FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

PREAMBLE

The Government of the People's Republic of China ("China") and the Government of the Republic of Korea ("Korea"), hereinafter referred to as "the Parties";

RECOGNISING their longstanding friendship and strong economic and trade relationship and desiring to strengthen their strategic cooperative partnership;

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

SHARING the belief that a free trade agreement shall produce mutual benefits to each Party and contribute to the expansion and development of international trade;

ESTABLISHING clear and mutually advantageous rules governing their trade;

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

MINDFUL that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development and that closer economic partnership can play an important role in promoting sustainable development; and

SEEKING to facilitate and enhance regional economic cooperation and integration;

HAVE AGREED as follows:

CHAPTER 1
INITIAL PROVISIONS AND DEFINITIONS

Section A: Initial Provisions

Article 1.1: Establishment of a Free Trade Area

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

Article 1.2: Objectives

The Parties conclude this Agreement, among others, for the purposes of:

(a) encouraging expansion and diversification of trade between the Parties;

(b) eliminating the barriers to trade in, and facilitating the cross-border movement of, goods and services between the Parties;

(c) promoting fair competition in the Parties' markets;

(d) creating new employment opportunities; and

(e) creating a framework for furthering bilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

Article 1.3: Relation to Other Agreements

The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other existing agreements to which both Parties are party.

Article 1.4: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement in their respective territories, including ensuring that their respective local governments observe all obligations and commitments under this Agreement.

Article 1.5: Territorial Application

1. With regard to China, this Agreement shall apply to the entire customs territory of China, including land, internal waters, territorial sea and air space, and any area beyond its territorial sea within which it may exercise sovereign rights or jurisdiction in accordance with international law and its domestic law; and

2. With regard to Korea, this Agreement shall apply to the land, maritime, and air space over which Korea exercises sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its domestic law.

Section B: Definitions

Article 1.6: Definitions

For the purposes of this Agreement, unless otherwise specified:

Anti-Dumping Agreement means the *Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade 1994*, which is part of the WTO Agreement;

customs authorities means:

(a) for China, the General Administration of Customs of the People's Republic of China or its successor; and

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

customs duties includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation[1], but does not include any:

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

(b) duty imposed pursuant to a Party's law consistently with Chapter 7 (Trade Remedies);

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

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

(e) duty imposed pursuant to any agricultural safeguard measure[2] taken under the *Agreement on Agriculture*, which is part of the WTO Agreement;

Customs Valuation Agreement means the *Agreement on Implementation of Article VII of the GATT 1994*, which is part of the WTO Agreement;

days means calendar days;

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

GATS means the *General Agreement on Trade in Services*, which is part of the WTO Agreement;

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[1] For greater certainty, **customs duty** includes an adjustment tariff imposed pursuant to Article 69 of Korea's *Customs Act.*

[2] Korea shall not apply such measure to the liberalized products under this Agreement. For greater certainty, **the liberalized products** means the tariff lines of which base rates are zero or those that are duty-free after phase-out period according to its Schedule to Annex 2-A (Reduction or Elimination of Customs Duties).

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

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

Import Licensing Agreement means the *Agreement on Import Licensing Procedures*, which is part of the WTO Agreement;

Joint Commission means the Joint Commission established under Article 19.1 (Joint Commission);

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

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

person means a natural person or a juridical person, or any other entity established in accordance with domestic law;

Safeguard Agreement means the *Agreement on Safeguards*, which is part of the WTO Agreement;

SCM Agreement means the *Agreement on Subsidies and Countervailing Measures*, which is part of the WTO Agreement;

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement;

TBT Agreement means the *Agreement on Technical Barriers to Trad*e, which is part of the WTO Agreement;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, which is part of the WTO Agreement;

WTO means the World Trade Organization; and

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

CHAPTER 2
NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A: Common Provisions

Article 2.1: Scope and Coverage

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

Article 2.2: Definitions

For the purposes of this Chapter:

consumed means

(a) actually consumed; or

(b) further processed or manufactured so as to result in a substantial change in the value, form, or use of the good or in the production of another good;

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party;

duty-free means free of customs duty;

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

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

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

performance requirement means a requirement that:

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

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

(c) a person benefiting from a waiver of customs duties or an import license

purchase other goods or services in the territory of the Party granting the waiver of customs duties or the import license, or accord a preference to domestically produced goods;

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

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

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

(f) subsequently exported;

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

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

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

Section B: National Treatment

Article 2.3: National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, 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*.

Section C: Reduction or Elimination of Customs Duties

Article 2.4: Reduction or Elimination of Customs Duties

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

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

pursuant to their Schedules to Annex 2-A for that good when approved by each Party in accordance with its applicable legal procedures.

3. A Party may unilaterally accelerate the reduction or elimination of customs duties set out in its Schedule to Annex 2-A at any time if it so wishes. A Party shall notify the other Party through a diplomatic note immediately after completion of the internal procedures required for the amendments to enter into force. Such amendments shall enter into force on the date specified in the diplomatic note, or in any event, within 90 days of such notification. Any concessions granted by the Party according to the unilateral acceleration set out therein shall not be withdrawn.

4. If at any moment a Party reduces its applied most-favored-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 to Annex 2-A.

Article 2.5: Standstill

Except as otherwise provided in this Agreement, 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 a Party may:

(a) raise a customs duty that was unilaterally reduced other than as provided for in Article 2.4.2 or 2.4.3 to the lower of the levels established either:

(i) in its Schedule to Annex 2-A; or

(ii) pursuant to Articles 2.4.2 or 2.4.3;or

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

Section D: Special Regimes

Article 2.6: Temporary Admission of Goods

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

(a) professional equipment, such as equipment used for scientific research, pedagogical or medical activities, the press or television and cinematographic purposes, necessary for a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration at exhibitions, fairs, meetings, or similar events;

(c) commercial samples; and

(d) goods admitted for sports purposes.

2. Each Party shall, on the request of the person concerned and for reasons its customs administration considers valid, extend the time limit for temporary admission beyond the period initially fixed in accordance with its domestic law.

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

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

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

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

(d) be capable of identification when exported;

(e) be exported on the departure of the person referenced in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, or within 6 months, unless extended;

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

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

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

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

6. Each Party shall provide that its customs administration or other competent authority shall relieve the importer or another person responsible for a good admitted under this Article from any liability for failure to re-export the good on presentation of proof to the satisfaction of the customs administration of the importing Party that the good has been destroyed by reason of force majeure.

Article 2.7: Duty-Free Entry of No Commercial Value Articles That Are for Advertising Purposes or to be Used as Samples

Each Party shall grant duty-free entry to no commercial value articles that are for advertising purposes or to be used as samples in accordance with its laws and regulations.

Section E: Non-Tariff Measures[3]

Article 2.8: Import and Export Restrictions

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

2. Where a Party proposes to adopt an export prohibition or restriction on energy and mineral resources in accordance with paragraph 2(a) of Article XI of GATT 1994, the Party shall provide notice in writing, as far in advance as practicable, to the other Party of such proposed prohibition or restriction and its reasons together with its nature and expected duration.

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

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

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

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

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent the Party from:

(a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or

(b) requiring as a condition for exporting the good of the Party to the territory of the other Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

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[3] Non-tariff measures related to sanitary and phytosanitary measures and technical barriers to trade are addressed in Chapters 5 (Sanitary and Phytosanitary Measures) and 6 (Technical Barriers to Trade) respectively and therefore they shall not be subject to the provisions of this Section. This shall not affect the implementation of Article 2.15.

5. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of either Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in the territory of the other Party.

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

7. For greater certainty, paragraph 6 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purpose of facilitating communications between its regulatory authorities and that person.

Article 2.9: Import Licensing

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.[4]

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

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

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

   (b) Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government Internet site. To the extent possible, the Party shall do so at least 30 days before the new procedure or modification takes effect.

3. Neither Party may apply an import licensing procedure to a good of the other Party unless the Party has complied with the requirements of paragraph 2 with respect to that procedure.

Article 2.10: Administrative Fees and Formalities

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

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[4] For the purposes of paragraph 1 and for greater certainty, in determining whether a measure is inconsistent with the Import Licensing Agreement, the Parties shall apply the definition of "import licensing" contained in that Agreement.

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

Article 2.11: State Trading Enterprises

1. The rights and obligations of the Parties with respect to state trading enterprises shall be governed by Article XVII of GATT 1994, its interpretative notes, and the *Understanding on the Interpretation of Article XVII of GATT 1994*, 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 2.12: Trade Related Non-Tariff Measures

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

2. To the extent possible, each Party should allow a reasonable interval between the publication of any such measures and their effective date.

Article 2.13: Establishment of Working Group

1. Pursuant to Article 2.16.3(c), the Parties hereby establish a working group under the auspices of the Committee on Trade in Goods, comprising relevant and competent officials of each Party, to conduct consultations on matters related to non-tariff measures.

2. The working group shall consider approaches that may better facilitate trade between the Parties and present to the Parties the results of its consideration, including any recommendation, preferably within 12 months. The results of the consideration and recommendations of the working group shall be submitted to the Committee on Trade in Goods for consideration and/or action.

Article 2.14: Tariff Rate Quota (TRQ) Administration

1. A Party that has established TRQs as set out in Annex 2-A shall implement and administer these TRQs in accordance with Article XIII of GATT 1994 and, for greater certainty, its interpretative notes, the Import Licensing Agreement, and any other WTO Agreement.

2. A Party shall ensure that its TRQ administration measures and implementation are consistent, transparent and are not adopted or maintained to create discrimination against the other Party.

Article 2.15: Designation of Testing Laboratories

Taking into consideration the regulations and requirements of respective legal framework, the competent authorities are encouraged to have discussions on the mutual recognition of the testing results by designating testing laboratories in the other Party in the fields of foods and cosmetics.

Section F: Institutional Provisions

Article 2.16: Committee on Trade in Goods

1. The Parties hereby establish a Committee on Trade in Goods (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. The Committee shall meet at least once a year to consider matters arising under this Chapter, and may meet more frequently as the Parties may agree.

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

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

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

(c) establishing working groups, if necessary, and monitoring the work of the working groups established under the auspices of the Committee; and

(d) exchanging information on matters related to subparagraphs (a) through (c) which may, directly or indirectly, affect trade between the Parties with a view to minimizing their negative effects on trade and seeking mutually acceptable alternatives.

ANNEX 2-A

REDUCTION OR ELIMINATION OF CUSTOMS DUTIES

1. Except as otherwise provided in a Party's Schedule to this Annex, the following staging categories apply to the reduction or elimination of customs duties by each Party pursuant to Article 2.4.1:

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

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

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

(d) customs duties on originating goods provided for in the items in staging category "10-A" in a Party's Schedule shall remain at base rates during years one through eight. Beginning on January 1 of the year nine, customs duties shall be removed in two equal annual stages, and such goods shall be duty-free, effective January 1 of year 10;

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

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

(g) customs duties on originating goods provided for in the items in staging category "PR-10" in a Party's Schedule shall be reduced by ten percent of the base rate in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall remain at 90 percent of the base rate, effective January 1 of year five;

(h) customs duties on originating goods provided for in the items in staging category "PR-20" in a Party's Schedule shall be reduced by 20 percent of the base rate in five equal annual stages beginning on the date this Agreement

enters into force, and such goods shall remain at 80 percent of the base rate, effective January 1 of year five;

(i) customs duties on originating goods provided for in the items in staging category “PR-30” in a Party’s Schedule shall be reduced by 30 percent of the base rate in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall remain at 70 percent of the base rate, effective January 1 of year five; and

(j) customs duties on originating goods provided for in the items in staging category “E” in a Party’s Schedule shall remain at base rates.

2. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party’s Schedule.

3. Interim staged rates shall be rounded down, at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest tenth of one Chinese Yuan in the case of China and the nearest Korean Won in the case of Korea.

4. For the purposes of this Annex and a Party’s Schedule, **year one** means the year this Agreement enters into force.

5. For the purposes of this Annex and a Party’s Schedule, beginning in year two, each annual stage of tariff reduction shall take effect on January 1 of the relevant year.

TARIFF SCHEDULE OF CHINA

GENERAL NOTES

1. Base Rates of Customs Duty. The base rates of duty set out in this Schedule reflect the Most-Favored-Nation tariff rates of the Chinese customs duty in effect on January 1, 2012.

2. Staging. In addition to the staging categories listed in paragraph 1 of Annex 2-A, this Schedule contains staging categories 15-A, PR-8, PR-15, PR-35 and PR-50:

(a) customs duties on originating goods provided for in the items in staging category"15-A" shall remain at base rates during years one through 10. Beginning on January 1 of the year 11, customs duties shall be removed in five equal annual stages, and such goods shall be duty-free, effective January 1 of year 15;

(b) customs duties on originating goods provided for in the items in staging category "PR-8" shall be reduced by eight percent of the base rate in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall remain at 92 percent of the base rate, effective January 1 of year five;

(c) customs duties on originating goods provided for in the items in staging category "PR-15" shall be reduced by 15 percent of the base rate in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall remain at 85 percent of the base rate, effective January 1 of year five;

(d) customs duties on originating goods provided for in the items in staging category "PR-35" shall be reduced by 35 percent of the base rate in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall remain at 65 percent of the base rate, effective January 1 of year five; and

(e) customs duties on originating goods provided for in the items in staging category "PR-50" shall be reduced by 50 percent of the base rate in five equal annual stages beginning on the date this Agreement enters into force, and such goods shall remain at 50 percent of the base rate, effective January 1 of year five.

TARIFF SCHEDULE OF KOREA

GENERAL NOTES

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

2. Base Rates of Customs Duty. The base rates of duty set out in this Schedule reflect the Korean Customs Duty Most-Favored-Nation rates of duty in effect on January 1, 2012.

3. Staging. In addition to the staging categories listed in paragraph 1 of Annex 2-A, this Schedule contains staging categories 20-A, 20-B, PR-1 and PR-130:

(a) customs duties on originating goods provided for in the items in staging category "20-A" shall remain at base rates during years one through 10. Beginning on January 1 of the year 11, customs duties shall be removed in ten equal annual stages, and such goods shall be duty-free, effective January 1 of year 20;

(b) customs duties on originating goods provided for in the items in staging category "20-B" shall remain at base rates during years one through 12. Beginning on January 1 of the year 13, customs duties shall be removed in eight equal annual stages, and such goods shall be duty-free, effective January 1 of year 20;

(c) customs duties on originating goods provided for in the items in staging category "PR-1" shall be reduced by one percent of the base rate on the date this Agreement enters into force; and

(d) customs duties on originating goods provided for in the items in staging category "PR-130" shall be reduced to 130 percent *ad valorem* in ten equal annual stages beginning on the date this Agreement enters into force, and such goods shall remain at 130 percent *ad valorem,* effective January 1 of year 10.

APPENDIX 2-A-1

KOREA

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

2. (a) The aggregate quantity of originating goods of China that shall be permitted to enter free of customs duty is specified below.

No	HSK 2012	Product	Annual Quantity (Metric Tons)
1	0301999020	Puffer (live)	140
2	0301999070	Loaches (live)	3,200
3	0302899040	Angler (Monkfish) (fresh/chilled)	17
4	0303440000	Bigeye tunas (Thunnus obesus) (frozen)	270
5	0303899060	Angler (Monkfish) (frozen)	1,900
6	0307511000	Poulp squid (live, fresh, or chilled)	6,100
7	0307591020	Poulp squid (other)	19,400
8	0307714000	Baby clams (live, fresh, or chilled)	15,800
9	0307791030	Baby clams (frozen)	330
10	0307793020	Baby clams (salted or in brine)	290
11	0713329000	Small red (adzuki) beans(other)	3,000
12	1107100000	Malt (not roasted)	5,000
13	1108191000	Other starches (of sweet potato)	5,000
14	1201903000	Soya beans (for bean sprouts)*	3,000
15	1201909000	Soya beans (other)*	7,000
16	1207400000	Sesamum seeds	24,000

* Note: TRQs for HSK 1201903000 and 1201909000 should be limited to soya beans for human consumption, identity-preserved.

(1) Identity-preserved soya beans means a shipment of soya beans containing not less than 95 percent of any single variety of soya bean and not more than one percent of foreign material.

(2) Identity preserved soya beans may not be shipped in bulk, but shall be shipped in bags or containers.

17	1605542091	Seasoned squid	980
18	1605542099	Squid (other, prepared or preserved)	1,300
19	1605592090	Top shell (other, prepared/preserved)	7
20	1605639000	Jellyfish (other, prepared/preserved)	4
21	2308009000	Vegetable materials and vegetable waste, vegetable residues and by-products (other)	38,000

(b) Customs duties on goods entered in aggregate quantities in excess of the quantities listed in subparagraph (a) shall be treated in accordance with staging category "E" as described in paragraph 1(j) of Annex 2-A.

3. Over the course of each year, the administering authority of a Party shall publish, in a timely fashion on its designated publicly available Internet site, administration procedures, utilization rates, and remaining available quantities for each of the TRQs.

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

CHAPTER 3
RULES OF ORIGIN AND ORIGIN IMPLEMENTATION PROCEDURES

Section A: Rules of Origin

Article 3.1: Definitions

For the purposes of this Chapter:

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

authorized body means any body designated under domestic laws and regulations of the exporting Party to issue a Certificate of Origin;

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

FOB means the value of the good free on board, regardless of the mode of transportation, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with the Customs Valuation Agreement;

fungible materials means materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination;

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

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

Harmonized System (**HS**) means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes;

material means any ingredient, part, component, subassembly and/or good that were physically incorporated into another good or were subject to the production of another good;

neutral elements means a good used in the production, testing or inspection of another good but not physically incorporated into the good;

non-originating goods or non-originating materials means goods or materials that do not

qualify as originating under this Chapter, and includes goods or materials of undetermined origin;

originating goods or originating materials means goods or materials which qualify as originating in accordance with the provisions of this Chapter;

packing materials and containers for shipment means goods used to protect a good during its transportation other than containers or packaging materials used for retail sale;

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

production means any kind of working or processing, including growing, raising, mining, harvesting, fishing, aquaculture, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, or assembling a good.

Article 3.2: Originating Goods

Except as otherwise provided in this Chapter, a good shall be considered as originating in a Party where:

(a) the good is wholly obtained or produced entirely in a Party as specified in Article 3.4;

(b) the good is produced entirely in a Party, exclusively from originating materials; or

(c) the good is produced entirely in a Party using non-originating materials and conforms to Annex 3-A;

and the good meets the other applicable provisions of this Chapter.

Article 3.3: Treatment of Certain Goods

1. Notwithstanding the provisions of Article 3.2, goods listed in Annex 3-B which have undergone working or processing on materials exported from a Party, and subsequently re-imported to that Party for export to the other Party, in an area outside the territories of the Parties[5] (hereinafter referred to as "Outward Processing Zone"), shall be considered as originating, provided that:

(a) total value of non-originating materials shall not exceed 40 percent of the FOB price of the final goods for which originating status is claimed; and

(b) the value of originating materials exported from the Party concerned

[5] For the purposes of this paragraph, the Parties agree that the area within which the good is processed under this Article shall be limited to the existing area of the industrial complex located and operated in the Korean Peninsula prior to the signing of this Agreement.

shall not be less than 60 percent of the total value of materials used in the processing of those goods.

2. The Parties shall establish a Committee on Outward Processing Zones under the auspices of the Joint Commission to perform the following functions:

(a) monitor the implementation of paragraph 1 of this Article;

(b) report to the Joint Commission on its activities and provide recommendations to the Joint Commission as necessary;

(c) review and designate the expansion of the existing Outward Processing Zone and the additional Outward Processing Zones[6]; and

(d) discuss other matters specifically mandated by the Joint Commission.

3. For greater certainty, except as otherwise provided in this Article, the relevant Articles in this Chapter shall be applied *mutatis mutandis* to the goods to which paragraph 1 of this Article applies.

Article 3.4: Goods Wholly Obtained or Produced

For the purpose of subparagraph (a) of Article 3.2, the following goods shall be considered as wholly obtained or produced entirely in a Party:

(a) live animals born and raised in a Party;

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

(c) plants and plant products grown, and harvested, picked or gathered in a Party;

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

(e) minerals and other natural resources not included in subparagraphs (a) through (d) above, extracted or taken from the soil, waters, seabed or subsoil of the Party;

(f) goods taken from the waters, seabed or subsoil outside the territorial sea of a Party, provided that the Party has rights to exploit such waters, seabed or subsoil;

[6] For the purposes of this subparagraph, Outward Processing Zones shall refer to industrial zones in the Korean Peninsula. The relevant authorities of the Parties shall discuss and agree on the relevant rules and procedures for the additionally designated Outward Processing Zones and the expansion of the existing Outward Processing Zones.

(g) goods of sea fishing and other marine products taken from the waters, seabed or subsoil outside the territorial sea of a Party by vessels registered or recorded with a Party and flying the flag of that Party;

(h) goods produced or processed on board factory ships registered or recorded with a Party and flying the flag of that Party, exclusively from goods referred to in subparagraph (g) above;

(i) scrap and waste derived from manufacturing or processing operations in a Party, which are fit only for the recovery of raw materials or which are to be utilized as raw material for the production of another good; or used goods consumed and collected in a Party provided that such goods are fit only for the recovery of raw materials; and

(j) goods obtained or produced in a Party exclusively from goods referred to in subparagraphs (a) through (i) above.

Article 3.5: Regional Value Content

1. For the purposes of the Regional Value Content (hereinafter referred to as "RVC") requirement provided in Annex 3-A, the RVC shall be calculated as follows:

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

Where:

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

VNM is the value of the non-originating materials.

2. VNM shall be determined according to the following circumstances:

(a) in case of the imported non-originating materials, VNM shall be the CIF value of the materials at the time of importation; and

(b) in case of the non-originating materials obtained in a Party, VNM shall be the earliest ascertainable price paid or payable for the non-originating materials used in the production of the goods in that Party. The value of such non-originating materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

3. If a product which has acquired originating status in a Party is used as material in the manufacture of another product in that Party, no account shall be taken of the non-originating components of that material in the determination of the originating status of the latter product.

Article 3.6: Accumulation

Where originating goods or materials of a Party are incorporated into a good in the other Party, the goods or materials so incorporated shall be regarded to be originating in the other Party.

Article 3.7: Minimal Operations or Processes

1. The following operations or processes which contribute minimally to the essential characteristics of the goods, either by themselves or in combination, do not confer origin whether or not the goods satisfy the product specific rules of origin as specified in Annex 3-A:

(a) operations to ensure the preservation of goods in good condition during transport and storage;

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

(c) change of packaging, breaking-up and assembly of package;

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

(e) ironing or pressing of textiles;

(f) simple painting and polishing operations;

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

(h) operations to color or flavor sugar or form sugar lumps; partial or total milling of crystal sugar;

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

(j) sharpening, simple grinding or simple cutting;

(k) sifting, screening, sorting, classifying, grading or matching (including the making-up of sets of articles), slitting, bending, coiling or uncoiling;

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

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

(n) simple mixing of products, whether or not of different kinds; mixing of

sugar with any material;

(o) testing or calibrations;

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

(q) drying, salting (or keeping in brine), refrigeration or freezing;

(r) slaughter of animals; or

(s) a combination of two or more operations specified in subparagraphs (a) through (r).

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

3. The Parties may agree on other operation as minimal operations or processes.

Article 3.8: De Minimis

A good that does not satisfy a change in tariff classification requirement provided in Annex 3-A shall nevertheless be an originating good if:

(a) (i) for a good, other than that provided for in Chapters 15 through 24 and Chapters 50 through 63 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;

(ii) for a good provided for in Chapters 15 through 24 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good, provided that the non-originating material is provided for in a different subheading from that of the good for which the origin is being determined under this subparagraph; or

(iii) for a good provided for in Chapter 50 through 63 of the HS Code, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; and

(b) the good meets all other applicable criteria of this Chapter.

Article 3.9: Fungible Materials

1. In determining whether a material used in the production is originating, any fungible materials shall be distinguished by:

(a) physically separating each fungible material; or

(b) using any inventory management method recognized in the Generally Accepted Accounting Principles of a Party in which the production is performed.

