex 14-A (Mediation Mechanism for Non-Tariff Measures), either Party may refer to the Trade Committee any issue relating to the interpretation or application of this Agreement.

7. When a Party submits information considered as confidential under its laws and regulations to the Trade Committee, specialised committees, working groups or any other bodies, the other Party shall treat that information as confidential.

8. Recognising the importance of transparency and openness, the Parties affirm their respective practices of considering the views of members of the public in order to draw on a broad range of perspectives in the implementation of this Agreement.

*Article 15.2*

**Specialised committees**

1. The following specialised committees are hereby established under the auspices of the Trade Committee:

- (a) the Committee on Trade in Goods in accordance with Article 2.16 (Committee on Trade in Goods);
- (b) the Committee on Sanitary and Phytosanitary Measures in accordance with Article 5.10 (Committee on Sanitary and Phytosanitary Measures);

(c) the Customs Committee in accordance with Article 6.16 (Customs Committee). In matters exclusively covered by the Customs Agreement, the Customs Committee acts as the Joint Customs Cooperation Committee established under that Agreement;

(d) the Committee on Trade in Services, Establishment and Electronic Commerce in accordance with Article 7.3 (Committee on Trade in Services, Establishment and Electronic Commerce);

(e) the Committee on Trade and Sustainable Development in accordance with Article 13.12 (Institutional Mechanism); and

(f) the Committee on Outward Processing Zones on the Korean Peninsula in accordance with Annex IV of the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation.

The remit and tasks of the specialised committees established are defined in the relevant chapters and protocols of this Agreement.

2. The Trade Committee may decide to establish other specialised committees in order to assist it in the performance of its tasks. The Trade Committee shall determine the composition, duties and functioning of the specialised committees established pursuant to this Article.

3. Unless otherwise provided for in this Agreement, the specialised committees shall normally meet, once a year, at an appropriate level, alternately in Brussels or Seoul, or at the request of either Party or of the Trade Committee and shall be co-chaired by representatives of Korea and the European Union. The specialised committees shall agree on their meeting schedule and set their agenda.

4. The specialised committees shall inform the Trade Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Trade Committee on their activities at each regular meeting of the Trade Committee. The creation or existence of a specialised committee shall not prevent either Party from bringing any matter directly to the Trade Committee.

5. The Trade Committee may decide to change or undertake the task assigned to a specialised committee or dissolve any specialised committee.

*Article 15.3*

**Working Groups**

1. The following Working Groups are hereby established under the auspices of the Trade Committee:

- (a) the Working Group on Motor Vehicles and Parts in accordance with Article 9.2 (Working Group on Motor Vehicles and Parts) of Annex 2-C (Motor Vehicles and Parts);

- (b) the Working Group on Pharmaceutical Products and Medical Devices in accordance with Article 5.3 (Regulatory Cooperation) of Annex 2-D (Pharmaceutical Products and Medical Devices);
- (c) the Working Group on Chemicals in accordance with paragraph 4 of Annex 2-E (Chemicals);
- (d) the Working Group on Trade Remedy Cooperation in accordance with Article 3.16.1 (Working Group on Trade Remedy Cooperation);
- (e) the Working Group on MRA in accordance with Article 7.21.6 (Mutual Recognition);
- (f) the Working Group on Government Procurement in accordance with Article 9.3 (Government Procurement Working Group); and
- (g) the Working Group on Geographical Indications in accordance with Article 10.25 (Working Group on Geographical Indications).

2. The Trade Committee may decide to establish other working groups for a specific task or subject matter. The Trade Committee shall determine the composition, duties and functioning of working groups. Any regular or ad-hoc meetings between the Parties whose work addresses matters covered by this Agreement shall be considered working groups within the meaning of this Article.

3. Unless otherwise provided for in this Agreement, working groups shall meet, at an appropriate level, when circumstances require, or at the request of either Party or of the Trade Committee. They shall be co-chaired by representatives of Korea and the European Union. Working groups shall agree on their meeting schedule and set their agenda.

4. Working groups shall inform the Trade Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Trade Committee on their activities at each regular meeting of the Trade Committee. The creation or existence of a working group shall not prevent either Party from bringing any matter directly to the Trade Committee.

5. The Trade Committee may decide to change or undertake the task assigned to a working group or dissolve any working group.