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

Article 3.10: Neutral Elements

In determining whether a good is originating, the origin of the following neutral elements shall be disregarded:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used for testing or inspecting the goods;

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

(d) tools, dies and moulds;

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

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

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

Article 3.11: Sets

1. Sets, as defined in General Rule 3 for the Interpretation of the Harmonized System, shall be regarded as originating when all the components of the sets are originating.

2. Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be regarded as originating, provided that the value of the non-originating goods as determined in accordance with Article 3.5, does not exceed 15 percent of the FOB value of the set.

Article 3.12: Packing Materials and Containers

1. Packing materials and containers used for the transport of goods shall not be taken into account in determining the origin of the goods.

2. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification in the product specific rules of origin. However, if the good is subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials as the case may be when determining the origin of the good.

Article 3.13: Accessories, Spare Parts and Tools

1. Accessories, spare parts, or tools delivered and presented with the good at the time of importation shall be disregarded when determining the origin of the good, provided that:

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

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

2. Where the goods are subject to a regional value content requirement, the value of the accessories, spare parts or tools described in paragraph 1 shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the goods.

Article 3.14: Direct Transport

1. The originating goods of the Parties claiming for preferential tariff treatment shall be directly transported between the Parties.

2. Goods whose transport involves transit through one or more Non-Parties, with or without trans-shipment or temporary storage in such Non-Parties, shall be considered directly transported between the Parties, provided that:

(a) the transit entry of goods is justified for geographical reason or by consideration related exclusively to transport requirements;

(b) the goods do not enter into trade or consumption in the non-Party; and

(c) the goods do not undergo any other operation in the non-Party other than unloading, splitting up of loads for transport reasons, and reloading, or any operation necessary to preserve it in good condition.

In the case where the goods are temporarily stored in a Non-Party as provided in this paragraph, the goods shall remain under control of the customs authorities in that Non-Party during its stay. The stay of the goods in that Non-Party shall not exceed three months from the date of their entry. In the case of force majeure, the stay of the goods in that Non-Party may exceed three months but shall not exceed six months from the date of their entry.

3. For the purpose of paragraph 2 of this Article, the following documents shall be submitted to the customs authority of the importing Party upon import declaration of the goods:

(a) in the case of transit or trans-shipment, transport documents such as the airway bill, the bill of lading, or the multimodal or combined transport documents covering the whole transporting route from the exporting Party to the importing Party; and

(b) in the case of storage or devanning of the containers, transport documents such as the airway bill, the bill of lading, or the multimodal or combined transport documents covering the whole transporting route from the exporting Party to the importing Party, and supporting documents provided by the customs authority of a Non-Party. The importing customs authority may designate other competent agencies in such Non-Party to issue such supporting documents and inform the exporting customs

authority of such designation.

Section B: Origin Implementation Procedures

Article 3.15: Certificate of Origin

1. A Certificate of Origin as set out in Annex 3-C shall be issued by the authorized bodies of the exporting Party, on application by the exporter, producer, or under the exporter's responsibility, by his authorized representative, in accordance with the domestic legislation, subject to the condition that the goods concerned fulfill the requirements of this Chapter.

2. A Certificate of Origin shall:

   (a) contain a unique certificate number;

   (b) state the basis on which the goods are deemed to qualify as originating for the purposes of this Chapter;

   (c) contain security features, such as signatures and stamps, and the stamps shall conform to those notified by the exporting Party to the importing Party;

   (d) be completed in English; and

   (e) be in printed format, which is understood as a Certificate of Origin either manually or electronically signed and stamped by the authorized body. It is required that only one original hard copy of the Certificate of Origin be printed.

3. A Certificate of Origin shall be issued before or at the time of shipment or within seven working days after shipment of the goods in question. It shall be valid for one year from the date of issuance in the exporting Party.

4. If a Certificate of Origin has not been issued before or at the time of shipment or within seven working days after shipment due to force majeure, involuntary errors, omissions or other valid causes, a Certificate of Origin may be issued retrospectively but no longer than one year from the date of shipment, bearing the words "ISSUED RETROACTIVELY".

5. For cases of theft, loss or accidental destruction of a Certificate of Origin, the exporter or producer may make a written request to the authorized bodies of the exporting Party for issuing a certified copy, provided that the original copy previously issued has been verified not to be used. The certified copy shall bear the words "CERTIFIED TRUE COPY of the original Certificate of Origin number ___ dated ___".

Article 3.16: Authorized Body

1. Each Party shall inform the customs authority of the other Party of the name of each authorized body, as well as relevant contact details, and shall provide details of any specimen of stamps for relevant forms and documents used by each authorized body, prior to the issuance of any certificates by that body.

2. Any change in the information provided above shall be promptly notified to the customs authority of the other Party and enter into force seven working days after the date of notification or on a later date indicated in such notification.

Article 3.17: Claims for Preferential Tariff Treatment

1. Unless otherwise provided in this Chapter, the importer claiming preferential tariff treatment shall:

(a) make a written statement in the customs declaration, indicating that the good qualifies as an originating good;

(b) possess a valid Certificate of Origin, at the time the import customs declaration referred to in subparagraph (a) is made; and

(c) submit the original Certificate of Origin and other documentary evidences related to the importation of the goods in accordance with their respective domestic laws and regulations[7].

2. The importer shall promptly make a corrected declaration and pay any duties owed, where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct.

Article 3.18: Post-Importation Preferential Tariff Treatment

1. Each Party shall provide that, where an originating good was imported, importer may, no later than one year after the date of importation, apply for refund of any excess duties, deposit, or guarantee paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the customs authority of the importing Party of:

(a) a valid Certificate of Origin demonstrating that the good was originating at the time of importation; and

(b) such other documentation relating to the importation of the good as the

[7] If all the information of a Certificate of Origin is exchanged between the customs authority of each Party through Article 3.27 (Electronic Origin Data Exchange System), the customs authority of each Party may not require the importer to submit the Certificate of Origin on importation. Nevertheless, the customs authority of each Party reserves the right to require the importer to submit the Certificate of Origin, when it deems necessary. This footnote shall be without prejudice to any other requirements under this Chapter.

importing Party may require.

2. Without prejudice to paragraph 1, each Party may require, in accordance with its respective laws and regulations, that the importer shall formally declare to the customs authority upon importation as a precondition for claiming preferential tariff treatment, failing which no preferential tariff treatment is to be granted.

Article 3.19: Exemption of Obligation of Submitting Certificate of Origin

1. For the purpose of granting preferential tariff treatment under this Chapter, a Party shall waive the requirements for the presentation of a Certificate of Origin for consignment of originating products of a customs value not exceeding 700 US dollars or its equivalent amount in the Party's currency; or

2. Waivers provided for in paragraph 1 shall not be applicable when it is established by the customs authorities of the importing Party that the importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the submission of a Certificate of Origin.

Article 3.20: Record Keeping Requirements

1. Each Party shall require its producers or exporters to retain origin documents for three years from the date the Certificate of Origin was issued for the producers or exporters. These documents include records of, but not limited to the following:

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

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

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

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

2. Each Party shall require its importer to retain all records related to the importation in accordance with its laws and regulations.

3. Each Party shall require that its authorized bodies retain copies of Certificates of Origin and any other documentary evidence sufficient to substantiate the origin of the goods for three years.

4. An exporter, producer, importer or authorized bodies may choose to maintain the records specified in paragraphs 1 through 3 in any medium that allows for prompt retrieval, including, but not limited to, digital, electronic, optical, magnetic, or written form in accordance with its domestic legislation.

Article 3.21: Minor Discrepancies and Errors

Without prejudice to Article 3.23, where the minor discrepancies and errors are ascertained by the customs authority of the importing Party such as illegibility, defect on its face, and discrepancy between the Certificate of Origin and the written declaration to the customs, the importer shall be granted a period of not less than five working days, but not exceeding 30 working days, from the date of request by the customs authority to provide a copy of the corrected Certificate of Origin.

Article 3.22: Non-Party Invoice

The importing Party shall not reject a Certificate of Origin only for the reason that the invoice was issued in a non-Party, provided that the requirements under this Chapter are complied with.

Article 3.23: Verification of Origin

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

(a) requests for information relating to the origin of imported good from the importer;

(b) requests to the customs authority of the exporting Party to verify the origin of the goods;

(c) requests to the customs authority of the exporting Party for a verification visit to exporter or producer in the exporting Party; or

(d) such other procedures as agreed upon by the customs authorities of the Parties.

2. For the purposes of subparagraph 1(b),

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

(i) the reasons why such verification is requested;

(ii) the Certificate of Origin of the goods, or a copy thereof; and

(iii) any other information or documents as may be necessary for such request;

(b) the customs authority of the exporting Party shall provide the customs

authority of the importing Party with verification results, to the extent possible including facts and findings, and relevant supporting documents made available by the exporter or producer, within six months from the date of the receipt of the request; and

(c) the customs authority of the importing Party shall notify the results of the determination as to whether the good in question is originating or not to the customs authority of the exporting Party within three months from the date of the receipt of the results of the verification from the customs authority of the exporting Party.

3. For the purposes of subparagraph 1(c), if the customs authority of the importing Party is not satisfied with the verification results provided by the customs authority of the exporting Party, the customs authority of the importing Party may, at the consent of the customs authority of the exporting Party, conduct verification visits to the premises of the exporter or producer in the exporting Party, under the escort of the customs authority of the exporting Party.

(a) Before conducting a verification visit, the customs authority of the importing Party shall, at least 30 days prior to the date of verification visit, deliver a written request to the customs authority of the exporting Party of its intention to conduct such verification visit. The customs authority of the exporting Party should decide whether to accept such request and reply to the customs authority of the importing Party within 30 days from the date of receipt of the request.

(b) When the customs authority of the exporting Party agrees to the request of verification visit but needs to postpone the proposed verification visit, the customs authority of the importing Party shall be notified together with the approval of the verification visit. Such postponement shall not exceed 60 days from the proposed date of the verification visit.

(c) In case the customs authority of the exporting Party agrees to such request, the customs authority of the importing Party can conduct verification visit to exporter or producer, in the company of customs officials of the exporting Party.

(d) Prior to initiating the verification visit, matters concerning the verification shall be mutually discussed between customs authorities of both Parties. In the course of verification visit, any request from the customs authority of the importing Party shall be made through the customs authority of the exporting Party.

(e) The customs authority of the importing Party shall notify the customs authority of the exporting Party of the determination on whether or not the good is originating and the result of verification visit, to the extent possible including legal basis and findings of fact in a written form.

(f) The exporter or producer may submit comments or documents

regarding eligibility of the good for preferential tariff treatment to the customs authority of the exporting Party in a written form.

(g) The customs authority of the importing Party shall notify the final determination on whether or not the good is originating to the customs authority of the exporting Party and the importer in a written form within 30 days from the receipt of the comments or information provided from the customs authority of the exporting Party under subparagraph 3(f).

(h) The verification visit process, from the actual visit to the final determination under subparagraph 3(g), shall be carried out within a maximum period of six months.

(i) Details for the verification visit may be decided jointly by the customs authorities of both Parties in advance.

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

5. The customs authority of the importing Party may deny preferential tariff treatment, in case where:

(a) the importer fails to respond to the customs authority of the importing Party within one month from the date of receipt of the request under subparagraph 1(a);

(b) the customs authority of the exporting Party fails to provide verification results to the customs authority of the importing Party within six months under subparagraph 2(b);

(c) the verification results provided to the customs authority of the importing Party or the results of verification visit do not contain information necessary to confirm the authenticity of the origin status of the good in question;

(d) the customs authority of the exporting Party denies the request of verification visit from the customs authority of the importing Party; or

(e) the customs authority of the exporting Party fails to respond to the request of verification visit from the customs authority of the importing Party within 30 days under subparagraph 3(a).

6. Communications under this Article shall be in the English language.

Article 3.24: Confidentiality

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

2. The information referred to in paragraph 1 shall not be disclosed without the specific permission of the person or government providing such information.

Article 3.25: Denial of Preferential Tariff Treatment

A Party may deny preferential tariff treatment to a good when:

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

(b) the importer, exporter or producer fails to comply with the relevant requirements of this Chapter;

(c) the Certificate of Origin does not meet the requirements of this Chapter; or

(d) in a case according to paragraph 5 of Article 3.23.

Article 3.26: Transitional Provision for Goods in Transit or Storage

The provision of this Chapter may be applied to goods which on the date of entry into force of this Agreement, are either in transit, in the Parties, or in temporary storage in customs warehouses, subject to the submission to the customs authorities of the importing Party, within three months of the date of entry into force of this Agreement, of a Certificate of origin made out retrospectively together with the documents showing that the goods have been transported directly in accordance with Article 3.14.

Article 3.27: Electronic Origin Data Exchange System

According to "*Arrangement between the General Administration of Customs of the People's Republic of China and the Korea Customs Service of the Republic of Korea on Strategic Cooperation*", both Parties endeavor to develop an Electronic Origin Data Exchange System before the implementation of this Agreement to ensure the effective and efficient implementation of this Chapter in a manner jointly determined by the Parties.

Article 3.28: Sub-Committee on Rules of Origin

1. The Parties hereby establish a Sub-Committee on Rules of Origin (hereinafter referred to as the "Sub-Committee") comprising the customs authorities of the Parties, which shall report to the Committee on Customs as defined in Article 19.4 (Committees and Other

Bodies).

2. The customs authorities of each Party may request consultations on matters arising from the implementation of this Chapter. The customs authority requested shall confirm the receipt of the request within 10 days and reply to the request within 60 days. For this purpose, contact points should be designated by each customs authority.

3. The Sub-Committee shall be convened at least once a year or at other times as the Parties may agree.

4. The functions of the Sub-Committee shall include:

(a) keeping Annex 3-A updated on the basis of the transposition of the Harmonized System;

(b) ensuring the effective, uniform and consistent administration of this Chapter, and enhancing the cooperation in this regard;

(c) addressing any technical issues related to the implementation of this Chapter and Annex 3-A, such as change in tariff classification, regional value content calculation, etc.; and

(d) meeting to review Articles 3.4 and 3.5 and documentary evidence of origin four years after the date of entry into force of this Agreement.

ANNEX 3-A
PRODUCT SPECIFIC RULES OF ORIGIN

Part I – General Interpretative Notes

1. The product specific rules in this Annex are structured on the basis of the Harmonized System 2012. In the event of any inconsistency between this description and the description set out in the legal text of the Harmonized System established by the World Customs Organization, the description set out in the latter shall prevail.

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

3. When a subheading is subject to alternative specific rules of origin (e.g. CTH or RVC (40)), the rule will be considered to be met if one of the alternatives is satisfied.

4. When a subheading is subject to combination rules of origin (e.g. CTH and RVC (40)), the rule will be considered to be met if all the rules are satisfied.

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

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

7. For the purposes of this Annex:

subheading means the first six-digit code under the nomenclature of the Harmonized System;

heading means the first four-digit code under the nomenclature of the Harmonized System; and

chapter means the first two-digit code under the nomenclature of the Harmonized System.

8. For the purposes of column 5 of this Annex:

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

CTH means that all non-originating materials used in the production of the good

have undergone a change in tariff classification at the first four-digit level;

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

WO means that the good must be wholly obtained or produced entirely in a Party within the meaning of Article 3.4; and

RVC (X) means that the good must have a regional value content of not less than X percent as calculated under Article 3.5.

Part Ⅱ – Product Specific Rules of Origin

ANNEX 3-B
LIST OF GOODS

1. Each Party shall apply Article 3.3 to goods listed in this Annex, which comprise three hundred ten in HS six-digit.

2. Both Parties may agree to amend the list of goods in this Annex annually.

230690, 321310, 321390, 340700, 350610, 391740, 391990, 392010, 392190, 392310, 392329, 392350, 392390, 392610, 392640, 392690, 401699, 420212, 420219, 420222, 420229, 420232, 420291, 420292, 420299, 420310, 420321, 420329, 430230, 430310, 441239, 482390*, 490300, 490900, 500400, 520839, 521039, 540110, 550932, 550961, 550969, 551519, 560311, 560410, 560741, 560750, 560811, 580421, 581092, 610130, 610230, 610310, 610331, 610342, 610343, 610433, 610442, 610452, 610453, 610461, 610462, 610463, 610469, 610510, 610520, 610610, 610620, 610711, 610712, 610722, 610791, 610811, 610819, 610821, 610822, 610831, 610832, 610891, 610892, 610910, 610990, 611011, 611020, 611030, 611120, 611130, 611211, 611212, 611521, 611594, 611595, 611596, 611599, 611710, 611790, 620111, 620112, 620113, 620191, 620192, 620193, 620211, 620212, 620213, 620219, 620291, 620292, 620293, 620311, 620312, 620319, 620331, 620332, 620333, 620339, 620341, 620342, 620343, 620349, 620412, 620413, 620419, 620431, 620432, 620433, 620439, 620441, 620442, 620443, 620444, 620449, 620451, 620452, 620453, 620459, 620461, 620462, 620463, 620469, 620520, 620530, 620590, 620620, 620630, 620640, 620690, 620711, 620719, 620791, 620799, 620811, 620822, 620891, 620892, 620899, 620920, 621040, 621111, 621112, 621132, 621133, 621139, 621142, 621143, 621210, 621220, 621290, 621320, 621430, 621440, 621600, 621790, 630130, 630140, 630231, 630391, 630492, 630493, 630532, 630533, 630539, 630612, 630710, 630790, 640291, 640299, 640340, 640359, 640391, 640399, 640419, 640610, 640620, 640690, 650500, 680530, 681280, 691200, 691490, 701400, 701590, 701919, 711311, 720720, 730890, 732290, 732393, 732599, 732690, 761699, 821300, 821520, 830140, 830890, 831000, 840390, 841231, 841330, 841391, 841480, 841490, 841510, 841590, 841899, 842091, 842121, 842123, 842131, 842139*, 842199, 842240, 843120, 843141, 844319, 844399*, 846694, 847330, 847989, 848079, 848490, 850110, 850300*, 850410, 850431, 850440, 850490, 850511, 850519, 850790, 851290, 851610*, 851631, 851632, 851660, 851690, 851770, 852910, 852990*, 853190 853340, 853400, 853590, 853620, 853669, 853690, 853890, 853931*, 853939*, 854140, 854232, 854370, 854390, 854430, 854442, 854470, 854720, 854890, 870829*, 870894*, 870899, 871410, 871680, 880400, 900190, 900211*, 900219, 900290, 901720, 902121, 903190, 910211, 911120, 911320, 940190*, 940330, 940490, 940510, 940540, 940560, 940592, 940599, 950300, 950510, 950669, 960810, 960820, 960910, 960990, 961511, 961900*

* For tariff lines at the six-digit level marked with asterisk, this Annex applies only to tariff lines at the eight-digit level that are subject to tariff elimination, which means staging categories of “0, 5, 10, 15 and 20” in China’s Tariff Schedule, under this Agreement.

ANNEX 3-C
CERTIFICATE OF ORIGIN

ORIGINAL

<table>
<tr><td colspan="3">1. Exporter’s name and address, country:</td><td colspan="4" rowspan="3">Certificate No.:

CERTIFICATE OF ORIGIN
Form for China-Korea FTA

Issued in ____________
(see Overleaf Instruction)</td></tr>
<tr><td colspan="3">2. Producer’s name and address, country:</td></tr>
<tr><td colspan="3">3. Consignee’s name and address, country:</td></tr>
<tr><td colspan="3">4. Means of transport and route (as far as known):

Departure Date:

Vessel/Flight/Train/Vehicle No.:

Port of loading:

Port of discharge:</td><td colspan="4">5. Remarks:</td></tr>
<tr><td>6. Item number (Max 20)</td><td>7. Marks and Numbers on packages</td><td>8. Number and kind of packages; description of goods</td><td>9. HS code (Six-digit code)</td><td>10. Origin criterion</td><td>11. Gross weight, quantity (Quantity Unit) or other measures (liters, m3, etc.)</td><td>12. Number and date of invoice</td></tr>
</table>

13. Declaration by the exporter: The undersigned hereby declares that the above details and statement are correct, that all the goods were produced in (Country) and that they comply with the origin requirements specified in the FTA for the goods exported to (Importing country) Place and date, signature of authorized signatory	14. Certification: On the basis of control carried out, it is hereby certified that the information herein is correct and that the goods described comply with the origin requirements specified in the China-Korea FTA. Place and date, signature and stamp of authorized body

Overleaf Instruction

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

Box 1: State the full legal name and address (including country) of the exporter in either China or Korea.

Box 2: State the full legal name and address (including country) of the producer. If goods from more than one producer are included in the certificate, list the additional producers, including their full legal name and address (including country). If the exporter or the producer wishes to maintain this information as confidential, it is acceptable to state "AVAILABLE UPON REQUEST." If the producer and the exporter are the same, please complete field with "SAME."

Box 3: State the full legal name and address (including country) of the consignee resident in either China or Korea.

Box 4: Complete the means of transport and route and specify the departure date, transport vehicle No., port of loading, and port of discharge.

Box 5: In case where a good is invoiced by a non-Party operator, the full legal name, country of the non-Party operator shall be indicated in this box. In case of issuance of certificates retroactively, should bear the words "ISSUED RETROACTIVELY", and in case of a certified true copy, should bear the words "CERTIFIED TRUE COPY of the original Certificate of Origin number ___ dated ___".

Box 6: State the item number, and the number of items should not exceed 20.

Box 7: State the shipping marks and numbers on packages, when such marks and numbers exist, if the shipping marks are images or symbols, other than letter or numerical number, shall state "IMAGE OR SYMBOL (I/S)", otherwise shall state "NO MARKS AND NUMBERS (N/M)"

Box 8: The number and kind of packages shall be specified. Provide a full description of each good. The description should be sufficiently detailed to enable the goods to be identified by the Customs Officers examining them and relate them to the invoice description and to the HS description of the good. If the goods are not packed, state "IN BULK".

Box 9: For each good described in Box 8, identify the HS tariff classification to six-digit.

Box 10: The exporter must indicate in Box 10 the origin criteria on the basis of which he claims that the goods qualify for preferential tariff treatment, in the manner shown in the following table:

Origin Criteria	*Insert in Box 10*
The good is wholly obtained or produced entirely in a Party, as set out and defined in Article 3.4 (Goods Wholly Obtained or Produced) or required so in Annex 3- A (Product Specific Rules of Origin).	WO
The good is produced entirely in a Party, exclusively from materials whose origin conforms to Chapter 3 (Rules of Origin and Origin Implementation Procedures).	WP
The good is produced in a Party, using non-originating materials that conform to a change in tariff classification, a regional value content, a process requirement or other requirements specified in Annex 3-A (Product Specific Rules of Origin).	PSR
The good is subject to Article 3.3 (Treatment of Certain goods)	OP

Box 11: Gross weight in Kilos should be shown here. Other units of measurement e.g. volume or number of items which would indicate exact quantities may be used when customary.

Box 12: Invoice number and date of invoice should be shown here. In case where a good is invoiced by a non-Party operator and the number and date of the commercial invoice is

unknown, the number and date of the original commercial invoice, issued in the exporting Party, shall be indicated in this box.

Box 13: This box shall be completed, signed and, dated by the exporter.

Box 14: This box shall be completed, signed, dated, and stamped by the authorized person of the authorized body.

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

CHAPTER 4
CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For the purposes of this Chapter:

customs law means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs authorities, and any regulations made by customs authorities, under their statutory powers;

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

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

Article 4.2: Scope and Objectives

1. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

2. The objectives of this Chapter are to:

(a) simplify and harmonize customs procedures of the Parties;

(b) facilitate trade between the Parties; and

(c) promote cooperation between the customs authorities, within the scope of this Chapter.

Article 4.3: Facilitation

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

2. Customs procedures of each Party shall, where possible and to the extent permitted by its respective customs law, conform with the trade-related instruments of the World Customs Organization (WCO) to which that Party is a contracting party, including those of the *International Convention on the Simplification and Harmonization of Customs Procedures*, as amended, known as the Revised Kyoto Convention.

3. The customs authorities shall facilitate the clearance, including release of goods in administering their procedures.

4. Each Party shall endeavor to provide a focal point, electronic or otherwise, through which its traders may submit all required regulatory information in order to obtain clearance, including release of goods.

Article 4.4: Consistency

Each Party shall ensure, to the extent possible, consistent implementation of its customs laws and regulations nationwide, and endeavour to deter inconsistent matters that may arise in the implementation process of the laws and regulations among its regional customs offices by establishing and taking proper measures.

Article 4.5: Transparency

1. Each Party shall ensure that its customs and other trade-related laws, regulations, general administrative procedures and other requirements, including fees and charges, are readily available to all interested parties, via an officially designated medium including official website. Each customs authority shall publish all customs laws and any administrative procedures it applies or enforces, via an officially designated medium including official website.

2. Each customs authority shall designate or maintain one or more enquiry points to deal with inquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and make available on the official website information concerning the procedures for making such inquiries.

3. To the extent possible, each customs authority shall publish in advance any new or amended regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons with the opportunity to comment before adopting them.

4. Each customs authority shall provide the other customs authority with timely notice of any significant modification of customs laws or procedures governing the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

Article 4.6: Customs Valuation

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

Article 4.7: Tariff Classification

The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System* to goods traded between them.

Article 4.8: Customs Cooperation

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

2. To the extent permitted by their domestic laws, the customs authorities shall assist each other, in relation to:

(a) the implementation and operation of this Chapter; and

(b) such other issues as the Parties mutually determine.

Article 4.9: Review and Appeal

1. Each Party shall, in accordance with its domestic laws and regulations, provide that the importer, exporter or any other person affected by its determinations, have access to:

(a) a level of administrative review of determinations by its customs authorities independent of the official or office responsible for the determinations under review; and

(b) judicial review of the administrative determinations subject to its laws and regulations.

2. A producer or exporter may provide, on the request of the reviewing authority, information directly to the Party conducting the administrative review, and may request such Party to treat that information as confidential in accordance with the rules applicable in that Party. This information shall be provided in accordance with the rules determined by the Parties.

Article 4.10: Advance Rulings

1. The customs authority of each Party shall issue written advance rulings prior to the importation of a good into its territory on the written request of an importer, an exporter, or any other applicant in the territory of that Party[8], on the basis of the facts and circumstances provided by the requester, including a detailed description of the information required to process a request for an advance ruling. The advance ruling may be issued on the following

[8] For China, the applicant for an advance ruling must be registered with China customs.

matters:

(a) tariff classification;

(b) origin of a good in accordance with this Agreement; and

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

2. The customs authority shall issue an advance ruling within 90 days after a request, provided that the requester has submitted all information required under the domestic laws, regulations and rules. The advance ruling shall be in force from its date of issuance, provided that the facts or circumstances on which the ruling is based remain unchanged.

3. The advance rulings that are into force may be annulled, amended or revoked:

(a) where the facts or circumstances prove that the information on which the advance ruling is based is false or inaccurate. In these cases, the customs authority may apply appropriate measures to the requester, including civil, criminal and administrative actions, penalties or other sanctions in accordance with its domestic laws;

(b) where the customs authorities deem appropriate to apply different criteria due to the obvious error made by customs authorities on the same facts and circumstances of the original advance rulings. In this case, the amendment or revocation shall be applied from the date of the change; or

(c) when the administrative decisions are affected due to changes in the laws, regulations and rules that served as basis. In these cases, the advance rulings shall automatically cease to be in force from the date of publication of those changes.

In the cases mentioned in subparagraph (c), the customs authority shall make available to interested persons the information reviewed, with sufficient time prior to the date on which the amendments enter into force, so they can take them into account, with the exception of the cases where it is impossible to publish in advance.

4. Each Party shall publish its advance rulings subject to any confidentiality requirements in its laws, regulations and rules.

5. A Party may decline to issue an advance ruling if the facts or circumstances forming the basis of the advance ruling are the subject of administrative or judicial review.

Article 4.11: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential tariff treatment under this Agreement.

Article 4.12: Use of Automated Systems

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

Article 4.13: Risk Management

1. The customs authorities shall focus measures of control on high-risk goods and facilitate the clearance of low-risk goods in administering customs procedures.

2. The Parties shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination or disguised restrictions on international trade.

Article 4.14: Release of Goods

1. Each Party shall adopt and apply simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. For greater certainty, this paragraph shall not require a Party to release goods where its requirements for release have not been met.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for advance electronic submission and processing of information before the physical arrival of goods subject to the satisfaction of certain conditions or requirements, to enable the release of goods on arrival to the extent possible;

(b) may allow importers to obtain the release of goods prior to meeting all import requirements of that Party if the importer provides

sufficient and effective guarantees and where it is decided that neither further examination, physical inspection nor any other submission is required;

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

(d) allow goods, other than prohibited, controlled or regulated, to be released at the place of customs supervision, for free circulation, without temporary transfer to warehouses or other facilities.

Article 4.15: Express Shipments

1. Each Party shall adopt or maintain separate and expedited customs procedures for express shipments while maintaining appropriate customs control and selection.

2. These procedures shall:

(a) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;

(b) to the extent possible, provide for certain goods to be cleared with a minimum of documentation; and

(c) apply without regard to an express shipment's weight or customs value, unless otherwise regulated by its domestic laws, regulations and rules.

Article 4.16: 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 4.17: Confidentiality

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

2. The information referred to in paragraph 1 shall not be disclosed without the specific permission of the person or government providing such information.

Article 4.18: Consultation

1. The customs authorities of each Party may request consultations on any matter arising from the operation or implementation of this Chapter in cases where there are reasonable grounds or truth provided by the requesting Party. Such consultations shall be conducted through the relevant contact points in confirmation of the receipt of request within 10 working days from the date of receipt by the requested Party and shall take place within 60 days of the request, unless the customs authorities of the Parties mutually determine otherwise.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Customs referred to in Article 4.19 for consideration.

3. Each customs authority shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. Customs authorities of the Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 4.19: Committee on Customs

1. With a view to the effective implementation and operation of this Chapter and Chapter 3 (Rules of Origin and Origin Implementation Procedures), a Committee on Customs (hereinafter referred to as the "Committee"), consisting of a Sub-Committee on Customs Procedures and Trade Facilitation (CPTF) and a Sub-Committee on Rules of Origin (ROO), is hereby established, under the Joint Commission.

2. The function of the Sub-Committee on CPTF shall be as follows:

(a) to ensure the proper function of this Chapter and resolve all issues arising from its application;

(b) to review the interpretation and implementation of this Chapter as well as the revision of this Chapter, as appropriate;

(c) to identify areas related to this Chapter to be improved for facilitating trade between the Parties; and

(d) to report to the Committee.

3. The Sub-Committee on CPTF shall consist of representatives from customs authorities of the Parties. The Sub-committee shall meet at such venues and times as agreed by the Parties.

CHAPTER 5
SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Objectives

The objectives of this Chapter are to:

(a) minimize the negative effects of sanitary and phytosanitary (hereinafter referred to as "SPS") measures on trade between the Parties while protecting human, animal or plant life or health in the Parties' territories;

(b) enhance transparency in and mutual understanding of the application of each Party's SPS measures;

(c) strengthen cooperation and communication among the competent authorities of the Parties which are responsible for matters covered by this Chapter; and

(d) enhance implementation of the SPS Agreement.

Article 5.2: Scope and Definitions

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

2. For the purposes of this Chapter, the definitions in Annex A to the SPS Agreement shall apply.

Article 5.3: Reaffirmation of the SPS Agreement

Except as otherwise provided for in this Chapter, the SPS Agreement shall apply between the Parties and is hereby incorporated into and made part of this Chapter.

Article 5.4: Technical Cooperation

1. The Parties agree to explore the opportunity for technical cooperation in SPS areas, with a view to enhancing the mutual understanding of the regulatory systems of the Parties and minimizing the negative effects on bilateral trade.

2. The Parties shall give due consideration to cooperation in relation to SPS issues. Such cooperation, which shall be on mutually agreed terms and conditions, may include, but is not limited to:

(a) furthering exchange of experience and cooperation in the development and application of domestic SPS measures as well as international standards;

(b) strengthening cooperation with respect to, *inter alia*, risk analysis methodology, disease/pest control methods, laboratory testing techniques, and exchange of information on domestic regulations;

(c) enhancing cooperation and exchange of experience between the WTO SPS Enquiry Points of the Parties;

(d) developing exchange programs for relevant officials of competent authorities, with the objectives of building capacity and confidence of the Parties regarding animal disease and plant pest management; and

(e) carrying out joint research and sharing the result of such research in areas, such as:

(i) animal and plant disease/pest surveillance;

(ii) animal and plant disease/pest prevention and control;

(iii) detection methods for pathogenic microorganisms in food; and

(iv) surveillance and control of harmful substances and agro-chemical and veterinary medicine residues and other food safety issues.

Article 5.5: Committee on the SPS Measures

1. The Parties hereby agree to establish a Committee on the SPS Measures (hereinafter referred to as the "Committee") comprising representatives of each Party's competent authorities of SPS matters.

2. The objectives of the Committee shall be to enhance each Party's implementation of the SPS Agreement, to protect human, animal, or plant life or health, to enhance cooperation and consultation on SPS matters, and to minimize the negative effects on trade between the Parties.

3. Recognizing that the resolution of SPS matters must rely on science and risk-based assessment and is best achieved through bilateral technical cooperation and consultation, the Committee shall seek to enhance present or future relations between the Parties' competent authorities of SPS matters. For these purposes, the Committee shall:

(a) recognize that scientific risk analysis shall be conducted and evaluated by the relevant regulatory agencies of each Party;

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

(c) consult on matters related to the development or application of SPS measures that affect, or may affect, trade between the Parties;

(d) communicate timely, through the contact points of the Parties, the significant, sustained or recurring non-compliance with SPS requirements;

(e) consider, if necessary, upon request of a Party, establishing technical consultations on the basis of terms and conditions to be agreed by the Committee when one Party considers that an SPS measure of the other Party is likely to be applied, or has been applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction, with a view to, as appropriate, seeking to address SPS matters of mutual interest to the Parties. Such consultations shall take place within a reasonable period of time from the date of the request;

(f) coordinate on issues, positions, and agenda for meetings of the WTO SPS Committee established under the SPS Agreement, the *Codex Alimentarius Commission* (CAC), the *World Organization for Animal Health* (OIE), the relevant international and regional organizations operating within the framework of the *International Plant Protection Convention* (IPPC), and other international and regional fora on food safety and on human, animal, or plant life or health;

(g) promote coordination of technical cooperation activities in relation to development, implementation, and application of SPS measures; and

(h) improve bilateral understanding related to specific implementation issues concerning the SPS Agreement, including clarification of each Party's regulatory frameworks and rulemaking procedures.

4. The Parties shall establish the Committee not later than 90 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

5. The Committee shall meet at least once a year unless the Parties otherwise agree. The venue of meetings shall also be mutually agreed and the chairmanship shall alternate between the Parties.

6. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of SPS measures from its relevant trade and regulatory agencies or ministries participate in the Committee meetings.

7. To coordinate the implementation of this Chapter, in particular the Committee meetings and to provide a means of information exchange within a reasonable period of time, the Parties shall designate the following contact points:

(a) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor; and

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

Article 5.6: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 6
TECHNICAL BARRIERS TO TRADE

Article 6.1: Objectives

The objectives of this Chapter are to:

(a) promote mutual understanding of each Party's standards, technical regulations and conformity assessment procedures;

(b) strengthen cooperation, including information exchange in the field of standards, technical regulations and conformity assessment procedures, reduce the costs of trade, promote and facilitate bilateral trade between the Parties; and

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

Article 6.2: Scope and Definitions

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

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

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

(b) sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement.

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

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

Article 6.3: Affirmation of the TBT Agreement

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

Article 6.4: Standards

1. With respect to the preparation, adoption and application of standards, each Party shall take reasonable measures to ensure that its standardizing body accept and comply with Annex 3 to the TBT Agreement.

2. Each Party shall encourage the standardizing body or bodies in its territory to cooperate with the standardizing body or bodies of the other Party. Such cooperation shall include, but is not limited to, information and experience on standards.

3. Where technical regulation or conformity assessment procedures are required and relevant international standards exist or their completion is imminent, each Party shall use them, or the relevant parts of them, as a basis for their technical regulations and conformity assessment procedures except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued.

4. In determining whether an international standard in the sense of Article 2.4 of the TBT Agreement exists, each Party shall consider the Decision of WTO Committee on Technical Barriers to Trade (hereinafter referred to as "WTO TBT Committee"). Such international standards shall include, but are not limited to, those developed by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and Codex Alimentarius Commission (CAC).

Article 6.5: Technical Regulations

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

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

Article 6.6: Conformity Assessment Procedures

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

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

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

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

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

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

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

2. The Parties shall exchange information on their experience in the development and application of the approaches in paragraph 1 and other appropriate approaches and therefore encourage their conformity assessment bodies to work closer with a view to facilitating the acceptance of conformity assessment results between both Parties.

3. Each Party shall ensure that conformity assessment procedures are prepared, adopted and applied so as to grant access of like products originating in the territory of the other Party under conditions no less favorable than those accorded to suppliers of like products of national origin.

4. The Parties shall give positive consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures.

5. The Parties shall cooperate to limit the processing period and fees to the extent necessary for conformity assessment procedures.

Article 6.7: Transparency

1. Each Party shall allow a period of at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures to WTO Central Registry of Notifications to solicit comments from the other Party except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise.

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

3. Each Party should take the comments of the other Party into due consideration, received prior to the end of the comment period following the notification of a proposed technical regulation, and shall endeavor to provide responses to these comments upon request.

4. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are promptly published or otherwise made available in such a manner as to enable

interested persons of the other Party and the other Party to become acquainted with them.

Article 6.8: Cooperation

1. The Parties shall intensify their joint efforts in the fields of technical regulations, standards and conformity assessment procedures with a view to enhancing the mutual understanding of their respective regulatory systems, improving technical competence and facilitating capacity building activities.

2. Each Party shall, upon request of the other Party, give positive consideration to proposals of cooperation on technical regulations, standards and conformity assessment procedures. Such cooperation, which shall be on mutually determined terms and conditions, may include but is not limited to:

(a) providing advice or technical assistance relating to the development and application of technical regulations, standards and conformity assessment procedures;

(b) encouraging cooperation between their respective organizations, public or private, responsible for metrology, standardization, testing, certification and accreditation;

(c) use of accreditation to qualify conformity assessment bodies;

(d) enhancing technical capacity in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;

(e) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures;

(f) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora; and

(g) encouraging the implementation of the TBT Agreement.

3. The Parties agree to cooperate on establishment and operation of conformity assessment bodies of the other Party in its own territory.

4. The Parties agree to share information and experiences on developing relevant standards, technical regulations and conformity assessment procedures for products with new technology or new features.

5. The Parties shall encourage their national certification bodies to be member of the IECEE-CB scheme and the national certification bodies to accept each other's IECEE-CB test certificate as the basis for national certification to electric safety requirements in order to reduce duplicative testing and certification requirements.

Article 6.9: Consumer Product Safety

1. The Parties recognize the importance of ensuring safety of consumer products traded between the Parties.

2. The Parties shall exchange information on relevant regulatory systems, incident analysis, hazard alerts, products bans, product recalls and market surveillance activities

3. The Parties agree to cooperate on good regulatory practice, the development and implementation of risk management principles including product safety monitoring, and regulatory enforcement.

Article 6.10: Implementing Arrangements

The Parties agree to make their best efforts to negotiate possible implementing arrangements with regard to conformity assessment cooperation at their earliest convenience. The Parties may conclude further implementing arrangements in the area of mutual interest.

Article 6.11: Marking and Labeling

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

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

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

(a) the Party shall endeavour to minimize the requirements for marking or labeling other than marking or labeling relevant to consumers or users of the product;

(b) the Party may specify the form of labels or markings in a reasonable manner, 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) the Party shall, where it requires the use of a unique identification number by economic operators, issue such number to the economic operators of the

other Party without undue delay and on a non-discriminatory basis;

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

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

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

(e) the Party shall, where it considers that legitimate objectives in accordance with the TBT Agreement are not compromised thereby, endeavour to accept non-permanent or detachable labels.

Article 6.12: Measures at the Border

Where a Party detains, at a port of entry, goods including testing samples for conformity assessment exported from the other Party due to a perceived failure to comply with a technical regulation or conformity assessment procedures, the reasons for the detention shall be promptly notified to the importer or his or her representative.

Article 6.13: Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hereinafter referred to as the “Committee”), composed of representatives of each Party as set out in paragraph 4.

2. The Committee’s functions shall include:

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

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

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

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

(e) exchanging information, upon request of a Party, on standards, technical

regulations, and conformity assessment procedures;

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

(g) encouraging the discussion on mutual recognition of the conformity assessment results performed in the other Party's territory;

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

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

(j) taking any other steps that the Parties consider will assist them in implementing this Chapter; and

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

3. The Committee shall meet at least once a year, unless the Parties otherwise agree. Meetings may be conducted in person, or via teleconference, videoconference, or any other means as mutually agreed by the Parties.

4. For the purposes of this Article, the Committee shall be coordinated by:

(a) for China, the General Administration of Quality Supervision, Inspection and Quarantine, or its successor; and

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

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

5. The authorities set out in paragraph 4 shall be responsible for coordinating with the relevant institutions and persons in their respective territories as well as for ensuring that such institutions and persons are engaged. The Committee shall carry out its work through the communication channels agreed by the Parties, which may include electronic mail, teleconferencing, videoconferencing, or other means.

Article 6.14: Information Exchange

1. Any information or explanation that is provided upon request of a Party pursuant to this Chapter shall be provided in print or electronically within a reasonable period of time. A Party shall endeavor to respond to each such request within 60 days.

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

Article 6.15: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 7
TRADE REMEDIES

Section A: Safeguard Measures

Article 7.1: Application of a Safeguard Measure

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

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

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

(i) the most-favored-nation (MFN) applied rate of duty on the good in effect on the date on which the safeguard measure is applied; and

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

Article 7.2: Conditions and Limitations

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

2. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement 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 Articles 4.2(a) and 4.2(b) of the Safeguards Agreement, and to this end, Articles 4.2(a) and 4.2(b) of the Safeguards Agreement are 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 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. No safeguard measure shall be applied again to the import of a good which has been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

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

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

Article 7.3: Provisional Measures

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

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

3. The duration of any provisional measure shall not exceed 200 days, during which time the applying Party shall comply with the requirements of Articles 7.2.2 and 7.2.3.

4. The applying Party shall promptly refund any tariff increases if the subsequent investigation does not determine that increased imports have caused or threatened to cause

serious injury to a domestic industry. The duration of any provisional measure shall be counted as a part of the duration period of the measure described in Article 7.2.5(b).

Article 7.4: Compensation

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

2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of consultations, the exporting Party may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The exporting Party shall notify the applying Party in writing at least 30 days before suspending concessions.

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

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

Article 7.5: Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards Agreement.

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

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

(a) a bilateral safeguard measure; and

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

Article 7.6: Definitions

For the purposes of Section A:

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

safeguard measure means a measure described in Article 7.1;

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

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

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

Section B: Anti-Dumping and Countervailing Duties

Article 7.7: General Provisions

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

2. The Parties agree that anti-dumping and countervailing duties should be used in full compliance with the relevant provisions of WTO Agreements 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 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. The Parties shall take due consideration of the comments submitted and make due responses in the final determination.

3. The Parties agree not to take any action in an arbitrary or protectionist manner pursuant to the Anti-Dumping Agreement.

4. Both Parties confirm that there shall be no practice between the two Parties to use a methodology based on surrogate value of a third country, including the use of surrogate price or surrogate cost in determining normal value and export price when determining dumping margin during an anti-dumping procedure.

5. The Parties confirm their current practice of counting toward the average all individual margins, whether positive or negative, when the margins of dumping are established on the weighted-to-weighted basis or transaction-to-transaction basis, or weighted-to-transaction basis, and share their expectation that such practice will continue.[9]

Article 7.8: Notification and Consultations

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 seven days before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application, and may afford the other Party a meeting or other similar opportunities regarding the application, consistent with the Party's law.

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 as soon as possible, and before proceeding to initiate an investigation the Parties shall have consultations with a view to finding a mutually acceptable solution.

Article 7.9: Undertakings

1. After a Party's competent authorities initiate an anti-dumping or countervailing duty investigation, upon the request of the other Party, the Party shall transmit to the other Party's embassy or competent authorities written information regarding the Party's procedures for requesting its authorities to consider an undertaking on price including the time frames for offering and concluding any such undertaking.

2. In an anti-dumping investigation, where a Party's authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the Party shall afford due consideration and opportunity for meetings, to exporters of the other Party regarding proposed price undertakings which, if accepted, may result in suspension of the investigation without imposition of anti-dumping duties, consistent with the Party's laws and procedures.

3. In a countervailing duty investigation, where a Party's authorities have made a preliminary affirmative determination of subsidization and injury caused by such subsidization, the Party shall afford due consideration and opportunity for meetings, to the other Party and exporters of the other Party regarding proposed price undertakings, which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, consistent with the Party's laws and procedures.

Article 7.10: Verification

[9] This is without prejudice to the position each Party takes in the WTO's Doha Development Agenda negotiations on Rules.

1. The general nature of information to be verified and information which needs to be provided should be notified to the exporters and producers concerned prior to the on-the-spot verification.

2. The result of the verification shall be disclosed to the exporters and producers concerned subject to the verification within a reasonable period after the verification.

Article 7.11: Public Hearing

Each Party shall take due consideration in holding a public hearing, either upon receipt of written application from interested parties or on its own initiative.

Article 7.12: Investigation after Termination Resulting from a Review

The Parties agree to examine carefully 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.

Article 7.13: Cumulative Assessment

When imports from more than one country are simultaneously subject to anti-dumping or countervailing duty investigation, a Party shall examine carefully whether the cumulative assessment of the effect from 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 7.14: De-Minimis Standard Applicable to New Shipper Review

When determining individual margin 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 that the dumping margin is less than the *de-minimis* threshold set out in Article 5.8 of the Anti-Dumping Agreement.

Section C: Committee on Trade Remedies

Article 7.15: Committee on Trade Remedies

1. The Parties hereby establish a Committee on Trade Remedies (hereinafter referred to as the "Committee") to oversee implementation of this Chapter and to discuss matters that the Parties agree. The Committee comprises representatives at an appropriate level from relevant agencies responsible for trade remedy measures of each Party.

2. The Committee will normally meet once a year and may meet more frequently as the Parties may agree.

CHAPTER 8
TRADE IN SERVICES

Article 8.1: Definitions

For the purposes of this Chapter:

(a) 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;

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

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

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

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

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

(d) 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;

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

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

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

1. a natural person of the other Party; or

2. a juridical person of the other Party identified under subparagraph (i);

(f) A juridical person is:

(i) **owned** by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;

(ii) **controlled** by persons of a Party if such persons have the power to name a

majority of its directors or otherwise to legally direct its actions; or

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

(i) central or local governments and authorities; or

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

(h) **measures by the Parties affecting trade in services** include measures in respect of:

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

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

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

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

(j) **natural person of a Party** means:

(i) with respect to China, a natural person who resides in the territory of either Party, and who under Chinese law is a national of China; or

(ii) with respect to Korea, a national of Korea under its domestic law;

(k) **person** means either a natural person or a juridical person;

(l) **sector of a service** means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule of Specific Commitment in Annex 8-A; or

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

(m) selling and marketing of air transport services mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

(n) service consumer means any person that receives or uses a service;

(o) service of the other Party means a service which is supplied:

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

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

(p) 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;

(q) service supplier means any person that supplies a service[10];

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

(s) trade in services means the supply of a service:

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

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

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

(iv) by a service supplier of a Party, through presence of natural persons

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

of a Party in the territory of the other Party; and

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

Article 8.2: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services.