#### *Article 15.4*

##### **Decision-making**

1. The Trade Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to take

decisions in respect of all matters in the cases provided by this Agreement.

2. The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decisions taken. The Trade Committee may also make appropriate recommendations.

3. The Trade Committee shall draw up its decisions and recommendations by agreement between the Parties.

#### *Article 15.5*

##### **Amendments**

1. The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, on such date as the Parties may agree.

2. Notwithstanding paragraph 1, the Trade Committee may decide to amend the Annexes, Appendices, Protocols and Notes to this Agreement. The Parties may adopt the decision subject to their respective applicable legal requirements and procedures.

#### *Article 15.6*

##### **Contact points**

1. In order to facilitate communication and to ensure the effective implementation of this Agreement, the Parties shall designate coordinators upon the entry into force of this Agreement. The designation of coordinators is without prejudice to the specific designation of competent authorities under specific chapters of this Agreement.

2. On the request of either Party, the coordinator of the other Party shall indicate the office or official responsible for any matter pertaining to the implementation of this Agreement and provide the required support to facilitate communication with the requesting Party.

3. To the extent possible under its legislation, each Party shall provide information through its coordinators on the request of the other Party and reply promptly to any question from the other Party relating to an actual or proposed measure that might affect trade between the Parties.

#### *Article 15.7*

##### **Taxation**

1. This Agreement shall only apply to taxation measures in so far as such application is necessary to give effect to the provisions of this Agreement.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention between Korea and the respective Member States of the European Union. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between Korea and the respective Member States of the European Union, the competent authorities under that convention shall have sole responsibility for jointly determining whether any inconsistency exists between this Agreement and that convention.

3. Nothing in this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

4. Nothing in this Agreement shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.

#### Article 15.8

##### Balance-of-payments exceptions

1. Where a Party is in serious balance-of-payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods, services and establishment.

2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.

Any restrictive measures adopted or maintained under this Article shall be non-discriminatory, of limited duration, not go beyond what is necessary to remedy the balance-of-payments and external financial situation. They shall be in accordance with the conditions established in the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.

3. Any Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify the other Party of them and present, as soon as possible, a time schedule for their removal.

4. Where the restrictions are adopted or maintained, consultation shall be held promptly in the Trade Committee. Such consultation shall assess the balance-of-payments situation of the concerned Party and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:

(a) the nature and extent of the balance-of-payments and the external financial difficulties;

(b) the external economic and trading environment; or

(c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 3 and 4. All findings of statistical and other facts presented by the International Monetary Funds (hereinafter referred to as the 'IMF') relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the IMF of the balance of payments and the external financial situation of the concerned Party.

#### Article 15.9

##### Security exceptions

Nothing in this Agreement shall be construed:

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

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) connected with the production of or trade in arms, munitions or war material or relating to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;

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

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

(c) to prevent any Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security.

#### Article 15.10

##### Entry into force

1. This Agreement shall be approved by the Parties in accordance with their own procedures.

2. This Agreement shall enter into force 60 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or on such other date as the Parties may agree.

3. Notwithstanding paragraphs 2 and 5, the Parties shall apply the Protocol on Cultural Cooperation from the first day of the third month following the date when Korea has deposited its instrument of ratification of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in Paris on 20 October 2005 (hereinafter referred to as the 'UNESCO Convention') to the UNESCO Secretariat in Paris unless Korea has deposited its instrument of ratification of the UNESCO Convention before the exchange of notifications referred to in paragraphs 2 or 5.

4. Notifications shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs and Trade of Korea, or its successor.

5. (a) This Agreement shall be provisionally applied from the first day of the month following the date on which the EU Party and Korea have notified each other of the completion of their respective relevant procedures.

(b) In the event that certain provisions of this Agreement cannot be provisionally applied, the Party which cannot undertake such provisional application shall notify the other Party of the provisions which cannot be provisionally applied. Notwithstanding subparagraph (a), provided the other Party has completed the necessary procedures and does not object to provisional application within 10 days of the notification that certain provisions cannot be provisionally applied, the provisions of this Agreement which have not been notified shall be provisionally applied the first day of the month following the notification.

(c) A Party may terminate provisional application by written notice to the other Party. Such termination shall take effect on the first day of the month following notification.