2. This Chapter shall not apply to:

(a) subsidies or grants provided by a Party except as provided for in Article 8.13 including government-supported loans, guarantees and insurance;

(b) services provided in the exercise of governmental authority within the territory of each respective Party;

(c) cabotage in maritime transport services;

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

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system ("CRS") services;

(e) financial services as defined in Article 9.14 (Definitions)[11]; and

(f) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.

3. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly

[11] Nevertheless, the Specific Commitments with regards to financial services are included in the Annex 8-A (Schedule of Specific Commitments).

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[12] accruing to the other Party under the terms of this Chapter as well as the terms of specific commitments undertaken.

4. Articles 8.3 and 8.4 shall not apply to laws, regulations or requirements governing the procurement by government agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

Article 8.3: Market Access

1. With respect to market access through the modes of supply defined in Article 8.1, 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 its Schedule of Specific Commitments in Annex 8-A[13].

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

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

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

(c) limitations on the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test[14];

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

[12] The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

[13] If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in Article 8.1(s)(i) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 8.1(s)(iii), it is thereby committed to allow related transfers of capital into its territory.

[14] This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

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

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

Article 8.4: National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[15]

2. A Party may meet the requirement in 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.

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 the Party compared to like service or service suppliers of the other Party.

Article 8.5: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.3 or Article 8.4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments.

Article 8.6: Schedule of Specific Commitments

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Articles 8.3, 8.4, and 8.5. With respect to sectors where such commitments are undertaken, each Schedule of specific commitments shall specify:

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

(b) conditions and qualifications on national treatment;

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[15] 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.

(c) undertakings relating to additional commitments; and

(d) where appropriate, the time frame for implementation of such commitments.

2. Measures inconsistent with Articles 8.3 and 8.4 shall be inscribed in the column relating to Article 8.3. In this case, the inscription will be considered to provide a condition or qualification to Article 8.4 as well.

3. Schedules of Specific Commitments shall be annexed to this Chapter and shall form an integral part of this Agreement.

4. Neither Party may adopt new, or more, discriminatory measures with regard to services and service supplier of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.[16]

Article 8.7: Domestic Regulation

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

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

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

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

[16] This paragraph is only applicable to Annex 8-A under this Chapter.

undue delay, information concerning the status of the application.

4. 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, the Parties shall jointly review the results of the negotiations on disciplines on these measures pursuant to Article VI.4 of GATS, with a view to incorporating them into this Chapter. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

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

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

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

5. (a) In sectors in which a Party has undertaken specific commitments, pending the incorporation of the disciplines referred to in paragraph 4, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement in a manner which:

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

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

(b) In determining whether a Party is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organisations applied by that Party.[17]

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

Article 8.8: Transparency

1. Each Party shall publish promptly all relevant measures of general application which

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

pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

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

3. Each Party shall promptly and at least annually inform the Committee on Trade in Services referred to in Article 8.14 of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Chapter.

4. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of this Agreement.

5. Each Party may notify to the Committee on Trade in Services referred to in Article 8.14 any measure, taken by the other Party, which it considers affects the operation of this Chapter.

Article 8.9: Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or the relevant competent bodies or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, the Party is not obliged to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognised.

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

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

5. Each Party shall endeavour:

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

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

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

6. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, the Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article 8.10: Payments and Transfers

1. Except under the circumstances envisaged in Article XII (Restrictions to Safeguard the Balance of Payments) of GATS, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

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

Article 8.11: Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to service suppliers of the other Party where the service is being supplied by a juridical person, if it is:

(a) owned or controlled by persons of a non-Party and has no substantive business operations in the territory of the other Party;

(b) owned or controlled by persons of the denying Party and has no substantive business operations in the territory of the other Party; or

(c) owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

Article 8.12: Monopolies and Exclusive Service Suppliers

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

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

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

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (a) authorises or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

Article 8.13: Subsidies

1. The Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Agreement.

2. At the request of a Party which considers that it is adversely affected by a subsidy of the other Party, the Parties shall enter into consultations on such matters.

Article 8.14: Committee on Trade in Services

1. The Parties hereby establish a Committee on Trade in Services (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. The Committee's functions shall include:

(a) reviewing the implementation and operation of this Chapter;

(b) identifying and recommending measures to promote trade in services; and

(c) at a Party's request, consulting on any matter arising under this Chapter.

3. The Committee shall meet within one year after the date this Agreement enters into force and annually thereafter unless the Parties otherwise agree. The Committee shall inform the Joint Commission of the results of each meeting.

Article 8.15: Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.12, may restrain competition and thereby restrict trade in services.

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

Article 8.16: Contact Points

Each Party shall designate one or more contact points to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. Each Party shall notify each other promptly of any amendments to the details of its contact points.

CHAPTER 9
FINANCIAL SERVICES

Article 9.1: Scope and Coverage

1. This Chapter applies to measures affecting the supply of financial services.

2. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

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

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

(c) activities or services conducted by a central bank, monetary authority or any other public entity in pursuit of monetary or exchange rate policies.

3. This Chapter does not apply to laws, regulations, or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

Article 9.2: National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 8-Awith regards to Financial Services, and subject to any conditions and qualifications set out therein, each Party shall accord to financial services and financial service suppliers of the other Party, in respect of all measures affecting the supply of financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers[18].

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

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

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[18] 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 financial services or financial service suppliers.

Article 9.3: Market Access for Financial Institutions

1. With respect to market access through the financial services supply, each Party shall accord to financial services and financial service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 8-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 its Schedule of Specific Commitments in Annex 8-A, are defined as:

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

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

(c) limitations on the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test[19];

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

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

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

Article 9.4: Treatment of Certain Information

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

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[19] This subparagraph does not cover measures of a Party which limit inputs for the supply of financial services.

Article 9.5: Prudential Carve Out

1. Notwithstanding any other provisions of this Chapter or Chapter 12 (Investment), a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.

2. Where such measures do not conform to the provisions of this Agreement referred to in paragraph 1, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

Article 9.6: Transparency[20]

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

2. Each Party shall ensure that all measures of general application to which this Chapter shall apply are administered in a reasonable, objective, and impartial manner.

3. In lieu of paragraph 2 of Article 18.1 (Publication), each Party, to the extent possible:

(a) shall publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulations; and

(b) shall provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

4. To the extent possible, each Party shall endeavour to allow reasonable time between publication of final regulations of general application and their effective date.

5. Each Party shall establish or maintain appropriate channels for receiving inquiries regarding measures of general application covered by this Chapter.

6. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.

7. A Party's regulatory authority shall inform the applicant of the status of its application within the timeframe as stipulated by relevant regulations. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

[20] Both Parties respect each other's domestic legal requirements and recognise the commitments of the Article on Transparency undertaken in the WTO Protocol in the accession of the People's Republic of China.

8. A Party's regulatory authority shall make an administrative decision on a completed application of financial service suppliers of the other Party relating to the supply of a financial service within the timeframe as stipulated by relevant regulations, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all necessary information is received. Where it is not practicable for an administrative decision to be made within 180 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within the timeframe as stipulated by relevant regulations thereafter.

9. 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.

Article 9.7: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems[21] operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 9.8: Recognition of Prudential Measures

1. A Party may recognise prudential measures of a non-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 with the non-Party concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such an agreement or arrangement, 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 recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 9.9: Specific Commitments[22]

[21] For greater certainty, for China, the High Value Payment System and the Bulk Electronic Payment System are provided by the People's Bank of China, and for Korea, the large amount payment and clearing system services are provided by the Bank of Korea and the small amount payment and clearing system services are provided by the Korea Financial Telecommunications and Clearings Institute.

[22] Notwithstanding this Article, the Specific Commitments for Financial Services by a Party in relation to Articles 9.2 and 9.3 shall be contained in the Schedule of Specific Commitments in the Annex 8-A.

Annex 9-A sets out certain specific commitments by each Party.

Article 9.10: Committee on Financial Services

1. The Committee on Financial Services (hereinafter referred to as the “Committee”) established in accordance with Article 19.4 (Committees and Other Bodies) shall comprise officials of each Party responsible for financial services as set out in paragraph 2 of Annex 9-A.

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration; and

(b) consider issues regarding financial services that are referred to it by a Party, including ways for the Parties to cooperate more effectively in the financial services sector.

3. The Committee shall meet as agreed, to assess the functioning of this Agreement as it applies to financial services.

Article 9.11: Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give due consideration to the request.

2. Consultations under this Article shall include officials of the authorities specified in paragraph 2 of Annex 9-A.

Article 9.12: Dispute Settlement

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Article 9.13: Prior Consultation for Investment Disputes in Financial Services

Where an investor of a Party in financial institutions submits a claim under Article 12.12 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), and the respondent invokes Article 9.5 as a defence, upon request from the respondent, both Parties shall consult with each other and attempt in good faith to make a determination which shall be binding on the tribunal within 180 days after the claim is submitted.

Article 9.14: Definitions

For the purposes of this Chapter:

financial service means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(a) Direct insurance (including co-insurance):

(i) life,

(ii) non-life;

(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency; and

(d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public;

(f) Lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, traveller's cheques, and bankers drafts;

(i) Guarantees and commitments;

(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(i) money market instruments (including cheques, bills, certificates of deposits);

(ii) foreign exchange;

(iii) derivative products including, but not limited to, futures and options;

(iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(v) transferable securities; and

(vi) other negotiable instruments and financial assets, including bullion;

(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l) Money broking;

(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier means any natural or juridical person of a Party wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity;

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

(i) central or local governments and authorities; and

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

supply of a financial service means the supply of a service:

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

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

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

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

public entity means a government, a central bank or 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 a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

ANNEX 9-A
SPECIFIC COMMITMENTS

1. Supervisory Cooperation

The Parties support the efforts of their respective financial regulators to provide assistance to the regulators of the other Party to enhance consumer protection and those regulators' ability to prevent, detect, and prosecute unfair and deceptive practices. Each Party confirms that its financial regulators have the legal authority to exchange information in support of those efforts. The Parties shall encourage financial regulators to continue their ongoing efforts to strengthen this cooperation through bilateral consultations or bilateral or multilateral international cooperative mechanisms, such as memoranda of understanding or ad hoc undertakings.

2. Financial Services Committee

The authorities responsible for financial services are:

(a) for China, CBRC, CIRC, CSRC and PBOC or their successors; and

(b) for Korea, the Financial Services Commission and the Ministry of Strategy Finance or their successors.

3. Government Sponsored Policy Implementing Entities

The Parties confirm that the government sponsored policy implementing entities shall not be considered financial service suppliers for the purposes of this Chapter.

4. Favourable Treatment

(a) The Parties shall endeavour to, subject to prudential requirements and in accordance with respective laws and regulations, process expeditiously all applications made by financial service suppliers from both Parties, respectively, for the operation in both Parties' territories to be applied on an equitable, non-discriminatory and good faith basis, as and when such applications are received.

(b) The Parties shall endeavour to ensure financial service suppliers from both Parties benefit from the further opening up of capital market to the extent permitted by the relevant policy set forth by the Parties.

CHAPTER 10
TELECOMMUNICATIONS

Article 10.1: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in telecommunications services.

2. Except to ensure that enterprises operating broadcast stations and cable systems have continued access to and use of public telecommunications networks or services, this Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

(a) require a Party to compel any enterprise to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

4. Nothing in this Chapter shall be interpreted as creating additional commitments other than those under Annex 8-A (Schedule of Specific Commitments) of Chapter 8 (Trade in Services).

Article 10.2: Relation to Other Chapters

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

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

Article 10.3: Access and Use

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders on a timely basis, and on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over owned or leased circuits;

(c) connect owned or leased circuits with public telecommunications networks or services in the territory, or across the borders, of that Party, or with circuits leased or owned by another service supplier;

(d) perform switching, signalling, processing, and conversion functions; and

(e) use operating protocols of their choice in the supply of any service.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks or services for the movement of information in its territory or across its borders in accordance with the laws and regulations of the Party, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party or any non-Party which is a party to the WTO Agreement.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; and

(b) protect personal information of end-users of public telecommunications networks or services,

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than as necessary to:

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

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

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

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

(b) requirements, where necessary, for the inter-operability of such networks or services; and

(c) type approval of terminal or other equipment which interfaces with the network

and technical requirements relating to the attachment of such equipment to such networks.

Section B: Obligations Relating to Interconnection Provided by Suppliers of Public Telecommunications Networks or Services

Article 10.4: Interconnection

1. (a) Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide, directly or indirectly, interconnection with suppliers of public telecommunications networks or services of the other Party, which have obtained licenses in accordance with the laws and regulations of the Party. The rates, terms and conditions of such interconnection will generally be determined through commercial negotiation between the service suppliers concerned, in accordance with the laws and regulations of the Party.

   (b) In carrying out subparagraph (a), each Party shall ensure that suppliers of public telecommunications networks or services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications networks or services and only use such information for the purpose of providing these services.

2. Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party, which have obtained licenses in accordance with the laws and regulations of the Party:

   (a) at any technically feasible point in the major supplier's network;

   (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;

   (c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

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

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

3. Each Party shall ensure that suppliers of public telecommunications networks or

services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory in accordance with at least one of the following options:

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services;

(b) the terms and conditions of an existing interconnection agreement; or

(c) a negotiation of a new interconnection agreement.

4. Each Party shall ensure that applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

5. Each Party shall ensure that major suppliers in its territory may be required to file interconnection agreements with the Party's telecommunications regulatory body.

6. Each Party shall ensure, where interconnection is provided under paragraph 3(a), that the rates, terms and conditions are made publicly available.

Article 10.5: Submarine Cable Systems

Where a supplier of telecommunications networks or services operates a submarine cable system to provide public telecommunications networks or services, the Party in whose territory the supplier is located shall ensure that such supplier accords the suppliers of public telecommunication networks or services of the other Party reasonable and non-discriminatory treatment with respect to access[23] to that submarine cable system (including landing facilities) in its territory, in accordance with the laws and regulations of the Party.

Section C: Additional Obligations Relating to Major Suppliers of Public Telecommunications Networks or Services

Article 10.6: Competitive Safeguards

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

2. The anti-competitive practices referred to in paragraph 1 include, in particular:

(a) engaging in anti-competitive cross-subsidisation;

[23] For greater certainty: 1) access to submarine cable landing facilities is subject to capacity; and 2) with respect to access for suppliers of public telecommunications networks or services of the other Party that do not own facilities in the territory of the Party, a Party may comply with this provision by ensuring access to submarine cable systems through facilities leased from, or public telecommunications services provided by, a supplier of public telecommunications networks or services licensed in its territory.

(b) using information obtained from competitors with anti-competitive results;

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

(d) pricing services in a manner that is likely to unreasonably restrict competition, including predatory pricing.

Section D: Other Measures

Article 10.7: Independent Regulatory Bodies

1. Each Party shall ensure that its telecommunications regulatory body is separate from and functionally independent of any supplier of public telecommunications networks or services. To this end, each Party shall ensure that its telecommunications regulatory body does not own equity[24] or maintain an operating or management role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all market participants[25] and shall be made and implemented on a timely basis.

Article 10.8: Universal Service

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 10.9: Licensing Process

1. When a Party requires a supplier of public telecommunications networks or services to have a licence, the Party shall make publicly available:

(a) all the licensing criteria and procedures it applies;

(b) the period it normally requires to reach a decision concerning an application for a licence; and

[24] For greater certainty, this paragraph shall not prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of telecommunications services.

[25] For greater certainty, the term "market participants" includes service suppliers seeking to participate in the telecommunications market.

(c) the terms and conditions of all licences in effect.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the denial of, revocation of, refusal to renew, or imposition of conditions on, a licence.

Article 10.10: Allocation and Use of Scarce Telecommunications Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers, and rights-of-way, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands related to telecommunication service (especially public telecommunication service), but shall not be required to provide detailed identification of frequencies allocated or assigned for specific government uses.

3. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Chapters 8 (Trade in Services) and 12 (Investment). Accordingly, each Party shall retain the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications networks or services, provided that it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs.

4. Each Party shall endeavour to allocate and assign spectrum for non-government telecommunications services in a transparent manner that considers the overall public interest, including the encouragement of the economically efficient use of the spectrum and competition among suppliers of telecommunications services, recognising that a Party may encourage such activities through a variety of means, including through administrative incentive pricing, auctions, unlicensed use, or inviting for bidding, etc.

Article 10.11: Enforcement

1. Each Party shall provide its telecommunications regulatory body with the authority to enforce the Party's measures relating to the obligations in Articles 10.3 through 10.6.

2. Such authority shall include the ability to impose, or seek from administrative or judicial bodies, effective sanctions, which may include financial penalties, or revocation of licences, etc.

Article 10.12: Resolution of Telecommunications Disputes

Further to Articles 18.3 (Administrative Proceedings) and 18.4 (Review and Appeal), each Party shall ensure that:

Recourse

(a) (i) suppliers of public telecommunications networks or services may have recourse to a telecommunications regulatory body or other relevant body of the Party in its territory to resolve disputes between suppliers of public telecommunications networks or services on a timely basis regarding measures relating to matters in Articles 10.3 through 10.6;

(ii) suppliers of public telecommunications networks or services of the other Party, which have obtained licenses in accordance with the laws and regulations of the Party, that have requested interconnection with a major supplier in the Party's territory may have recourse, within a reasonable and publicly specified period after the supplier requests interconnection, to a telecommunications regulatory body or other relevant body to resolve disputes regarding the terms, conditions, and rates for interconnection with such major supplier; and

Judicial Review

(b) any service supplier whose legally-protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority of the Party according to the laws of the Party. Neither Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the relevant judicial body otherwise determines.

Article 10.13: Transparency

Further to Article 18.1 (Publication), each Party shall ensure that:

(a) regulatory decisions, including the basis for such decisions, of its telecommunications regulatory body are promptly published or otherwise made available to all interested persons;

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

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

(ii) specifications of technical interfaces;

(iii) conditions for attaching terminal or other equipment to public telecommunications networks;

(iv) licensing requirements and other related measures, if any;

(v) the amendment and adoption of measures concerning technologies or standards affecting access and use; and

(vi) procedures relating to judicial or administrative review; and

(c) each Party shall ensure that its telecommunications regulatory body or other relevant body provides, on the request by a supplier of public telecommunications networks or services of the other Party, a written explanation of reasons for any decision that denies access of the kind specified in Article 10.4.

Article 10.14: Measures Concerning Technologies and Standards[26]

1. Neither Party shall prevent suppliers of public telecommunications networks or services or value-added services from having the flexibility to choose the technologies that they use to supply their services.

2. Notwithstanding paragraph 1, a Party may apply a measure that limits the technologies or standards that a supplier of public telecommunications networks or services or value-added services may use to supply its services, provided that the measure is designed to satisfy a legitimate public policy objective and is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade.[27]

Article 10.15: Consultation with Industry

Each Party shall facilitate consultation with suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of telecommunications policy, regulations and standards.

Article 10.16: International Roaming Rates

The Parties shall encourage their respective telecommunications service suppliers to reduce the wholesale rates for international mobile roaming between the Parties, with a view to reducing international mobile roaming rates.

Article 10.17: Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international organisations, including the International

[26] For greater certainty, except for paragraph 1, this Article shall not apply to measures adopted before the date of entry into force of this Agreement.

[27] For greater certainty: 1) a Party retains the right to define its own legitimate public policy objectives; and 2) whenever such a measure is based on relevant international standards, it shall be rebuttably presumed not to create unnecessary obstacles to trade.

Telecommunication Union and the International Organization for Standardization.

Section E: Definitions

Article 10.18: Definitions

For the purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

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

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

essential facilities means facilities of a public telecommunications network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a user or users;

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

(a) control over essential facilities; or

(b) use of its position in the market;

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

personal information means any information transmitted by electromagnetic means that identifies a natural person or is related to personal privacy;

public telecommunications network means telecommunications infrastructure used to

provide public telecommunications services;

public telecommunications networks or services means public telecommunications networks, or public telecommunications services, or public telecommunications networks and services;

public telecommunications service means any telecommunications service that is offered to the public generally. Such services may include, *inter alia*, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, and excludes value-added services;

service supplier of the other Party means a person of the other Party that seeks to supply or supplies a service, including a supplier of public telecommunications networks or services;

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

telecommunications regulatory body means any body or bodies at the central level of government responsible for the regulation of telecommunications;

user means an end-user or a supplier of public telecommunications networks or services; and

value-added services means services that add value to telecommunications services through enhanced functionality. For China, these are services as defined in Article 8 of the *Telecommunications Regulation of the People's Republic of China, and Catalogue of Telecommunications Business*. For Korea, these are services as defined in Article 2.12 of the *Telecommunications Business Act*.

CHAPTER 11
MOVEMENT OF NATURAL PERSONS

Article 11.1: Definitions

For the purposes of this Chapter,

immigration measure means any law, regulation, procedure, requirement or practice affecting the entry and exit, stay and residence of foreign nationals;

natural person of a Party means a natural person of a Party as defined in Chapter 8 (Trade in Services); and

temporary entry means entry by a natural person covered by this Chapter without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes.

Article 11.2: General Principles

1. This Chapter reflects the preferential trading relationship between the Parties, their mutual desire to facilitate temporary entry for a natural person on a reciprocal basis and to establish transparent criteria and procedures for temporary entry in accordance with Annex 11-A, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

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

Article 11.3: General Obligations

1. A Party shall apply its measures related to this Chapter in accordance with Article 11.2 and, in particular, shall expeditiously apply those measures so as to avoid unduly nullifying or impairing the benefits accruing to the other Party or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. Notwithstanding paragraph 1, nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of 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 unduly nullify or impair the benefits accruing to the other Party or delay trade in goods or services or conduct of investment activities under

this Agreement.[28]

Article 11.4: Visa Facilitation

1. The Parties shall endeavour to facilitate the processes on the issuance and extension of visa.

2. The specific commitments on this Article are set out in Annex 11-B.

Article 11.5: Grant of Temporary Entry

1. The Parties may make commitments in respect of temporary entry of natural person. Such commitments and the conditions governing them shall be inscribed in Annex 11-A.

2. Where a Party makes a commitment under paragraph 1, that Party shall grant temporary entry of natural person of the other Party, as provided for in the commitment, provided that such natural person is otherwise qualified under all applicable immigration measures.

3. A Party shall limit any fees for processing applications for temporary entry of natural persons so as not to unduly nullify or impair the benefits accruing to the other Party or delay trade in goods or services or conduct of investment activities under this Agreement and not to exceed the administrative costs normally rendered.

4. The temporary entry granted pursuant to this Chapter shall not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorizing the temporary entry.

Article 11.6: Transparency

1. Further to Article 18.1 (Publication), each Party shall:

(a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter;

(b) no later than six months after the date of entry into force of this Agreement, prepare, publish, and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter including information on applicable laws and regulations in such a manner as will enable natural persons of the other Party to become acquainted with them; and

(c) upon modifying or amending an immigration measure that affects the temporary entry of natural persons, ensure that such modifications or amendments are promptly

[28] The sole fact of requiring a visa for natural persons shall not be regarded as unduly nullifying or impairing the benefits accruing to the other Party or delaying trade in goods or services or conduct of investment activities under this Agreement.

published and made available in such a manner as will enable natural persons of the other Party to become acquainted with them.

2. Further to Article 18.1 (Publication), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding applications and procedures related to the temporary entry of natural person.

3. On the request of the applicant, the Party shall endeavor to provide, without undue delay, i nformation on the status of the application or the decision about the application.

Article 11.7: Committee on Movement of Natural Persons

1. The Parties hereby establish a Committee on Movement of Natural Persons (hereinafter referred to as the "Committee") comprising representatives of each Party including immigration officials, which shall meet on the request of either Party or the Joint Commission to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

(a) exchanging information on the relevant laws and regulations;

(b) identifying and recommending measures to facilitate movement of natural persons between the Parties;

(c) considering other issues with respect to movement of natural persons that a Party has interest in; and

(d) reviewing the implementation and operation of this Chapter.

Article 11.8: Dispute Settlement

1. The relevant authorities of both Parties shall endeavour to favourably resolve any problems that may arise from the implementation and administration of this Chapter.

2. If both Parties cannot reach agreement with regard to any specific issues raised from the implementation and administration of this Chapter as provided for in paragraph 1, Chapter 20 (Dispute Settlement) shall apply to the issues.

3. A Party shall not initiate proceedings under Chapter 20 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

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

(b) the natural person has exhausted the available administrative remedies regarding the particular matter.

4. The remedies referred to in subparagraph 3(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the natural person.

Article 11.9: Relation to Other Chapters

1. Nothing in this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter, Chapters 1 (Initial Provisions and Definitions), 20 (Dispute Settlement), 21 (Exceptions), and 22 (Final Provisions), and Articles 18.1 (Publication) through 18.3 (Administrative Proceedings).

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters and their Annexes of this Agreement.

ANNEX 11-A
SPECIFIC COMMITMENTS

Section A: China's Specific Commitments

1. China requires a natural person of Korea seeking temporary entry into its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry.

Business visitors and services salespersons of Korea

2. Entry and temporary stay shall be granted to a business visitor and a services salesperson of Korea for a period of not more than 90 days without requiring that person to obtain an employment authorization, provided that the business visitor and the services salesperson otherwise complies with immigration measures applicable to temporary entry.

3. **A business visitor of Korea** means a natural person of Korea who is:

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

(b) an investor of Korea, or a duly authorized representative of an investor of Korea, seeking temporary entry into China to establish, expand, monitor, or dispose of a commercial presence of that investor; or

(c) a goods seller who is seeking temporary entry into the territory of China to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public.

4. **A Services Salesperson of Korea** means a natural person of Korea not based in the territory of China and receiving no remuneration from a source located within China, and who is engaged in activities related to representing a service supplier for the purpose of negotiation for the sale of services of that supplier where:

(a) such sales are not directly made to the general public and;

(b) the salesperson is not engaged in supplying the service.

Intra-Corporate Transferees (ICT) of Korea

5. Entry and temporary stay shall be granted to managers, executives and specialists defined as senior employees of a Korean company, who are dispatched to work in representative

office, branch, or subsidiary in the territory of China for a period of up to three years, which may be extended for subsequent periods provided the conditions on which it is based remain in effect, provided that such person otherwise complies with immigration measures applicable to temporary entry.

6. Entry and temporary stay shall be granted to managers, executives and specialists defined as senior employees of a Korean company, being engaged in the foreign invested enterprises in the territory of China for conducting business, for a period of up to three years. The aforementioned entry and temporary stay may be extended for subsequent periods provided the conditions on which it is based remain in effect, provided that such person otherwise complies with immigration measures applicable to temporary entry.

7. **ICT** means a manager, an executive, or a specialist, who is an employee of a service supplier or investor of Korea with a commercial presence in China;

(a) **manager** means a natural person within an organization who primarily directs the organisation or a department or subdivision of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations;

(b) **executive** means a natural person within an organization who primarily directs the management of the organisation, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment; and

(c) **specialist** means a natural person within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organisation's service, research equipment, techniques or management.

Contractual Services Suppliers (CSS) of Korea

8. Entry and temporary stay shall be granted for a period up to one year or the period of the contract, whichever is less, to a natural person of Korea who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 11-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.

9. **A contractual service supplier** means a natural person of Korea who:

(a) is an employee of a service supplier or an enterprise of Korea, whether a company, partnership or firm, who enters into China temporarily in order to perform a service

pursuant to a contract(s) between his or her employer and a service consumer(s) in China;

(b) is employed by a company, partnership or firm of Korea, which has no commercial presence in China where the service is to be supplied;

(c) receives his or her remuneration from that employer; and

(d) has appropriate educational and professional qualifications relevant to the service to be supplied.

10. Labour market testing may be required as a condition for temporary entry of CSS, or numerical restriction may be imposed relating to temporary entry for CSS.

Section B: Korea's Specific Commitments

1. Korea requires a natural person of China seeking temporary entry into its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry.

2. Korea may refuse to grant temporary entry to a natural person of China who is likely to be involved in any labour dispute[29] that is in progress and adversely affect the settlement of such labour dispute.

Business visitors of China

3. Entry and temporary stay shall be granted to a business visitor of China for a period of not more than 90 days without requiring that person to obtain an employment authorization, provided that the business visitor otherwise complies with immigration measures applicable to temporary entry.

4. **A business visitor of China** means a natural person of China:

(a) who is:

(i) a service seller who enters the territory of Korea for the purpose of negotiating sale of services or entering into agreements for such sale;

(ii) seeking temporary entry for negotiating sale of goods, where such negotiations do not involve direct sales to the general public; or

[29] **Labour dispute** means a dispute between a union and employer related to terms and conditions of employment.

(iii) an investor or an employee of an investor, who is a manager, executive or specialist as defined in paragraph 6, seeking temporary entry to establish an investment; and

(b) whose primary source of remuneration for the proposed business activity, principal place of business and the actual place of accrual of profits, at least predominantly, remain outside Korea.

Intra-Corporate Transferees (ICT) of China

5. Entry and temporary stay shall be granted for a period of up to three years, which may be extended for subsequent periods provided the conditions on which it is based remain in effect, to an ICT of China, provided that such person otherwise complies with immigration measures applicable to temporary entry.

6. **ICT** means an employee of a company that supplies services through subsidiaries, branches, or designated affiliates established in the territory of Korea and who has been so employed for a period not less than one year immediately preceding the date of the application for temporary entry, and who is an executive, manager, or specialist as defined below:

(a) **executive** means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual supply of a service or services of the organisation;

(b) **manager** means a natural person within an organisation who primarily directs the organisation or a department of the organisation; supervises and controls the work of other supervisory, professional or managerial employees; has the authority to hire and fire or recommend hiring, firing, or other personnel actions; and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the supply of the service; and

(c) **specialist** means a natural person within an organisation who possesses knowledge at an advanced level of continued expertise and proprietary knowledge on the services, research, equipment, techniques, or management of the organisation.

Contractual Services Suppliers (CSS) of China

7. Entry and temporary stay shall be granted for a period up to one year or the period of the contract, whichever is less, to a natural person of China who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 11-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.

8. **A contractual service supplier** means a natural person of China who:

(a) is employed or engaged in a specialised occupation that requires theoretical and practical application of specialised knowledge;

(b) possesses the necessary academic and professional qualifications and professionally-qualified competency-based experience to perform an activity in the sector relevant to the service to be provided in accordance with the laws, regulations or requirements of Korea;

(c) is engaged in the supply of a contracted service as an employee of an enterprise that has no commercial presence in Korea, where the enterprise obtains a service contract, for a period not exceeding one year, from an enterprise of Korea, who is the final consumer of the services supplied. The contract shall comply with the laws and regulations of Korea;

(d) has been an employee of the enterprise for a period of not less than one year immediately preceding the date of application for admission; and

(e) is required to receive no remuneration from an enterprise located in Korea.

9. Labour market testing may be required as a condition for temporary entry of CSS, or numerical restriction may be imposed relating to temporary entry for CSS.

APPENDIX 11-A-1
LIST OF CONTRACTUAL SERVICE SUPPLIERS

For China:

The services provided by CSS are only limited to the specific sectors as follows:

(1) architectural services;

(2) engineering services;

(3) integrated engineering services

(4) urban planning services (except general urban planning)

(5) computer and related services;

(6) construction and related engineering services;

(7) education services: CSS shall acquire a bachelor's degree or above, receive appropriate professional titles or certificates, and have at least two-year professional work experience; a Chinese party involved in a contract shall be a juridical person which has the function of providing education service; and

(8) tourism services.

For Korea:

1. Services related to the installation, management or repair of industrial equipment or machinery, excluding construction and power generation equipment, for an enterprise in Korea which purchases the equipment or the machinery from an enterprise employing the natural person located in China;

2. Consultancy services related to technical knowledge or skill concerning the natural sciences applied to information technology, e-business, biotechnology, nanotechnology, digital electronics, or the environmental industry;

3. Consultancy services for foreign accounting standards and auditing, training of CPAs, transfer of auditing technology and exchange of information related to accounting, auditing and bookkeeping services, to a Korean accounting firm or office through a membership contract;

4. Architectural services subject to collaboration with architects registered under Korean law in the form of joint contracts;

5. Management consulting services; and

6. The following professional engineering services:

    (a) consultancy services related to the installation of computer hardware;

    (b) software R&D-based implementation services;

    (c) data management services;

    (d) data system services; and

    (e) specialty engineering design services for automobiles.

ANNEX 11-B
VISA FACILITATION

1. With a view to ensuring stability and convenience of ICT[30] and investors of the other Party, a Party shall take commitments in applying its relevant laws and regulations as follows:

For China,

China commits to expand the initial stay from one year to two years under its Work Certificate and Working Resident Permit system with regard to ICTs of Korea who are employed in China, or investors of Korea with established business in the territory of China, and who are engaged with its operation.

China commits to facilitate the procedure for the extension of stay under its Work Certificate and Working Resident Permit system.

For Korea,

Korea commits to expand the initial stay from one year to two years under its Alien Card system with regard to ICTs of China who are employed in Korea or investors of China with established business in the territory of Korea, and who are engaged with its operation.

Korea commits to facilitate the procedure for the extension of stay under its Alien Card system.

2. Under the framework of *Agreement on the Simplification of Visa Procedures and the Issuance of Multiple Entry Visas Between the Government of the People's Republic of China and the Government of the Republic of Korea* signed at Beijing November 12, 1998, and recognizing possible amendment of the above-mentioned agreement, both Parties commits to facilitate the issuance of multiple entry visa for business visitors.

For China,

China commits to issue multiple entry visa valid for one year and for a stay not exceeding thirty days each time to eligible applicants. China confirms that its practice is to issue aforesaid multiple entry visa from the second application, to the personnel who visits China and then come to Korea without unlawful record in previous cases.

For Korea,

[30] **ICT** means:

i) with respect to China, the ICT defined in Paragraph 7 of the Section B under the Annex 11-A; and

ii) with respect to Korea, the ICT defined in Paragraph 6 of the Section A under the Annex 11-A.

Pursuant to relevant regulations of Ministry of Justice of Korea, Korea commits to issue multiple entry visa valid for one year and for a stay not exceeding thirty days each time to eligible applicants. Korea confirms that its practice is to issue aforesaid multiple entry visa from the second application, to the personnel who visits Korea and then comes China without unlawful record in previous cases.

ANNEX 11-C
PREFERENTIAL ARRANGEMENT FOR INVESTMENT FACILITATION

Based on the needs of each Party, the Parties should encourage, through setting up a preferential arrangement, mutual investment and movement of personnel in accordance with each other's respective domestic laws and regulations, and without prejudice to its domestic employment market.

The scope of personnel should include business visitor, contractual service supplier, and ICT. Respective government ministries shall engage in and work out the aforementioned arrangement accordingly.

CHAPTER 12
INVESTMENT

Article 12.1: Definitions

For the purposes of this Chapter[31]:

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

enterprise of a Party[32] means any legal person or any other entity constituted or organized under the applicable laws and regulations of that Party, whether or not for profit, and whether private or government-owned or controlled, and includes a company, corporation, trust, partnership, sole proprietorship, joint venture, association or organization;

freely usable currencies means freely usable currencies as defined under the Articles of the *Agreement of the International Monetary Fund*;

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

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

investment activities means management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

investments[33] means every kind of asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that investments may take include:

(i) an enterprise and a branch of an enterprise;

(ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;

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[31] It is understood that measures adopted or maintained by local governments are measures adopted or maintained by a Party.

[32] For greater certainty, a branch of an enterprise is not, in and by itself, deemed to be an enterprise.

[33] Investments also include the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

(iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;

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

(v) claims to money and claims to any performance under contract having a financial value associated with investment;

(vi) intellectual property rights, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;

(vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits; and

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

investor of a Party means a natural person or an enterprise of a Party that makes investments in the territory of the other Party;

natural person of a Party means a natural person that has the nationality of that Party in accordance with its applicable laws and regulations; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, as revised in 2010 or as subsequently agreed between the Parties.

Article 12.2: Promotion and Protection of Investments

1. Each Party shall encourage and create favorable conditions for investors of the other Party to make investments in its territory.

2. Each Party shall, subject to its rights to exercise powers in accordance with the applicable laws and regulations, including those with regard to foreign ownership and control, admit investment of investors of the other Party.

Article 12.3: National Treatment

1. Each Party shall in its territory accord to investors of the other Party and to covered investment treatment no less favorable than that it accords in like circumstances to its own investors and their investments with respect to investment activities.

2. Paragraph 1 shall not apply to non-conforming measures, if any, existing at the date of entry into force of this Chapter maintained by each Party under its laws and regulations, or

any amendment or modification to such measures, provided that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification. Treatment granted to covered investment once admitted shall in no case be less favorable than that granted at the time when the original investment was made.

3. Each Party shall take, where applicable, all appropriate steps to progressively remove all the non-conforming measures referred to in paragraph 2.

Article 12.4: Most-Favored-Nation Treatment[34]

1. Each Party shall in its territory accord to investors of the other Party and to covered investments treatment no less favorable than that it accords in like circumstances to investors of any non-Party and to their investments with respect to investment activities and the matters relating to the admission of investment in accordance with paragraph 2 of Article 12.2.

2. Paragraph 1 shall not be construed so as to oblige a Party to extend to investors of the other Party and covered investments any preferential treatment resulting from its membership of:

(a) any customs union, free trade area, monetary union, similar international agreement leading to such union or free trade area, or other forms of regional economic cooperation;

(b) any international agreement or arrangement for facilitating small scale trade in border areas; or

(c) any bilateral and multilateral international agreements involving aviation, fishery and maritime matters including salvage.

3. It is understood that the treatment accorded to investors of any non-Party and to their investments as referred to in paragraph 1 does not include treatment accorded to investors of any non-Party and to their investments by provisions concerning the settlement of investment disputes between a Party and investors of any non-Party that are provided for in other international agreements.

Article 12.5: Minimum Standard of Treatment[35]

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

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[34] For the purposes of this Article, the term "non-Party" shall not include any separate customs territory within the meaning of the *General Agreement on Tariffs and Trade* or of the WTO Agreement that is a member of the World Trade Organization as of the date of entry into force of this Agreement.

[35] This Article shall be interpreted in accordance with Annex 12-A.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" [36] includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process of law; and

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

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

4. Each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to war or other armed conflict, or revolt, insurrection, riot, or other civil strife.

5. Notwithstanding paragraph 4, if an investor of a Party, in the situations referred to in paragraph 4, suffers a loss in the territory of the other Party resulting from:

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

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

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be in accordance with Article12.9, *mutatis mutandis*.

6. Paragraph 4 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 12.3.

Article 12.6: Access to the Courts of Justice

Each Party shall in its territory accord to investors of the other Party treatment no less favorable than that it accords in like circumstances to its own investors and investors of any non-Party, with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

[36] Determination on fair and equitable treatment shall be based on adequate proof.

Article 12.7: Prohibition of Performance Requirements

1. The provisions of the *Agreement on Trade-Related Investment Measures* in Annex 1A to WTO Agreement are incorporated into and made part of this Chapter, *mutatis mutandis* and shall apply with respect to all covered investments under this Chapter.

2. Neither Party shall, in its territory, impose unreasonable or discriminatory measures on covered investment by investors of the other Party concerning performance requirements on export or transfer of technology.

Article 12.8: Transparency

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party and which pertain to or affect investment activities. The Government of each Party shall make easily available to the public, the names and addresses of the competent authorities responsible for such laws, regulations, administrative procedures and administrative rulings.

2. When a Party introduces or changes its laws or regulations that significantly affect the implementation and operation of this Chapter, the Party shall endeavor to provide a reasonable interval between the time when such laws or regulations are published or made publicly available and the time when they enter into force, except for those laws or regulations involving national security, foreign exchange rates or monetary policies and other laws or regulations the publication of which would impede law enforcement.

3. Each Party shall, on the request by the other Party, within a reasonable period of time and through existing bilateral channels, respond to specific questions from, and provide information to, the latter Party with respect to any actual or proposed measure of the former Party, which might materially affect the interests of the latter Party and its investors under this Chapter.

4. Each Party shall, in accordance with its laws and regulations:

(a) make public in advance regulations of general application that affect any matter covered by this Chapter; and

(b) provide a reasonable opportunity for comments by the public for those regulations related to investment and give consideration to those comments before adoption of such regulations.

5. The provisions of this Article shall not be construed so as to oblige any Party to disclose confidential information, the disclosure of which:

(a) would impede law enforcement;

(b) would be contrary to the public interest; or

(c) could prejudice privacy or legitimate commercial interests.

Article 12.9: Expropriation and Compensation[37]

1. Neither Party shall expropriate or nationalize a covered investment or take any measure equivalent to expropriation or nationalization (hereinafter referred to in this Chapter as "expropriation") except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with its laws and international standard of due process of law; and

(d) upon compensation pursuant to paragraphs 2 through 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time from the time of expropriation to the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned, and into freely usable currencies.

4. Without prejudice to the provisions of Article 12.12, the investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

Article 12.10: Transfers[38]

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory[39]. Such transfers include:

[37] This Article shall be interpreted in accordance with Annexes 12-A and 12-B.

[38] For greater certainty, Annex 12-C applies to this Article.

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

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

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

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

(e) payments made pursuant to Articles 12.5.4, 12.5.5 and 12.9;

(f) payments arising out of a dispute; and

(g) earnings and remuneration of a national of a Party who works in connection with a covered investment in the territory of the other Party.

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

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

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

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

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

(c) criminal or penal offenses;

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

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

Article 12.11: Subrogation

[39] For greater certainty, the transfers referred to in this Article shall comply with relevant formalities stipulated by the laws and regulations, if any, of a Party relating to exchange administration.

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to investments of that investor in the territory of the other Party, the latter Party shall:

(a) recognize the assignment, to the former Party or its designated agency, of any right or claim of the investor that formed the basis of such payment; and

(b) recognize the right of the former Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

2. If a Party or its designated agency has made a payment to its investors and thereby entered into the rights of the investor, the investor may not make a claim based on these rights against the other Party without the consent of the former Party or its designated agency making the payment. For greater certainty, the investor shall continue to be entitled to exercise its rights that have not been subrogated pursuant to paragraph 1.

3. Articles 12.5, 12.9 and 12.10 shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency referred to in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment.

Article 12.12: Settlement of Investment Disputes between a Party and an Investor of the Other Party

1. For the purposes of this Article, an investment dispute is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation of the former Party under this Chapter with respect to the investor or its covered investments in the territory of the former Party.

2. Any investment dispute shall, as far as possible, be settled amicably through consultation between the investor who is a party to the investment dispute (hereinafter referred to in this Article as "disputing investor") and the Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party"). A written request for consultation shall be submitted to the disputing Party by the disputing investor before the submission of the investment dispute to the arbitration set out in paragraph 3. Such a written request shall specify[40]:

(a) the name and address of the disputing investor;

(b) the obligations under this Chapter alleged to have been breached;

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[40] The written consultation request shall be delivered to the following competent authorities of the disputing Party:

(a) in the case of China, the Treaty and Law Department, Ministry of Commerce; and

(b) in the case of Korea, International Legal Affairs Division, Ministry of Justice.

(c) a brief summary of the facts of the investment dispute; and

(d) the relief sought and the approximate amount of damages.

3. The investment dispute shall on the request of the disputing investor be submitted to either[41]:

(a) a competent court of the disputing Party;

(b) arbitration in accordance with the ICSID Convention, if the ICSID Convention is available;

(c) arbitration under the ICSID Additional Facility Rules, if the ICSID Additional Facility Rules are available;

(d) arbitration under the UNCITRAL Arbitration Rules; or

(e) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules,

provided that, for the purposes of subparagraphs (b) through (e):

(i) the investment dispute cannot be settled through the consultation referred to in paragraph 2 within four months from the date of the submission of the written request for consultation to the disputing Party; and

(ii) the requirement concerning the domestic administrative review procedure set out in paragraph 7, where applicable, is met.

4. Each Party hereby gives its consent to the submission of an investment dispute by a disputing investor to the arbitration set out in paragraph 3 in accordance with the provisions of this Article.

5. Once the disputing investor has submitted an investment dispute to the competent court of the disputing Party or to one of the arbitrations set out in paragraph 3, the choice of the disputing investor shall be final and the disputing investor may not submit thereafter the same dispute to the other arbitrations set out in paragraph 3.

6. Notwithstanding paragraphs 3 and 4, no claim may be submitted to the arbitration set out in paragraph 3 unless the disputing investor gives the disputing Party written waiver of any right to initiate before any competent court of the disputing Party with respect to any measure of the disputing Party alleged to constitute a breach referred to in paragraph 1.

7. When the disputing investor submits a written request for consultation to the disputing Party under paragraph 2, the disputing Party may require, without delay, the investor

[41] For the purposes of subparagraph (a), this paragraph shall not be construed to prevent, where applicable, preliminary trial by administrative tribunals or agencies.

concerned to go through the domestic administrative review procedure specified by the laws and regulations of that Party before the submission to the arbitration set out in paragraph 3.

The domestic administrative review procedure shall not exceed four months from the date on which an application for the review is filed. If the procedure is not completed by the end of the four months, it shall be deemed to be completed and the disputing investor may submit the investment dispute to the arbitration set out in paragraph 3. The investor may file an application for the review unless the four months consultation period as provided in paragraph 3 has elapsed.[42]

8. The applicable arbitration rules shall govern the arbitration set out in paragraph 3 except to the extent modified in this Article.

9. The award rendered by an arbitral tribunal established under paragraph 3 (hereinafter referred to in this Article as the "Tribunal") shall include:

(a) a finding whether or not there has been a breach by the disputing Party of any obligation under this Chapter with respect to the disputing investor and its covered investments; and

(b) one or both of the following remedies, only if the disputing investor's loss or damage is attributed to such breach:

(i) monetary damages and applicable interest; and

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

10. The award which is rendered by the Tribunal shall be final and binding upon both parties to the investment dispute. This award shall be executed in accordance with the applicable laws and regulations concerning the execution of award in force, in the country in whose territory such execution is sought.

11. Notwithstanding paragraph 3, no claim may be submitted to the arbitration set out in that paragraph, if more than three years have elapsed from the date on which the disputing investor first acquired, or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred the loss or damage referred to in paragraph 1.

Article 12.13: Special Formalities and Information Requirements

1. Nothing in Article 12.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investment

[42] It is understood that any decision made under the domestic administrative review procedure shall not prevent the disputing investor from submitting the investment dispute to the arbitration set out in paragraph 3.

activities by investors of the other Party in its territory, such as the requirement that investments be legally constituted under the laws or regulations of the former Party, provided that such formalities are consistent with this Chapter and do not materially impair the protections afforded by the former Party to investors of the latter Party and their investments pursuant to this Chapter.

2. Notwithstanding Articles 12.3 and 12.4, a Party may require an investor of the other Party, in its territory, to provide information concerning its covered investments solely for informational or statistical purposes. The former Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor of the latter Party or its covered investments. Nothing in this paragraph shall be construed so as to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 12.14: Security Exceptions

1. Notwithstanding any other provisions in this Chapter other than the provisions of Article 12.5.4 each Party may take any measure:

(a) which it considers necessary for the protection of its essential security interests;

(i) taken in time of war, or armed conflict, or other emergency in that Party or in international relations; or

(ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons;

(b) in pursuance of its obligations under the *United Nations Charter* for the maintenance of international peace and security.

2. In cases where a Party takes any measure, pursuant to paragraph 1, that does not conform with the obligations of the provisions of this Chapter other than the provisions of Article 12.5.4, that Party shall not use such measure as a means of avoiding its obligations.

Article 12.15: Denial of Benefits[43]

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the latter Party and to its investments if the enterprise is owned or controlled by an investor of a non-Party and the denying Party:

(a) does not maintain normal economic relations with the non-Party; or

[43] For the purposes of this Article, the term "non- Party" shall not include any separate customs territory within the meaning of the *General Agreement on Tariffs and Trade* or of the WTO Agreement that is a member of the World Trade Organization as of the date of entry into force of this Agreement.