(d) Where this Agreement, or certain provisions thereof, is provisionally applied, the term 'entry into force of this Agreement' shall be understood to mean the date of provisional application.

#### *Article 15.11*

##### **Duration**

1. This Agreement shall be valid indefinitely.
2. Either Party may notify in writing the other Party of its intention to denounce this Agreement.
3. The denunciation shall take effect six months after the notification under paragraph 2.

#### *Article 15.12*

##### **Fulfilment of obligations**

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained.

2. Either Party may immediately take appropriate measures in accordance with international law in case of denunciation of this Agreement not sanctioned by the general rules of international law.

#### *Article 15.13*

##### **Annexes, appendices, protocols and notes**

The Annexes, Appendices, Protocols and Notes to this Agreement shall form an integral part thereof.

#### *Article 15.14*

##### **Relation with other agreements**

1. Unless specified otherwise, previous agreements between the Member States of the European Union and/or the European Community and/or the European Union and Korea are not superseded or terminated by this Agreement.

2. The present Agreement shall be an integral part of the overall bilateral relations as governed by the Framework Agreement. It constitutes a specific Agreement giving effect to the trade provisions within the meaning of the Framework Agreement.

3. The Protocol on Mutual Administrative Assistance in Customs Matters supersedes the Customs Agreement with regard to the provisions concerning mutual administrative assistance.

4. The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their obligations under the WTO Agreement.

#### *Article 15.15*

##### **Territorial application**

1. This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties, and, on the other hand, to the territory of Korea. References to 'territory' in this Agreement shall be understood in this sense, unless explicitly stated otherwise.

2. As regards those provisions concerning the tariff treatment of goods, this Agreement shall also apply to those areas of the EU customs territory not covered by paragraph 1.

#### *Article 15.16*

##### **Authentic texts**

This Agreement is drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Korean languages, each of these texts being equally authentic.



Съставено в Брюксел на шести октомври две хиляди и десета година.

Hecho en Bruselas, el seis de octubre de dos mil diez.

V Bruselu dne šestého října dva tisíce deset.

Udfærdiget i Bruxelles den sjette oktober to tusind og ti.

Geschehen zu Brüssel am sechsten Oktober zweitausendzehn.

Kahe tuhande kümnenda aasta oktoobrikuu kuuendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις έξι Οκτωβρίου δύο χιλιάδες δέκα.

Done at Brussels on the sixth day of October in the year two thousand and ten.

Fait à Bruxelles, le six octobre deux mille dix.

Fatto a Bruxelles, addì sei ottobre duemiladieci.

Briselē, divi tūkstoši desmitā gada sestajā oktobrī.

Priimta du tūkstančiai dešimtų metų spalio šeštą dieną Briuselyje.

Kelt Brüsszelben, a kétezer-tizedik év október hatodik napján.

Magħmul fi Brussell, fis-sitt jum ta' Ottubru tas-sena elfejn u għaxra.

Gedaan te Brussel, de zesde oktober tweeduizend tien.

Sporządzono w Brukseli dnia szóstego października roku dwa tysiące dziesiątego.

Feito em Bruxelas, em seis de Outubro de dois mil e dez.

Întocmit la Bruxelles, la șase octombrie două mii zece.

V Bruseli dňa šiesteho októbra dvetisícdesať.

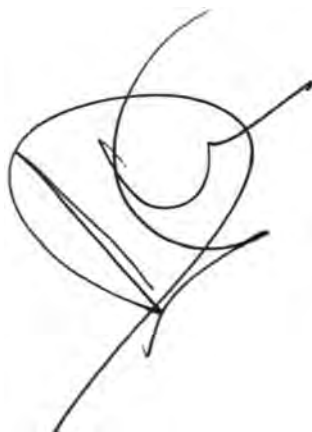
V Bruslju, dne šestega oktobra leta dva tisoč deset.

Tehty Brysselissä kuudentena päivänä lokakuuta vuonna kaksituhattakymmenen.

Som skedde i Bryssel den sjätte oktober tjugohundratio.

2010년 10월 6일 브뤼셀에서 작성되었다.

Voor het Koninkrijk België  
Pour le Royaume de Belgique  
Für das Königreich Belgien


A stylized, handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.

Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

За Република България

A handwritten signature in black ink, featuring a large initial 'B' followed by a series of loops and a long horizontal stroke at the end.