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

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the latter Party and to its investments if the enterprise is owned or controlled by an investor of a non-Party or of the denying Party, and the enterprise has no substantial business activities in the territory of the latter Party.

Article 12.16: Environmental Measures

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

Article 12.17: Committee on Investment

1. The Parties hereby establish a Committee on Investment (hereinafter referred to in this Article as the "Committee") with a view to accomplishing the objectives of this Chapter. The functions of the Committee shall be:

(a) to discuss and review the implementation and operation of this Chapter;

(b) to discuss other investment-related matters concerning this Chapter, including the scope of the existing non-conforming measures referred to in paragraphs 2 and 3 of Article 12.3; and

(c) to consult any matter arising under this Agreement that affects establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments from an investor of a Party in the territory of the other Party.

2. The Committee may, as necessary, decide to make appropriate recommendations to the Parties for the more effective functioning or the attainment of the objectives of this Chapter.

3. The Committee shall be composed of representatives of the Governments of the Parties and may decide to invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed. The Committee shall decide on the modalities of its operation as necessary.

4. Any decision of the Committee shall be made by consensus.

5. Unless otherwise decided by the Parties, the Committee shall convene once a year.

Article 12.18: Services-Investment Linkage[44]

1. Articles 12.5 (Minimum Standard of Treatment), 12.9 (Expropriation and Compensation), 12.10 (Transfers), 12.11 (Subrogation), 12.12 (Settlement of Investment Disputes between a Party and an Investor of the other Party) and Annexes 12-A (Customary International Law), 12-B (Expropriation) and 12-C (Transfers) of this Agreement shall apply, *mutatis mutandis*, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to the Chapter 8 (Trade in Services), only to the extent that they relate to a covered investment.

2. Articles 12.5 (Minimum Standard of Treatment), 12.9 (Expropriation and Compensation), 12.10 (Transfers), 12.11 (Subrogation), 12.12 (Settlement of Investment Disputes between a Party and an Investor of the other Party), 12.13 (Special Formalities and Information Requirements), 12.15 (Denial of Benefits) and Annexes 12-A (Customary International Law), 12-B (Expropriation), 12-C (Transfers) of this Agreement shall apply, *mutatis mutandis*, to any measure affecting the supply of financial service by a financial service supplier of a Party through commercial presence in the territory of the other Party pursuant to the Chapter 9 (Financial Services), only to the extent that they relate to a covered investment.

Article 12.19: Contact Points for Improving Investment Environment

1. For the purpose of improving investment environment and promoting investment in its territory, each Party designates contact points respectively, to receive the complaints from investors of the other Party with regard to its administrative action of governments and to provide assistance in resolving difficulties of investors of the other Party. The contact points from the Parties will endeavor to provide advisory services available with regard to establishment, liquidation, investment promotion activities as much as possible.

2. The contact points are:

(a) for China, the Investment Promotion Agency of Ministry of Commerce or its successors; and

(b) for Korea, the Ministry of Trade, Industry and Energy/Korea Trade-Investment Promotion Agency (KOTRA) or their successors.

3. Further to the contact points referred to in paragraphs 1 and 2, a Party shall maintain the local contact points at the level of local governments[45] in its territory in order to promptly respond to the complaints and difficulties of investors of the other Party.

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[44] For greater certainty, Article 12.12 applies to investment disputes, in relation to such covered investments, between a Party and an investor of the other Party concerning an alleged breach of an obligation solely under the Articles referred to in this Article.

[45] For greater certainty, **local governments of China** in this paragraph means provincial governments directly under the central government.

4. Neither Party shall have recourse to Chapter 20 (Dispute Settlement) and Article 12.12 for any matter arising under this Article.

ANNEX 12-A
CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 12.5 results from a general and consistent practice of states that they follow from a sense of legal obligation. With regard to Article 12.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

ANNEX 12-B
EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in a covered investment.

2. Article 12.9.1 addresses two situations. The first is direct expropriation, where investments are nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

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

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

(ii) the extent to which the action or series of actions interferes with distinct and reasonable expectations arising out of investments; and

(iii) the character and objectives of the action or series of actions, including whether such action is proportionate to its objectives.

(b) Except in rare circumstances, such as when an action or a series of actions by a Party is extremely severe or disproportionate in light of its purpose, non-discriminatory regulatory actions adopted by the Party for the purpose of legitimate public welfare do not constitute indirect expropriation.

ANNEX 12-C
TRANSFERS

1. Nothing in this Chapter, Chapter 8 (Trade in Services), or Chapter 9 (Financial Services) shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures with regard to payments and capital movements:

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

(b) where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party.

2. The measures referred to in paragraph 1:

(a) shall not exceed a period of one year; however, if extremely exceptional circumstances arise such that a Party seeks to extend such measures, the Party will coordinate in advance with the other Party concerning the implementation of any proposed extension;

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

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

(d) shall avoid unnecessary damage to the commercial, economic, or financial interests of the Parties;

(e) shall not otherwise interfere with investors' ability to earn a market rate of return in the territory of the Party on any restricted assets;

(f) shall be temporary and phased out progressively as the situation described in paragraph 1 improves;

(g) shall not be confiscatory;

(h) shall promptly be notified to the other Party;

(i) are applied in a manner consistent with Articles 12.3 and 8.4 (National Treatment) and Articles 12.4 subject to the Schedule of Specific Commitments; and

(j) shall not constitute a dual or multiple exchange rate practice.

3. Nothing in this Chapter, Chapter 8 (Trade in Services) or Chapter 9 (Financial Services) shall be regarded to affect the rights enjoyed and obligations undertaken by a Party as a party to the Articles of the *Agreement of the International Monetary Fund*.

CHAPTER 13
ELECTRONIC COMMERCE

Article 13.1: General

The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of promoting its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

Article 13.2: Relation to Other Chapters

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

Article 13.3: Customs Duties[46]

Each Party will maintain the current WTO practice[47] of not imposing customs duties on electronic transmissions.[48]

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[46] The inclusion of the provisions on electronic commerce in this Chapter is made without prejudice to the Parties' position on whether deliveries by electronic means should be categorized as trade in services or goods.

[47] The current practice will be maintained consistent with paragraph 5 of *Work Programme on Electronic Commerce of the Bali WTO Ministerial Decision* (WT/MIN(13)/32-WT/L/907).

[48] The Parties may reserve the right to adjust the practice, consistent with any changes to the WTO Ministerial Decision on this issue.

[4] For greater certainty, for China, for any electronic signature to be certified by a third party to the electronic transaction, the authentication service must be provided by a legally established authentication service provider which shall be approved by an authority accredited in accordance with its domestic law.For greater certainty, for Korea, it may be required that the method of authentication meet certain performance standards or be certified, by an authority accredited in accordance with its domestic law.

Article 13.4: Electronic Authentication and Electronic Signatures

1. Neither Party may adopt or maintain legislation for electronic signature that would deny a signature legal validity solely on the basis that the signature is in electronic form.

2. Each Party shall maintain domestic legislation for electronic signature that permits:

(a) parties to electronic transaction to mutually determine the appropriate electronic signature and authentication method;[4950] and

(b) electronic authentication agencies to have the opportunity to prove in judicial or administrative authorities a claim that their electronic authentication to electronic transaction comply with legal requirements with respect to electronic authentication.

3. Each Party shall work towards the mutual recognition of digital certificates and electronic signatures.

4. Each Party shall encourage the use of digital certificates in the business sector.

Article 13.5: Protection of Personal Information in Electronic Commerce

Recognizing the importance of protecting personal information in electronic commerce, each Party shall adopt or maintain measures which ensure the protection of the personal information of the users of electronic commerce and share information and experience on the

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[5] For greater certainty, for Korea, it may be required that the method of authentication meet certain performance standards or be certified, by an authority accredited in accordance with its domestic law.

protection of personal information in electronic commerce.

Article 13.6: Paperless Trading

1. Each Party shall endeavour to make trade administration documents available to the public in electronic form.

2. Each Party shall explore the possibility of accepting trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 13.7: Cooperation on Electronic Commerce

1. The Parties agree to share information and experience on issues related to electronic commerce, including, *inter alia*, laws and regulations, rules and standards, and best practices.

2. The Parties shall encourage cooperation in research and training activities to enhance the development of electronic commerce.

3. The Parties shall encourage business exchanges, cooperative activities and joint electronic commerce projects.

4. The Parties shall actively participate in regional and multilateral fora to promote the development of electronic commerce in a cooperative manner.

Article 13.8: Definitions

For the purposes of this Chapter:

electronic authentication means the process or act of providing authenticity and reliability verification for the parties involved in electronic signature to ensure integrity and security of electronic communication or transaction;

electronic signature means data in electronic form that is in, affixed to, or logically

associated with a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message. **Data message** means information generated, sent, received or stored by electronic, optical or similar means; and

trade administration documents means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

Article 13.9: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 14
COMPETITION

Article 14.1: Objectives

Each Party understands that proscribing anti-competitive business practices of enterprises, implementing competition policies and cooperating on competition issues contribute to preventing the benefits of trade liberalization from being undermined and to promoting economic efficiency and consumer welfare.

Article 14.2: Competition Laws and Authorities

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing anti-competitive business practices. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws.

2. Each Party shall also take appropriate actions, according to each Party's relevant laws and regulations with respect to anti-competitive business practices, which will prevent the benefits of trade liberalization from being undermined.

Article 14.3: Principles in Law Enforcement

1. Each Party shall be consistent with the principles of transparency, non-discrimination, and procedural fairness in the competition law enforcement.

2. Each Party shall treat persons who are not persons of the Party no less favorably than persons of the Party in like circumstances in the competition law enforcement.

3. Each Party shall ensure that:

(a) a person subject to an investigation to determine whether conduct

violates its competition laws or what administrative sanctions or remedies should be ordered for violation of such laws is afforded the opportunity to present opinion or evidence in its defense in the investigation process.

(b) persons subject to the imposition of a sanction or remedy for violation of its competition laws should be given the opportunity to seek review of the sanction or remedy through administrative reconsideration and/or administrative lawsuit in accordance with each Party's laws.

Article 14.4: Transparency

1. Each Party shall make public, including on the Internet, its laws and regulations concerning competition policy, including procedural rules for an investigation.

2. Each Party shall ensure that all final administrative decisions finding a violation of its competition laws are in written form and set out any relevant findings of fact and legal basis on which the decision is based.

3. Each Party shall endeavor to make public the decisions and any orders implementing them in accordance with its own laws and regulations. The version of the decisions or orders that the Party makes available to the public shall not contain business confidential information or other information that is protected by its law from public disclosure.

Article 14.5: Application of Competition Laws

1. This Chapter applies to all undertakings of each Party.

2. Nothing in this Chapter 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.

3. With respect to public enterprises and enterprises entrusted with special rights[51] or exclusive rights:

(a) neither Party shall adopt or maintain any measure contrary to the principles contained in Article 14.2; and

(b) the Parties shall ensure that such enterprises are subject to the competition laws set out in Article 14.13,

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.

Article 14.6: Cooperation in Law Enforcement

1. The Parties recognize the importance of cooperation and coordination in competition field, to promote effective competition law enforcement. Accordingly, the Parties shall cooperate through notification, consultation, exchange of information, and technical cooperation.

2. The Parties recognize the importance of cooperation on matters related to their consumer protection laws. Accordingly, the Parties may exchange and communicate consumer protection information for the purpose of better protecting consumer's rights and interests.

Article 14.7: Notification

1. Each Party, through its competition authority or authorities, shall notify the other

[51] Special rights are granted by a Party when it designates or limits to two or more the number of enterprises authorized 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.

Party of an enforcement activity if it considers that such enforcement activity may substantially affect the other Party's important interests.

2. Provided that it is not contrary to the Parties' competition laws and does not affect any investigation being carried out, the Parties shall endeavor to notify at an early stage and in a detailed manner which is enough to permit an evaluation in the light of the interests of the other Party.

3. The Parties undertake to exert their best efforts to ensure that notifications are made in the circumstances set out above, taking into account the administrative resources available to them.

Article 14.8: Consultation

1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations regarding representations made by the other Party. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Party to which a request for consultations has been addressed, shall accord full and sympathetic consideration to the concerns raised by the other Party.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavor to provide relevant non-confidential information to the other Party.

Article 14.9: Exchange of Information

1. Each Party shall endeavor to, upon request of the other Party, provide information to facilitate effective enforcement of their respective competition laws, provided that it does not affect any ongoing investigation and is compatible with the laws and regulations governing the agencies possessing the information.

2. Each Party shall maintain the confidentiality of any information provided as confidential by the competition authority of the other Party and shall not disclose such information to any entity that is not authorized by the Party providing information.

3. On request of a Party, each Party shall make available to the other Party public information concerning its exemptions and immunities to its competition laws, provided that the request specifies the particular goods or services and markets of concern, and includes indicia that the exemption or immunity may hinder trade liberalization between the Parties.

Article 14.10: Technical Cooperation

The Parties may promote technical cooperation, including exchange of experiences, capacity building through training programs, workshops and research collaborations for the purpose of enhancing each Party's capacity related to competition policy and law enforcement.

Article 14.11: Independence of Competition Law Enforcement

This Chapter should not intervene with the independence of each Party in enforcing its respective competition laws.

Article 14.12: Dispute Settlement

1. If a Party considers that a given practice continues to affect trade in the sense of this Chapter, it may request consultation to the other Party in the Joint Commission with a view to facilitating a resolution of the matter.

2. Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matters arising under this Chapter.

Article 14.13: Definitions

For the purposes of this Chapter:

anti-competitive business practices means business conduct or transactions that adversely affect competition in the territory of a Party, such as:

(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;

competition laws means:

(a) for China, *Anti-monopoly Law* and its implementing regulations and amendments; and

(b) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations and amendments;

consumer protection laws means:

(a) for China, *Consumer Protection Law* and its implementing regulations and amendments; and

(b) for Korea, Chapters III, IV.3, IX, and X of the *Framework Act on Consumer* and its implementing regulations and amendments;

undertakings means natural persons, legal persons and any other organizations that are in engagement of commodities production, operation or service provision.

CHAPTER 15
INTELLECTUAL PROPERTY RIGHTS

Section A: General Provisions

Article 15.1: Objectives

1. The objectives of this Chapter are:

   (a) to facilitate international trade and economic, social and cultural development through the dissemination of ideas, technology and creative works;

   (b) to provide certainty for right holders and users of intellectual property over the protection and enforcement of intellectual property rights; and

   (c) to facilitate the enforcement of intellectual property rights with a view, *inter alia*, to eliminating trade in goods infringing intellectual property rights and incentivizing research.

2. The Parties recognize that the protection and enforcement of intellectual property rights should strike a balance between the legitimate interest of the right holders and the public at large.

Article 15.2: General Principles

1. The Parties shall grant and ensure adequate, effective, transparent and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements acceded to by both Parties.

2. In respect of all categories[52] of intellectual property covered in this Chapter, the Parties

[52] For the purposes of this Chapter, "intellectual property" comprises in particular copyright and related rights, trademarks for

shall accord to nationals[53] of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection[54]. Exemptions from this obligation must be in accordance with the substantive provisions of Articles 3 and 5 of the TRIPS Agreement and Article 4(2) of the *World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty* (hereinafter referred to as the "WPPT").

3. The Parties may take appropriate measures, provided that they are consistent with the provisions of this Agreement and their international obligations, to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 15.3: International Agreements

The Parties affirm their commitments established in existing international agreements in the field of intellectual property rights to which both Parties are party, including the following:

(a) the TRIPS Agreement;

(b) the *Paris Convention for the Protection of Industrial Property* (1967) (the Paris Convention);

(c) the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (the Berne Convention);

(d) the *Patent Cooperation Treaty* (1970), as amended in 1979, and modified in 1984 and 2001;

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goods and services, industrial designs, patents, utility model, plant varieties, and undisclosed information.

[53] For the purposes of paragraph 2, a national of a Party shall include, in respect of the relevant right, any person, natural or legal, of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 15.3.

[54] For the purposes of paragraph 2, protection includes: (i) matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter, (ii) the prohibition on circumvention of effective technological measures set out in Article 15.8, and (iii) the rights and obligations concerning rights management information set out in Article 15.9.

(e) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980;

(f) the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1957), as amended in 1979;

(g) the *Protocol relating to the Madrid Agreement concerning the International Registration of Marks* (1989);

(h) the *World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty* (1996);

(i) the *WIPO Copyright Treaty* (1996) (hereinafter referred to as the "WCT");

(j) the *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms* (1971);

(k) the *International Convention for the Protection of New Varieties of Plants 1978* (hereinafter referred to as "1978 UPOV Convention"); and

(l) the *Convention Establishing the World Intellectual Property Organization*.

Article 15.4: More Extensive Protection

Each Party may, but shall not be obliged to, provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

Article 15.5: Intellectual Property and Public Health

1. The Parties recognize the principles established in the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2), adopted on 14 November 2001 by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are

without prejudice to this Declaration. In interpreting and implementing the rights and obligations under this Chapter, the Parties are entitled to rely upon the *Declaration on the TRIPS Agreement and Public Health*.

2. The Parties reaffirm their commitment to contribute to the international efforts to implement the Decision of the WTO General Council of 30 August 2003 on the *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, as well as the Protocol Amending the TRIPS Agreement, done at Geneva on 6 December 2005.

Section B: Copyright and Related Rights

Article 15.6: Protection of Copyright and Related Rights

1. Without prejudice to the obligations set out in the international agreements to which both Parties are party, each Party shall, in accordance with its laws and regulations and this Chapter[55] grant and ensure adequate and effective protection to the authors of works and to performers, producers of phonograms and broadcasting organizations for their works, performances, phonograms and broadcasts, respectively.

2. Each Party shall provide that authors, performers, producers of phonograms, and broadcasting organizations have the right to authorize or prohibit reproductions of their works, performances, phonograms and broadcasts, in any manner or form.

3. Each Party shall provide that the term of protection of broadcast shall not be less than 50 years after the taking place of a broadcasting, whether this broadcasting is transmitted by wire or over the air, including by cable or satellite.

Article 15.7: Broadcasting and Communication to the Public

1. Performers and producers of phonograms shall enjoy the right to remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or

[55] For the purpose of this Article, this Chapter refers to Articles on copyright and related rights in this Chapter.

for any communication to the public.[56]

2. Each Party shall provide broadcasting organizations with the exclusive right to authorize or prohibit:

(a) the re-broadcasting of their broadcasts;

(b) the fixation of their broadcasts; and

(c) the reproduction of fixations, made without their consent, of their broadcasts.[57]

Article 15.8: Protection of Technological Measures

1. Each Party shall provide adequate legal protection and effective legal remedies 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. For the purposes of this Chapter, **technological measure** means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or performance or phonogram, 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, including access control measures that prevent or restrict access to works made available in the network.

3. 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 15.3.

Article 15.9: Protection of Rights Management Information

1. Each Party shall provide adequate and effective legal protection against any person knowingly performing any of the following acts, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by

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[56] It is understood that this paragraph is subject to the obligation of each Party to give such right under international agreements.

[57] The exercise of the above-mentioned right shall not prejudice the protected rights in works, performances, and phonograms embodied in the broadcast.

this Chapter or the Berne Convention, WCT and WPPT:

(a) to remove or alter any electronic rights management information without authority; or

(b) to communicate to the public, without authority, works, copies of works, performance, copies of fixed performance or phonograms knowing that electronic rights management information has been removed or altered without authority.

2. For the purposes of this Chapter, **rights management information** means any information provided by right holders which identifies the work or performance or phonogram referred to in this Chapter, the author or any other right holder, or information about the terms and conditions of use of the work or performance or phonogram, 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 performance or phonogram referred to in this Chapter.

Article 15.10: Limitations and Exceptions

Each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, phonogram or broadcasting, and do not unreasonably prejudice the legitimate interests of the right holder.

Section C: Trademarks

Article 15.11: Trademarks Protection

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services.

2. Neither Party may require, as a condition of registration, that signs be visually perceptible,

nor may either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound.

3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Parties making rights available on the basis of use.

4. Each Party shall provide that the signs having the nature of deception shall not be used as trademarks and shall not be registered as trademarks.

Article 15.12: Exceptions to Trademarks Rights

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

Article 15.13: Well-Known Trademarks

1. No Party may require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

2. The protection according to this Article shall not be limited to identical or similar goods or services where the registered trade mark is well known in the respective Party and provided that use of a trademark which is a reproduction, an imitation or a translation, of the well-known trademark above in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

3. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion, or to be misleading, and the interests of the owner of the well-known mark are likely to be damaged by such use.

Article 15.14: Registration and Applications of Trademarks

1. Each Party shall provide a system for the registration of trademarks, which shall include:

(a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;

(b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;

(c) an opportunity for interested parties to oppose a trademark application before registration and to seek cancellation or invalidation of a trademark after it has been registered; and

(d) a requirement that decisions in opposition and cancellation proceedings be reasoned and in writing. Written decisions may be provided electronically.

2. Each Party shall provide a:

(a) system for the electronic application for, and electronic processing, registering,

and maintenance of trademarks; and

(b) publicly available electronic database, including an online database, of trademark applications and registrations.

Section D: Patents and Utility Model

Article 15.15: Patents Protection

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.

2. Each Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.

3. Each Party may also exclude from patentability:

(a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

4. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the

patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

5. Each Party may provide an applicant with accelerated examination for the patent application in accordance with domestic laws and regulations, on which topic the Parties agree to enhance cooperation.

Article 15.16: Utility Model

1. Considering that both Parties have established utility model system, in order to facilitate the understanding and utilizing of utility model system by right holders and the public from both Parties and keep the balance of interests between right holders and the public, the Parties agree to enhance the cooperation on utility model legal framework of the Parties by exchanging information and experience on laws and regulations concerning utility model.

2. In any dispute over utility model infringement, the court may require the complainant to furnish an evaluation report made by the competent authority based on a result of prior art searches, as evidence for hearing the utility model infringement, where the Party does not provide a substantive examination.

Section E: Genetic Resources, Traditional Knowledge and Folklore

Article 15.17: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.

2. The Parties acknowledge and reaffirm the principles established in the *Convention on Biological Diversity* adopted on 5 June 1992 (hereinafter referred to in this Article as the "Convention") and respect the requirements in *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, especially those on prior informed consent and fair and equitable sharing of benefits. The Parties encourage the effort to enhance a mutually supportive relationship between the TRIPS Agreement and the Convention, regarding genetic

resources and traditional knowledge.

3. Subject to each Party's international rights and obligations and domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity and the equitable sharing of benefits arising from the use of genetic resources and traditional knowledge.

4. Subject to future developments of multilateral agreements or their respective domestic legislations, the Parties agree to further discuss relevant issues on genetic resources.

5. The Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of the Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to the objectives of the Convention.

Section F: Plant Variety Protection

Article 15.18: Plant Variety Protection

1. The Parties shall respect regulations on new plant varieties protection of the other Party and grant adequate and effective protection to breeders of new plant varieties.

2. The Parties will enhance cooperation on testing of new plant varieties to increase the efficiency therein.

3. At least the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

(a) production or reproduction (multiplication) for the purposes of commercial marketing;

(b) conditioning for the purpose of commercial propagation;

(c) offering for sale;

(d) selling or other marketing; and

(e) importing or exporting.

Section G: Undisclosed Information

Article 15.19: Undisclosed Information

The Parties shall protect undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Section H: Industrial Designs

Article 15.20: Industrial Designs

1. The Parties shall ensure in their national laws adequate and effective protection of industrial designs by providing a period of protection of at least 10 years.

2. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing articles bearing or embodying the protected design when such acts are undertaken for commercial purposes.

3. Each Party may provide limited exceptions to the protection of industrial 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.

Section I: Acquisition and Maintenance of Intellectual Property Rights

Article 15.21: Acquisition and Maintenance of Intellectual Property Rights

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the Parties shall ensure that the procedures for grant or registration are of the same level as that provided in the TRIPS Agreement, in particular Article 62.

Section J: Enforcement of Intellectual Property Rights

Article 15.22: General Obligation

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights shall be published or, where publication is not practicable made available to the public, in its national language in such a manner as to enable governments and right holders to become acquainted with them. Each Party may provide exceptions in accordance with laws and regulations, for example, that information in those decisions concerning business secrets or personal privacy shall not be published.

2. Each Party publicizes information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, including any statistical information that the Party may collect for such purposes.[58]

Article 15.23: Presumption of Authorship or Ownership

In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner is the right holder in such work, performance, phonogram, or broadcast as designated.

Article 15.24: Civil and Administrative Procedures and Remedies

[58] For greater certainty, nothing in paragraph 2 is intended to prescribe the type, format, and method of publication of the information a Party publicizes.

1. Each Party shall make available to right holders[59] civil judicial procedures concerning the enforcement of any intellectual property right.

2. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement[60]; or

(ii) the profits of the infringer that are attributable to the infringement which may be presumed to be the amount of damages referred to in subparagraph (a)(i); and

(b) in determining damages for infringement of intellectual property rights, its judicial authorities may consider, *inter alia*, the value of the infringed goods or services, measured by the market price, the suggested retail price, or other legitimate measure of value submitted by the right holder.

3. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in case of trademark counterfeiting, establish or maintain pre-established damages, which shall be available on the election of the right holder. Such pre-established damages shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement.[61]

4. Each Party shall provide that its judicial authorities, except in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement, patent infringement, or trademark infringement, that

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[59] For the purposes of this Article, "right holder" includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.

[60] In the case of patent infringement, damages adequate to compensate for the infringement shall not be less than a reasonable royalty.

[61] Neither Party is required to apply paragraph 3 to actions for infringement against a Party or a third party acting with the authorization or consent of a Party.

the prevailing party shall be awarded payment by the losing party of court costs or fees and reasonable attorneys' fees.

5. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority, to order the seizure of allegedly infringing goods and of any materials and implements the predominant use of which has been in the creation of infringing good and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

6. Each Party shall provide that:

(a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, under appropriate circumstances;

(b) its judicial authorities shall have the authority to order that materials and implements that have been predominantly used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and

(c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of goods into the channels of commerce.

7. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority, when it deems appropriate, for the purpose of collecting evidence, to order the infringer to provide any information relevant with the infringement activities, to the judicial authorities, and when necessary and without prejudicing trade secrets, to the right holder.

8. Each Party shall provide that its judicial authorities have the authority to impose sanctions on parties to a civil judicial proceeding, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding.

9. Each Party may permit use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.

Article 15.25: Provisional Measures

1. Each Party shall provide that its judicial authorities have the authority, where appropriate, to act on requests for provisional measures *inaudita altera parte* expeditiously.

2. Each Party shall provide that its judicial authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.

Article 15.26: Special Requirements Related to Border Measures

1. Each Party shall, subject to the provisions of domestic legislation, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation, exportation, transshipment, placement under a free zone and placement under a bonded warehouse of goods infringing an intellectual property right[62] may take place, to lodge an application in

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[62] For the purposes of this article, **goods infringing an intellectual property right** means;

(a) **counterfeit trademark goods** means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) **pirated copyright goods** means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation; and

(c) goods which, according to the legislation of the Party in which the application for customs action is

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. Each party shall, subject to the provisions of domestic legislation, provide in advance that a right holder may request to the customs authorities for protecting their rights in the course of their action in respect of importation, exportation, transshipment and carry-in into the bonded area including into free trade zone, with submission of sufficient information such as suspected infringing importer or exporter, identification method of the suspected infringing goods. Customs authorities may inform the details including name of exporter and importer, address of the importer, product description, quantity and declared price etc. to the right holder when they found suspected infringing goods relevant to such protection requesting rights in the course of their action and provide the right holder an opportunity to submit an application for initiating procedures to suspend the release of the goods.

3. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected infringing goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures.

4. Each Party shall provide that its competent authorities may act *ex officio* to suspend the release of the goods, in case where there is clear evidence that the goods are infringing an intellectual property right stipulated in paragraph 1 without formal complaint from the private person or the right holder.

5. Each Party may provide that goods that have been suspended from release by its customs authorities, and that have been confiscated under infringement of an intellectual property right stipulated in paragraph 1 shall be destroyed, except in exceptional circumstances. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce.

6. Where an application fee, merchandise storage fee or disposal expense is assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse to these measures.

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made, infringe a patent, a plant variety right, a registered design, or a geographical indication.

Article 15.27: Criminal Procedures and Remedies

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale.

2. Each Party shall provide for criminal procedures and penalties to be applied in accordance with its laws and regulations for the willful unauthorized copy of a cinematographic work, or any part thereof, from a performance in a movie theater on a commercial scale.

3. Each Party shall provide:

   (a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer's monetary incentive;

   (b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements used in the commission of the offense, any documentary evidence relevant to the offense, and any assets traceable to the infringing activity;

   (c) that its judicial authorities shall, have the authority to order:

      (i) the forfeiture or destruction of all counterfeit or pirated goods; and

      (ii) the forfeiture or destruction of materials and implements that have been predominately used in the creation of pirated or counterfeit goods.

   Each Party shall provide that forfeiture and destruction under this subparagraph shall occur without compensation of any kind to the defendant.

Article 15.28: Measures against Repetitive Copyright Infringements on the Internet

Each Party shall take effective measures to curtail repetitive infringement of copyright and related rights on the Internet or other digital network.

Article 15.29: Request for Information on the Alleged Infringer

Each Party may establish an administrative or judicial procedure enabling relevant authorities or copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

Section K: Other Provisions

Article 15.30: Cooperation

Under the established structure of this Agreement, each Party shall, upon request of the other Party, and in addition to the already existing forms of cooperation:

(a) exchange information relating to intellectual property policies in their respective administrations;

(b) provide technical assistance and training courses;

(c) inform the other Party of changes to, and developments in, the implementation of their national intellectual property systems;

(d) strengthen partnership in areas such as:

(i) offering necessary collaboration upon request from the other Party on evidence collection, technical assistance and information sharing when fighting against cross-border intellectual property crimes;

(ii) exchanges and cooperation on online copyright enforcement;

(iii) technology transfer on energy-saving and green technologies;

(iv) other areas that the Parties have consensus on.

(e) consider issues on intellectual property rights raised by businesses and industries.

Article 15.31: Committee on Intellectual Property Rights

1. The Parties hereby establish the Committee on Intellectual Property Rights (hereinafter referred to in this Article as the "Committee") as specified in Article 19.4 (Committees and Other Bodies).

2. For the purposes of the effective implementation and operation of this Chapter, the functions of the Committee shall include, but are not limited to:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing ways to facilitate cooperation between the Parties;

(c) exchange of information on laws, systems and other issues of mutual interest concerning intellectual property rights;

(d) carrying out other functions as may be delegated by the Joint Commission; and

(e) seeking to resolve disputes that may arise regarding the interpretation or application of this Chapter.

3. The Committee shall meet within one year after the date this Agreement enters into force and annually thereafter unless the Parties otherwise agree. The Committee shall inform the Joint Commission of the results of each meeting.

CHAPTER 16
ENVIRONMENT AND TRADE

Article 16.1: Context and Objectives

1. Recalling the *Stockholm Declaration on the Human Environment of 1972*, the *Rio Declaration on Environment and Development of 1992*, *Agenda 21 of 1992*, the *Johannesburg Plan of Implementation on Sustainable Development of 2002*, and the *Rio+20 Outcome Document "The Future We Want" of 2012*, the Parties recognize that economic development, social development and environmental protection are interdependent and mutually supportive components of sustainable development. They underline the benefit of cooperation on environmental issues as part of a global approach to sustainable development.

2. The Parties reaffirm their commitments to promoting economic development in such a way as to contribute to the objective of sustainable development and to ensuring that this objective is integrated and reflected in their trade relationship.

3. The Parties agree that environmental standards should not be used for trade protectionist purposes.

Article 16.2: Scope

Except as otherwise provided in this Chapter, this Chapter applies to the measures including laws and regulations adopted or maintained by the Parties for addressing environmental issues.

Article 16.3: Levels of Protection

1. The Parties reaffirm each Party's sovereign right to establish its own levels of environmental protection and its own environmental development priorities, and to adopt or modify its environmental laws and policies.

2. Each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve its respective levels of environmental protection.

Article 16.4: Multilateral Environmental Agreements

1. The Parties recognize that multilateral environmental agreements (hereinafter referred to as "MEAs") play an important role globally and domestically in protecting the environment. The Parties further recognize that this Chapter can contribute to realizing the goals of such agreements.

2. The Parties commit to consulting and cooperating as appropriate with respect to negotiations in the MEAs to which both Parties are party on trade-related environmental issues of mutual interest.

3. The Parties reaffirm their commitments to the effective implementation in their laws and

practices of the MEAs to which both Parties are party.

Article 16.5: Enforcement of Environmental Measures Including Laws and Regulations

1. A Party shall not fail to effectively enforce its environmental measures including laws and regulations, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in its environmental laws, regulations, policies and practices. Accordingly, neither Party shall waive or otherwise derogate from such laws, regulations, policies and practices in a manner that weakens or reduces the protections afforded in those laws, regulations, policies and practices.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 16.6: Environmental Impact

1. The Parties commit to reviewing the impact of the implementation of this Agreement on environment, at appropriate time after the entry into force of this Agreement, through their respective participative processes and institutions.

2. The Parties, as appropriate, share information with the other Party on techniques and methods in reviewing the environmental impacts of this Agreement.

Article 16.7: Bilateral Cooperation

1. Recognizing the importance of cooperation in the field of environment in achieving the goals of sustainable development, the Parties commit to building on the existing bilateral agreements or arrangements and to further strengthening cooperative activities in areas of common interest.

2. In order to promote the achievement of the objectives of this Chapter and to assist in the fulfillment of their obligations pursuant to it, the Parties have established the following indicative list of areas of cooperation:

(a) promotion of the dissemination of environmental goods including environmentally-friendly products and environmental services;

(b) cooperation on development of environmental technology and promotion of environmental industry;

(c) exchange of information on policies, activities and measures for environmental protection;

(d) establishment of environmental think-tanks cooperation mechanisms including exchange of environmental experts;

(e) capacity building which include workshops, seminars, fairs and exhibition in the field of the environment;

(f) build-up of environmental industry base in respective countries as a pilot area; and

(g) other forms of environmental cooperation as the Parties may deem appropriate.

3. The Parties reaffirm that both Parties shall reinforce their cooperation in the field of environment, including in the areas of prevention and control of air pollutants, committed in the existing bilateral agreement such as *Memorandum of Understanding between the Ministry of Environmental Protection of the People's Republic of China and the Ministry of Environment of the Republic of Korea on Environmental Cooperation* signed on 3 July 2014.

4. The Parties shall exert their best efforts to ensure that the applications and benefits of cooperative activities between them are as broad as possible.

Article 16.8: Institutional and Financial Arrangement

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. A Party may through the contact points request consultations regarding any matter arising under this Chapter.

3. The Parties hereby establish a Committee on Environment and Trade (hereinafter in this Chapter referred to as the "Committee"). The Committee shall comprise senior officials from within the administrations of the Parties.

4. The Committee shall meet when deemed necessary to oversee the implementation of this Chapter.

5. The Parties recognize that adequate and sustainable financial resources are necessary for the implementation of this Chapter, and these resources should be made available.

Article 16.9: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 17
ECONOMIC COOPERATION

Section A: General Provisions

Article 17.1: Objectives

1. The Parties agree to strengthen economic cooperation with the aim to enhance the mutual benefits of this Agreement in accordance with their national strategies and policy objectives.

2. The cooperation under this Chapter shall pursue the following objectives:

(a) facilitating the implementation of this Agreement with a view to promoting economic and social development of the Parties; and

(b) creating and enhancing sustainable trade and investment opportunities by facilitating trade and investment between the Parties and by strengthening competitiveness and innovation capacities, with a view to promoting sustainable economic growth and development.

Article 17.2: Methods and Means

1. The Parties shall cooperate with the objective of identifying and employing effective methods and means for the implementation of this Chapter. To this end, the Parties shall coordinate efforts with relevant international organizations and develop, where practicable, synergies with other forms of bilateral cooperation already existing between the Parties.

2. Cooperation between the Parties will be implemented through the tools, resources, and mechanisms available to the Parties, following the existing rules and procedures through the competent bodies for the discharge of their cooperation relations.

3. The Parties may use instruments and modalities, such as exchange of information, experiences, and best practices, for the identification, development, and implementation of projects.

Article 17.3: Non-application of Dispute Settlement

Neither Party shall have recourse to Chapter 20 (Dispute settlement) for any matter arising under this Chapter.

Article 17.4: Committee on Economic Cooperation

1. The Parties hereby establish a Committee on Economic Cooperation (hereinafter referred to as the "Committee"), comprising representatives of each Party.

2. The Committee shall meet at least once a year to consider matters arising under this Chapter, and may meet more frequently as the Parties may agree.

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

(a) monitoring and assessing the progress in implementation of the projects agreed by the Parties under this Chapter;

(b) making recommendations on the cooperative activities under this Chapter; and

(c) reviewing, through regular reporting from the Parties, the operation of this Chapter and the application and fulfillment of its objectives.

4. The Committee may establish other groups, if necessary, under its auspices.

Section B: Agro-Fisheries Cooperation

Article 17.5: Food Security

1. Recognizing the important role that two-way trade and investment play in achieving long-term food security, the Parties shall, as appropriate, endeavor to promote and facilitate productive and mutually beneficial trade and investment in agriculture and food.

2. The Parties shall explore opportunities to cooperate in the area of global food security, including through relevant regional and international fora such as G20, APEC, FAO and ASEAN 10+3.

Article 17.6: Fisheries Cooperation

1. The Parties, recognizing the social and economic importance of fish and fisheries products, shall endeavor to cooperate in the field of fisheries.

2. The objectives of cooperation in fisheries are to:

(a) strengthen and build on existing cooperative relationship[63] between the Parties; and

(b) facilitate sound fish and fishery products trade[64] between the Parties under the approach of sustainable and responsible fishing.

3. The Parties will cooperate in the field of fisheries under the existing mechanism through:

(a) facilitating conservation and management of marine living resources;

(b) fostering more dialogues and exchange of information;

(c) strengthening the research and technical capacities for the development of fisheries between the Parties; and

(d) promoting the consumption of fish product in each Party.

Article 17.7: Forestry

1. The Parties, recognizing that stable supply and sound trade of forest products is a critical element of the bilateral strategic relationship, shall promote mutual cooperation in enhancing the security of supply of forest products between the Parties, through:

(a) working collectively to secure the stable supply of forest products;

(b) making best efforts to avoid any export restrictive measures on forest products unless such measures are presented with reasonable justifications;

(c) promoting the trade of forest products from legal sources; and

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[63] The China-Korea Joint Fisheries Committee.

[64] Specific implementation measures will be further discussed in the existing channel.

(d) promoting and facilitating mutual investment in the field of forestry, including forest plantation and wood processing industries.

2. The Parties shall endeavor to cooperate in the field of forestry. Such cooperation may include, but is not limited to, the following:

(a) development, utilization, and sustainable management of forest resources;

(b) cooperation on the conservation of natural ecosystem and restoration of rare or endangered species;

(c) facilitating the cooperation on addressing problems regarding illegal logging and the common understanding on timber legality verification;

(d) strengthening the exchange and cooperation on the storage techniques of forest germplasm resources;

(e) promoting the development of the woody ornamental plants, tree seed and treeseedling industries; and

(f) other fields of forestry which may be agreed through discussions by the Parties.

3. Types of cooperation may include, but are not limited to, the following:

(a) experience sharing and information exchange in the areas of mutual interests;

(b) promotion of joint fora, seminars, symposiums, conferences, research and development, education and training;

(c) exchange of researchers, technicians, experts and officials; and

(d) other types of cooperation as may be mutually determined by the Parties.

Section C: Industrial Cooperation

Article 17.8: Steel Cooperation

1. The Parties, as major exporters of steel products, shall promote cooperative activities in these fields.

2. Areas of steel industry cooperation may include, but are not limited to the following:

(a) exchanging information of both Parties on domestic regulations and supporting policy in the steel market.

(b) exchanging information of both Parties on the domestic steel market including supply and demand; and

(c) cooperation to promote a fair competitive environment in the steel market.

Article 17.9: Small and Medium-Sized Enterprises Cooperation

1. The Parties shall endeavor to promote a favorable environment for the development of small and medium-sized enterprises (hereinafter referred to as the "SMEs").

2. The Parties will cooperate in the field of SMEs by encouraging relevant private and governmental bodies to build capacities of SMEs, including utilizing existing bilateral Small and Medium Business Policy Exchange Committee Mechanism, established by the relevant or competent authorities of the Parties.

3. Areas of SMEs cooperation may include, but are not limited to, the following:

(a) facilitating the investment flows between SMEs of the Parties;

(b) fostering more exchange of information on trade procedures, trade promotion networks, joint business fora, business cooperation instruments, and any other relevant statistics and information for traders who are SMEs;

(c) promoting training and exchange programs for small and medium-sized enterprises traders of the Parties, and exploring promising fields suitable for inter-governmental cooperation on SMEs;

(d) enhancing exchange of experiences between the public agencies of the Parties on initiatives and policy instruments for the development of enterprises, with a special focus on SMEs; and

(e) enhancing competitiveness of micro enterprise through cooperation of private and governmental bodies and exchange of information related with micro enterprise.

Article 17.10: Information and Communications Technology Cooperation

1. The Parties, recognizing the rapid development of Information and Communications Technology (hereinafter referred to as the "ICT") shall endeavor to promote the development of ICT and ICT-related services with a view to obtaining the maximum benefit of the use of ICT for the Parties.

2. Areas of ICT Cooperation may include, but are not limited to, the following:

(a) promoting cooperation between the private and public sectors of the Parties;

(b) enhancing cooperation in international exhibition and fora related to ICT;

(c) undertaking other appropriate cooperative activities; and

(d) mutual cooperation and support in international organizations related to international standards.

3. The Parties will encourage cooperation in the following areas, including, but not limited to, the following:

(a) scientific and technical cooperation for the software industry of the Parties;

(b) research and development and management of information technology parks;

(c) research and development on information technology services such as integration of broadcasting and telecommunications;

(d) research and development and deployment of networks and telecommunications, when the Parties agree on the necessity of such activities; and

(e) any other areas as agreed by the Parties, such as Intelligent Transport Systems, Automobile Electronics, Mobile Intelligent Terminals, and Key Materials and devices of flat panel display.

Article 17.11: Cooperation in Textile

1. The Parties shall promote the following cooperation as a means of building mutually beneficial partnership in textile industry chain.

2. Areas of textile cooperation may include, but are not limited to, the following:

(a) development and application of industrial textile, functional fiber fabric, fine fabric and knitted fabric;

(b) cooperation and exchange of apparel and fashion design, brand marketing and promotion;

(c) cooperation and exchange in such areas as standard quality system certification, and advanced management experience;

(d) exchange of technology, information, researchers, technicians and other experts; and

(e) any other areas agreed by the Parties.

3. The Parties shall:

(a) promote textile cooperation through related governmental organizations, industry associations and enterprises engaged in textile industry chain; and

(b) facilitate organization of joint fora, seminars, conferences, exhibition and

research projects.

Article 17.12: Contact Points

The Parties will designate the contact points on industrial cooperation, as below, in order to facilitate discussion;

(a) for China, the Ministry of Industry and Information Technology, or its successor; and

(b) for Korea, the Ministry of Trade, Industry and Energy, or its successor.

Section D: Government Procurement

Article 17.13: Objectives

The Parties, recognizing the importance of government procurement in their respective economies, shall endeavor to promote cooperative activities between the Parties in the field of government procurement.

Article17.14: Transparency

The Parties shall publish their laws, or otherwise make publicly available their laws, regulations and administrative rulings of general application as well as their respective international agreements that may affect their procurement markets.

Article 17.15: Exchange of Information

1. The Parties shall at the national level, subject to their respective laws and regulations, exchange information on their respective laws and regulations on government procurement.

2. The exchange of information under paragraph 1 shall be facilitated through the following

governmental authorities:

(a) for China, the Ministry of Finance; and

(b) for Korea, the Ministry of Strategy and Finance, and the Public Procurement Service or their successors.

Article 17.16: Contact Points

The Parties will designate the contact points on government procurement, as below, in order to facilitate discussion:

(a) for China, the Ministry of Finance; and

(b) for Korea, the Ministry of Strategy and Finance, and the Public Procurement Service, or their successors.

Article17.17: Further Negotiation

The Parties agree to commence negotiations on government procurement as soon as possible following completion of negotiations on the accession of China to the *WTO Agreement on Government Procurement* with a view to concluding, on a reciprocal basis, an agreement on government procurement between the Parties.

Section E: Other Areas for Cooperation

Article 17.18: Energy and Resources Cooperation

1. The Parties shall promote cooperation under this Chapter as a means of building a stronger, more stable, and mutually beneficial partnership in the field of energy and resources.

2. The Parties shall:

(a) promote cooperation between the public and private sectors of the Parties, through their government bodies, public organizations, research centers, universities, and enterprises, engaged in the field of energy and resources;

(b) encourage and support business opportunities, including investment, related to plant construction in the field of energy and resources for a stable and mutually beneficial bilateral relationship;

(c) recognize and facilitate activities related to agreements and cooperation entities that have already been organized; and

(d) enhance policy dialogues on energy saving and comprehensive utilization of resources through senior seminars and other forms and promote cooperation on environment industry through projects, workshop, training, field visits and other appropriate forms.

3. The Parties shall facilitate visits and exchanges of researchers, technicians, and other experts, and shall also promote joint fora, seminars, symposia, conferences, exhibitions, and research projects.

Article 17.19: Science and Technology Cooperation

1. The Parties, recognizing the importance of science and technology in their respective economies, shall endeavor to develop and promote cooperative activities in the field of science and technology.

2. The Parties will encourage and facilitate cooperation in areas, as appropriate, including, but not limited to, the following:

(a) joint research and development, including, if necessary, sharing of equipment;

(b) exchange of scientists, researchers, research equipment engineers, technicians, and experts;

(c) joint organization of seminars, symposia, conferences, and other scientific and technical meetings, including the participation of experts in those activities;

(d) exchange of information on practices, policies, laws, regulations, and programs related to science and technology;

(e) cooperation in the commercialization of products and services resulting from joint scientific and technological activities; and

(f) any other forms of scientific and technological cooperation as agreed by the Parties.

Article 17.20: Maritime Transport Cooperation

The Parties shall endeavor to cooperate in maritime transport through:

(a) establishing contact points to facilitate information exchange on matters related to maritime transportation and logistics services;

(b) arranging training programs and technical cooperation related to port operation and management; and

(c) arranging technical assistance and capacity building activities related to maritime transportation, including the vessel traffic service.

Article 17.21: Tourism Cooperation

The Parties, recognizing that tourism contributes to the enhancement of mutual understanding between them and is an important industry for their economies, shall endeavor to:

(a) explore the possibility of undertaking joint research on tourism development and promotion to increase inbound visitors to each Party;

(b) encourage the relevant authorities and agencies of the Parties to strengthen cooperation in tourism training and education, to ensure high-quality services for tourists of the Parties;

(c) cooperate in joint campaigns to promote tourism in the territories of the Parties through workshops and seminars among the relevant authorities and agencies of the Parties;

(d) collaborate to promote the sustainable development of tourism in the territories of the Parties;

(e) exchange information on relevant statistics, promotional materials, policies, and laws and regulations in tourism and related sectors; and

(f) encourage tourism and transportation authorities and agencies to improve the aviation connectivity between the Parties.

Article 17.22: Outbound Tourist Cooperation

1. China encourages Korean tourist firms to apply, in accordance with relevant laws and regulations of China, for outbound tourist operational business under the current pilot project scheme.[65]

2. With regard to the application of Korean tourist firms, China will give priority in positively considering the authorization of Korean tourist firms to operate outbound tourist business, provided that the applying Korean firms meet all the requirements as stipulated in the relevant laws and regulations of China.