Za Českou republiku

A handwritten signature in black ink, appearing to read 'Schwarzenberg' with a long horizontal stroke at the end.

På Kongeriget Danmarks vegne

A handwritten signature in black ink, consisting of two distinct parts: a large '2' on the left and a long horizontal stroke on the right.

Für die Bundesrepublik Deutschland



Eesti Vabariigi nimel



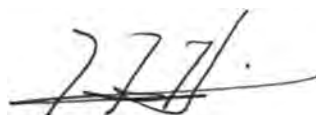
Thar cheann Na hÉireann  
For Ireland



Για την Ελληνική Δημοκρατία



Por el Reino de España



Pour la République française



Per la Repubblica italiana



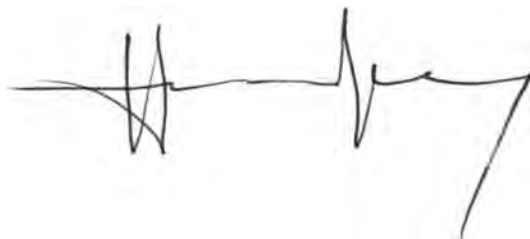
Για την Κυπριακή Δημοκρατία



Latvijas Republikas vārdā –



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg



A Magyar Köztársaság részéről



Għal Malta




Voor het Koninkrijk der Nederlanden



Für die Republik Österreich



W imieniu Rzeczypospolitej Polskiej

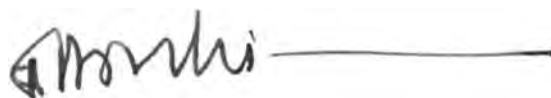


Pela República Portuguesa





Pentru România



Za Republiko Slovenijo



Za Slovenskú republiku



Suomen tasavallan puolesta  
För Republiken Finland



För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



Za Европейския съюз  
Por la Unión Europea  
Za Evropskou unii  
For Den Europæiske Union  
Für die Europäische Union  
Euroopa Liidu nimel  
Για την Ευρωπαϊκή Ένωση  
For the European Union  
Pour l'Union européenne  
Per l'Unione europea  
Eiropas Savienības vārdā –  
Europos Sąjungos vardu  
Az Európai Unió részéről  
Għall-Unjoni Ewropea  
Voor de Europese Unie  
W imieniu Unii Europejskiej  
Pela União Europeia  
Pentru Uniunea Europeană  
Za Európske úniu  
Za Evropsko unijo  
Euroopan unionin puolesta  
För Europeiska unionen



대한민국을 위하여



**LIST OF ANNEXES**

Annex 1 to Chapter One	Intentionally left blank
Annex 2-A to Chapter Two	Elimination of customs duties
Annex 2-B to Chapter Two	Electronics
Annex 2-C to Chapter Two	Motor vehicles and parts
Annex 2-D to Chapter Two	Pharmaceutical products and medical devices
Annex 2-E to Chapter Two	Chemicals
Annex 3 to Chapter Three	Agricultural safeguard measures
Annex 4 to Chapter Four	TBT coordinator
Annex 5 to Chapter Five	Intentionally left blank
Annex 6 to Chapter Six	Intentionally left blank
Annex 7-A to Chapter Seven	Lists of commitments
Annex 7-B to Chapter Seven	MFN treatment exemption
Annex 7-C to Chapter Seven	List of MFN exemptions
Annex 7-D to Chapter Seven	The additional commitment on financial services
Annex 8 to Chapter Eight	Intentionally left blank
Annex 9 to Chapter Nine	BOT contracts and public works concessions
Annex 10-A to Chapter Ten	Geographical indications for agricultural products and foodstuffs
Annex 10-B to Chapter Ten	Geographical indications for wines, aromatised wines and spirits
Annex 11 to Chapter Eleven	Intentionally left blank
Annex 12 to Chapter Twelve	Intentionally left blank
Annex 13 to Chapter Thirteen	Cooperation on trade and sustainable development
Annex 14-A to Chapter Fourteen	Mediation mechanism for non-tariff measures
Annex 14-B to Chapter Fourteen	Rules of procedure for arbitration
Annex 14-C to Chapter Fourteen	Code of conduct for members of arbitration panels and mediators
Annex 15 to Chapter 15	Intentionally left blank