3. The China National Tourism Administration and the Ministry of Culture, Sports and Tourism of Korea will establish a channel to enhance this cooperation.

Article 17.23: Cultural Cooperation

1. The objective of cultural cooperation is to promote cultural exchanges between the Parties. In attaining this objective, the Parties shall respect the existing agreements or arrangements already in effect for cultural cooperation.

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[65] The current pilot project scheme means the scheme operated by China National Tourism Administration (CNTA) since 2010 in accordance with Decree No.33 issued by the Ministry of Commerce and CNTA under which four foreign invested tourist firms have acquired the permission of operating outbound tourist business.

2. The Parties, in conformity with their respective legislations and without prejudice to the reservations included in their commitments in other Chapters of this Agreement, shall encourage exchanges of expertise and best practices regarding the protection of cultural heritage sites and historic monuments, including environmental surroundings and cultural landscapes.

3. The Parties endeavor to exchange information to identify, recover, and avoid the illegal traffic of their cultural heritage under the existing bilateral cooperation mechanism.

4. The Parties shall endeavor to promote cooperation in broadcasting and audio-video services sectors, for the purpose of deepening mutual understanding between the Parties.

Article 17.24: Pharmaceuticals, Medical Devices and Cosmetics Cooperation

1. The Parties shall endeavor to cooperate for mutual growth and development in the sector of pharmaceuticals, medical devices and cosmetics, recognizing the importance of improving and protecting public health.

2. Areas of cooperation in the sector of pharmaceuticals, medical devices, and cosmetics include, but are not limited to the following:

(a) information exchange on :

(i) policies including legislative progress and enforcement; and

(ii) conferences, seminars, workshops, exhibitions, fairs and other events to encourage participation;

(b) cooperation in relevant private sector:

(i) exchange of researchers, students and those involved in relevant industries;

(ii) joint research programs and projects and their commercialization;

(iii) product quality upgrade, supply-chain networking, technology trade, etc.; and

(iv) promotion and facilitation of mutual investment opportunities.

Article 17.25: Local Economic Cooperation

1. The Parties agree to facilitate the local economic cooperation, taking full use of advantages of the outcome of this Agreement, and initiate pilot cooperation project by identifying Weihai and Incheon Free Economic Zone (IFEZ) as demonstration areas. The detailed programs of such cooperation shall be discussed by the municipal government of Weihai and Incheon after the conclusion of the negotiations of this Agreement.

2. The pilot cooperation project will explore and carry out cooperation in the fields including, but not limited to, trade, investment, services, industrial cooperation, so as to play an exemplary and leading role for local economic cooperation under the framework of this Agreement.

3. The Parties will explore the possibility to expand the local economic cooperation nationwide, after reviewing the results of the pilot cooperation project.

Article 17.26: China-Korea Industrial Complexes/Parks

1. The Parties agree to strengthen cooperation in establishment, operation and development in the Industrial Complexes/Parks to be designated by the Parties, including knowledge sharing, exchanging information and facilitating investment.

2. The Parties shall endeavor to promote mutual investment by companies in the Industrial Complexes/Parks to be designated by the Parties.

Article 17.27: Contact Points

The Parties will designate the contact points on other areas for cooperation, except for outbound tourist cooperation under Article 17.22, in order to facilitate discussion;

(a) for China, the Ministry of Commerce, or its successor; and

(b) for Korea, the Ministry of Trade, Industry and Energy, or its successor.

CHAPTER 18
TRANSPARENCY

Article 18.1: Publication

1. Each Party shall ensure that its measures respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons of the other Party and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any such measures that it proposes to adopt; and

(b) provide a reasonable opportunity for interested persons of the other Party and the other Party to comment on such proposed measures.

Article 18.2: Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's legitimate interests under this Agreement.

2. On the request of the other Party, a Party shall, within 30 days of receipt of the request, provide information and respond to questions pertaining to any actual or proposed measure that the other Party considers might materially affect the operation of this Agreement, whether or not the other Party has been previously notified of that measure.

3. The information referred to under this Article shall be considered to have been provided when it has been made available by appropriate notification to the WTO or when it has been made available on the official, public and fee-free accessible website of the Party concerned.

4. Any notification, request, or information under this Article shall be conveyed to the other Party through their Contact Points referred to in the Article 19.5 (Contact Points).

Article 18.3: Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 18.1 to particular persons, goods or services of the other Party in specific cases, that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided with reasonable notice, in accordance with the Party's procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) its procedures are in accordance with its law.

Article 18.4: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by the Party's law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

CHAPTER 19
INSTITUTIONAL PROVISIONS

Article 19.1: Joint Commission

The Parties hereby establish the China-Korea Free Trade Area Joint Commission (hereinafter referred to as the "Joint Commission") at the level of Ministers comprising representatives of both Parties.

Article 19.2: Functions of the Joint Commission

1. The Joint Commission shall:

(a) oversee the implementation and further elaboration of this Agreement;

(b) consider any proposal to amend this Agreement or to make modifications to the commitments therein;

(c) oversee the work of all committees and other bodies established under this Agreement;

(d) consider ways to further enhance trade and investment between the Parties in accordance with the objective of this Agreement;

(e) seek to resolve differences that may arise regarding the interpretation or application of this Agreement; and

(f) consider any other matter that may affect the operation of this Agreement.

2. The Joint Commission may:

(a) establish and delegate responsibilities to *ad hoc* and standing committees or other bodies;

(b) adopt rules of procedure; and

(c) take such other action in the exercise of its functions as the Parties may agree.

Article 19.3: Rules of Procedure of the Joint Commission

1. The Joint Commission shall take decisions on any matter within its functions as set out in Article 19.2 by mutual agreement.

2. The Joint Commission shall convene in regular sessions once per year and at other times as the Parties may agree. Regular sessions of the Joint Commission shall be held alternately in the territory of each Party and chaired successively by each Party. Other sessions of the Joint Commission shall be held at such location as the Parties may agree and chaired by the Party hosting the meeting.

3. The Joint Commission shall be chaired by, the Minister of Commerce of China or its successor and the Minister of Trade, Industry and Energy of Korea or its successor, or their respective designees.

4. Each Party shall be responsible for the composition of its own delegation to the Joint Commission.

5. The Party chairing a session of the Joint Commission shall provide necessary administrative support for such session, and shall record any decisions and discussions of the Joint Commission, copies of which will be provided to the other Party.

6. Each Party shall treat any confidential information exchanged in relation to a meeting of the Joint Commission or any body created under paragraph 2(a) of Article 19.2 on the same basis as the Party providing the information.

7. All decisions of the Joint Commission and all Committees, working groups, and other bodies established under this Agreement shall be taken by consensus of the Parties.

Article 19.4: Committees and Other Bodies

1. The following Committees and bodies are hereby established under the auspices of the

Joint Commission.

(a) The Committee on Trade in Goods;

(b) The Committee on Trade in Services;

(c) The Committee on Financial Services;

(d) The Committee on Movement of Natural Persons;

(e) The Committee on Investment;

(f) The Committee on Customs;

(i) Sub-Committee on Rules of Origin;

(ii) Sub-Committee on Customs Procedure and Trade Facilitation;

(g) The Committee on Outward Processing Zones

(h) The Committee on Trade Remedies;

(i) The Committee on Sanitary and Phytosanitary Measures;

(j) The Committee on Technical Barriers to Trade;

(k) The Committee on Intellectual Property Rights;

(l) The Committee on Environment and Trade; and

(m) The Committee on Economic Cooperation.

2. The Committees may decide to establish their own sub-Committees or any other body for the performance of their tasks.

3. All decisions made by the Committees and other bodies shall be subject to the

endorsement of the Joint Commission.

Article 19.5: Contact Points

1. Each Party shall designate a Contact Point or Points to facilitate communications between the Parties on any matter covered by this Agreement. The following Contact Points are designated:

(a) for China, the Ministry of Commerce, or its successor; and

(b) for Korea, the Ministry of Trade, Industry and Energy, or its successor.

2. On the request of the other Party, the Contact Point or Points shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

CHAPTER 20
DISPUTE SETTLEMENT

Article 20.1: Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation when a dispute occurs.

Article 20.2: Scope

Unless otherwise provided in this Agreement or as the Parties otherwise agree, this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation and application of this Agreement or wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement; or

(b) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 20.3: Choice of Forum

1. Where a dispute arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 20.4: Consultations

1. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any dispute through consultations under this Article or other consultative provisions of this Agreement.

2. Either Party may request consultations with the other Party with respect to any matter described in Article 20.2 by delivering written notification to the other Party. The requesting Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint, in the written notification. If a request for consultations is made, the other Party shall reply in writing to the request within 10 days after the date of its receipt.

3. Consultations shall be held in good faith within 30 days after the date of receipt of the request with a view of reaching a mutually satisfactory solution and take place, unless the Parties otherwise agree, in the territory of the requested Party .

4. If the requested Party does not reply within 10 days or does not enter into consultations within 30 days from the date of receipt of the request for consultations, then the requesting Party may proceed directly to request the establishment of a panel in accordance with Article 20.6.

5. Each Party shall:

(a) provide sufficient information in the consultations to enable a full examination of how the matter subject to consultations might affect the operation of this Agreement; and

(b) treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

6. Consultations shall be confidential and without prejudice to the rights of the Parties in any further proceedings under this Chapter.

Article 20.5: Good Offices, Conciliation or Mediation

1. Good offices, conciliation, and mediation are procedures undertaken voluntarily if the Parties so agree.

2. Proceedings involving good offices, conciliation, and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

3. Good offices, conciliation, or mediation may be requested at any time by any Party. They may begin at any time and be terminated at any time. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 20.6.

4. The Parties are encouraged to enter into a mediation procedure in particular when a Party believes that a certain non-tariff measure adversely affects trade between the Parties and that such measure is related to the matter falling under market access of goods of this Agreement and is subject to this Chapter, unless the Parties otherwise agree.

5. The Parties should endeavor to participate in the mediation procedure provided for in paragraph 4 in an expeditious way and with the aim to reach a mutually agreed solution within a reasonable period of time with the assistance of a mediator designated or appointed by the Parties upon agreement. Where the Parties have agreed to a solution, each Party should take any measure necessary to implement the mutually agreed solution.

6. The mediation procedure provided for in paragraph 4 is not intended to serve as a basis for dispute settlement procedures under this Agreement or any other agreement in which the Parties participate as parties.

Article 20.6: Establishment of Panel

1. If the consultations referred to in Article 20.4 fail to resolve a matter within 60 days after the date of receipt of the request for consultations or within such other period as the Parties may agree, the complaining Party may deliver a written request to establish a panel to the other Party.

2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measure at issue and provide a brief summary of the legal basis for the complaint sufficient to present the problem clearly.

3. A panel shall be established upon the date of receipt of the request referred to in paragraph 1.

Article 20.7: Composition of Panel

1. Unless the Parties otherwise agree, the Parties shall apply the following procedures in selecting a panel:

(a) the panel shall comprise three members;

(b) each Party shall appoint one panelist respectively within 15 days after the establishment of the panel. If a Party fails to appoint a panelist within that period, the panelist shall be appointed by the other Party, unless the Parties otherwise decide;

(c) the Parties shall endeavor to agree on the third panelist, who shall serve as the chair, within 30 days after the establishment of the panel; and

(d) if the Parties are unable to agree on the chair within 30 days after the establishment of the panel, on the request of any Party to the dispute, the Director General of the WTO is expected to designate the chair within a further period of 30 days. In the event that the Director General of the WTO is a national of either Party or unable to perform this task, the Deputy Director-General of the WTO who is not a national of either Party shall be requested to perform such task.

2. The chair of the panel shall not be a national of either Party, nor have his or her usual place of residence in the territory of either Party, nor be employed by either Party, nor have dealt with the matter in any capacity.

3. If a panelist appointed under this Article resigns or becomes unable to serve on the panel, a successor shall be appointed within 15 days in accordance with the selection procedure of the original panelist and the successor shall have all the powers and duties of the original panelist. In such a case, any time period applicable to the panel proceedings shall be suspended during the appointment of the successor.

4. All panelists shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct established in Annex 20-B (Code of Conduct for Panelists and Mediators).

5. Where a Party considers that a panelist does not comply with the requirements of Annex 20-B (Code of Conduct for Panelists and Mediators), the Parties shall consult and, if so agreed, replace that panelist in accordance with paragraph 3.

Article 20.8: Functions of Panel

1. The function of a panel is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.

2. Where a panel concludes that a measure is inconsistent with this Agreement, it shall recommend that the Party complained against bring the measure into conformity with this Agreement.

Article 20.9: Rules of Procedure

1. Unless the Parties otherwise agree, a panel shall follow the Rules of Procedure set out in Annex 20-A (Rules of Procedure) and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the Annex 20-A (Rules of Procedure).

2 Unless the Parties otherwise agree within 20 days from the date of receipt of the request

for the establishment of the panel, the panel's terms of reference shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of the panel pursuant to Article 20.6 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute, conclusions, and recommendations."

3. On the request of a Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree.

4. Unless the Parties otherwise agree, the remuneration of the panelists and other expenses of the panel shall be borne by the Parties in equal shares.

Article 20.10: Suspension or Termination of Panel Proceedings

1. The Parties may agree that a panel suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, all relevant timeframes set out in this Chapter shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse, unless the Parties otherwise agree.

2. The Parties may agree to terminate the proceedings of a panel.

Article20.11: Panel Report

1. Unless the Parties otherwise agree, a panel shall, within 120 days after the last panelist is appointed, issue to the Parties an interim report.

2. In exceptional cases, if the panel considers it cannot issue its interim report within the period of 120 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

3. The panel shall base its report on the relevant provisions of this Agreement and the

submissions and arguments of the Parties. The panel shall consider this Agreement in accordance with customary rules of interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties* (1969).

4. Each Party may submit written comments to the panel on its interim report within 15 days of the presentation of the report. After considering any written comments by the Parties on the interim report, the panel may modify its report and make any further examination it considers appropriate.

5. The panel shall present a final report to the Parties within 45 days of the presentation of the interim report, unless the Parties otherwise agree. The Parties shall make the final report available to the public within 15 days after the issuance of the final report, subject to the protection of confidential information, unless the Parties decide not to do so.

6. The panel shall make every effort to take its decision by consensus. If the panel is unable to reach consensus, it may take its decision by majority vote. Panelists may furnish dissenting or separate opinions on matters not unanimously agreed. All opinions expressed in the panel report by individual panelists shall be anonymous.

7. The final report of the panel shall be final and binding on the Parties for the dispute and shall not create any rights or obligations for persons. The final report 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 the panel makes.

Article 20.12: Implementation of the Final Report of the panel

1. If in its final report the panel determines that a Party has not conformed with its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.

2. Unless the Parties otherwise agree, the Party complained against shall eliminate the non-conformity as determined in the final report of the panel immediately, or if this is not practicable, within a reasonable period of time referred to in Article 20.13.

Article 20.13: Reasonable Period of Time

1. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within 30 days of the issuance of the final report of the panel, either Party may, to the extent possible, refer the matter to the original panel, which shall determine the reasonable period of time.

2. The panel shall provide its report to the Parties within 30 days after the date of the referral of the matter to it. When the panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

3. The reasonable period of time normally should not exceed 15 months from the date of issuance of the final report of the panel.

4. The Party complained against will inform the complaining Party in writing of its progress to comply with the final report of the panel at least 30 days before the expiry of the reasonable period of time.

Article 20.14: Compliance Review

1. The Party complained against shall notify the complaining Party before the end of the reasonable period of time of any measures that it has taken to comply with the final report of the panel.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the recommendations of the panel, such dispute shall be referred to a panel proceeding, including wherever possible by resort to the original panel.

3. The panel shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the panel considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

4. Articles concerning panel procedures in this Agreement shall apply *mutatis mutandis* to

the procedure under this Article.

Article 20.15: Suspension of Concessions or Other Obligations

1. If the panel under Article 20.14 finds that the Party complained against fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the panel within the reasonable period of time established, or if the Party complained against expresses in writing that it will not implement the recommendations, or if no measure taken to comply exists, and the Parties fail to reach an agreement on compensation within 20 days after entering into negotiations for compensation, the complaining Party may suspend the application of concessions or other obligations to the Party complained against. The complaining Party shall notify the Party complained against 30 days before suspending concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

2. Compensation and suspension of concessions or other obligations are temporary measures available in the event that the recommendations and determinations are not implemented within the reasonable period of time. However, neither compensation nor suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with this Agreement. Compensation shall be consistent with this Agreement.

3. In considering concessions or other obligations to suspend:

(a) the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors that affected by the measure that the panel has found to be inconsistent with the obligations derived of this Agreement; and

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may suspend concession or other obligations in other sectors.

4. The level of suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment.

5. If the Party complained against considers that the level of suspension of concessions or

other obligations is not equivalent to the nullification or impairment, it may request in writing to the original panel. On the written request of the Party complained against, the original panel shall determine whether the level of concessions or other obligations to be suspended by the complaining Party is excessive pursuant to paragraph 4. If the panel cannot be established with its original panelists, the proceeding set out in Article 20.6 shall be applied.

6. The panel shall present its determination within 60 days after the date of receipt of the request, or if the panel cannot be established with its original panelists, from the date on which the last panelist is appointed.

7. The complaining Party may not suspend the application of concessions or other obligations before the issuance of the panel's determination pursuant to this Article.

Article 20.16: Post Suspension

1. Without prejudice to the procedure in Article 20.15, if the Party complained against considers that it has eliminated the non-conformity that the panel has found, it may provide a written notice to the complaining Party with description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original panel within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

2. The panel shall issue its report within 60 days after the referral of the matter.

3. If the panel determines that the Party complained against has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

Article 20.17: Private Rights

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ANNEX 20-A
RULES OF PROCEDURE

Application

1. The following rules of procedures are established pursuant to Article 20.9 (Rules of Procedure) and shall apply to dispute settlement proceedings under this Chapter unless the Parties otherwise agree.

Definitions

2. For the purposes of this Chapter and this Annex:

adviser means a person retained by a Party to advise or assist that Party in connection with the panel proceeding;

assistant means a person who, under the terms of appointment of a panelist, conducts research or provides support for the panelist;

complaining Party means a Party that requests the establishment of a panel under Article 20.6 (Establishment of Panel);

day means a calendar day

deliver means to deliver on a carrier medium, by electronic transmission or in paper;

document includes any written matter submitted in the course of the panel proceeding, whether in paper or electronic form;

panel means a panel established under Article 20.6 (Establishment of Panel);

panelist means a member of the panel established under Article 20.6 (Establishment of Panel);

Party complained against means the Party that receives a written notification indicating that

the complaining Party has referred the matter to a dispute settlement panel in accordance with Article 20.6 (Establishment of Panel);

3. Any reference made in the Rules of Procedure to an Article is a reference to the appropriate Article in this Chapter.

Logistical Administration

4. The Party complained against shall be in charge of the logistical administration of dispute settlement procedures, in particular the organization of hearings, unless the Parties otherwise agree.

Notifications

5. The Parties and the panel shall transmit any request, notice, written submission or other document by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.

6. A Party shall provide a copy of each of its all written submissions to the other Party and to each of the panelists during the course of the dispute settlement proceedings. A copy of the document shall be also provided in electronic format.

7. All notifications shall be made and delivered to the Ministry of Commerce of China, or its successor and to the Ministry of Trade, Industry and Energy of Korea, or its successor respectively.

8. The deadlines are counted from the following date of receipt of such submission or documents.

9. Minor errors of a clerical nature in any request, notice, written submission, or other document related to the panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

10. If the last day for delivery of a document falls on a legal holiday of China or Korea,

the document may be delivered on the next business day.

Commencing the Panel Procedure

11. Unless the Parties otherwise agree, they shall meet with the panel within 15 days of the date of the establishment of the panel in order to determine such matters that the Parties or the panel deem appropriate, including the remuneration and expenses that shall be paid to the panelists.

First Written Submissions

12. The complaining Party shall deliver its first written submission no later than 20 days after the last panelist is appointed. The Party complained against shall deliver its first written submission no later than 20 days after the date of delivery of the complaining Party's first written submission, unless the panel otherwise decides.

Operation of Panels

13. The chair of the panel shall preside at all of its meetings. A panel may delegate to the chair authority to make administrative and procedural decisions.

14. Unless the Parties otherwise agree, the panel may conduct its activities by any means, including telephone, facsimile transmission or computer links.

15. Only panelists may take part in the deliberations of the panel, but the panel may, after consultation with the Parties, permit its assistants, interpreters, or translators to be present at its deliberations. Any person present for such deliberations shall not disclose any information discussed during the deliberation to the Parties.

16. The drafting of the report shall remain the exclusive responsibility of the panel and must not be delegated.

17. Where a procedural question arises that is not covered by the provisions of this Agreement, a panel may adopt an appropriate procedure that is compatible with the

Agreement.

Hearings

18. The chair of the panel shall fix the date, time, and venue of the hearing after consultation with the Parties and the other panelists. The chair shall notify the Parties in writing of those determined date, time, and venue of the hearing. Unless one of the Parties disagrees, the panel may decide not to convene a hearing.

19. Unless the Parties otherwise agree, the hearings shall be held in the territory of the Party complained against.

20. The panel may convene additional hearings if the Parties so agree.

21. All panelists shall be present during the entirety of any hearing.

22. The following persons may attend the hearing, irrespective of whether the hearing is closed to the public or not:

(a) representatives of the Parties;

(b) advisers to the Parties;

(c) administrative staff, interpreters and translators; and

(d) panelists' assistants

Only the representatives and advisers of the Parties may address to the panel.

23. The panel may direct questions to either Party at any time during a hearing.

24. The panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.

Supplementary Written Submissions

25. Each Party may deliver a supplementary written submission concerning any matter that arises during the hearing within 20 days after the date of the hearing.

Confidentiality

26. The panel's hearings and the documents submitted to it shall be kept confidential. The information submitted by the other Party to the panel which that Party has designated as confidential shall be treated as confidential. Nothing in this paragraph shall preclude a Party to a dispute from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

Ex Parte Contacts

27. The panel shall not meet or contact a Party in the absence of the other Party. No Party may contact any panelist in relation to the dispute in the absence of the other Party or the other panelists.

28. No panelist may discuss any aspect of the subject matter of the proceedings with a Party or the Parties in the absence of the other panelists.

Computation of Time

29. Where anything under this Agreement or this Annex is to be done, or the panel requires anything to be done, within a number of days after or before a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

30. Where, by reason of the application of paragraph 10 of this Annex, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

Working Languages

31. Unless the Parties otherwise agree, the working language for the dispute settlement proceedings shall be English.

ANNEX 20-B
CODE OF CONDUCT FOR PANELISTS AND MEDIATORS

Definitions

1. For the purposes of this Annex:

assistant means a person who, under the terms of appointment of a member of the panel, conducts research or provides support for the member;

mediator means a person who conducts a mediation procedure in accordance with Article 20.5 (Good Offices, Conciliation or Mediation);

panelist means a member of a panel established under Article 20.6 (Establishment of Panel);

proceeding, unless otherwise specified, means a panel proceeding under this Chapter; and

staff, in respect of member, means persons under the direction and control of the panelist, other than assistants.

Responsibilities to the Process

2. Every panelist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved.

Disclosure Obligations

3. A panelist shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding by informing the Joint Commission, in writing, for consideration by the Parties.

4. A panelist shall only communicate matters concerning actual or potential violations of this Annex to the Joint Commission for consideration by the Parties.

Duties of Panelists

5. Upon selection, a panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. A panelist shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

7. A panelist shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with this Annex.

8. A panelist shall not engage in *ex parte* contacts concerning the proceeding.

Independence and Impartiality of Panelists

9. A panelist must be independent and impartial and avoid creating an appearance of impropriety or bias.

10. A panelist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.

11. A panelist shall not use his or her position on the panel to advance any personal or private interests. A panelist shall avoid actions that may create the impression that others are in a special position to influence him or her.

Confidentiality

12. A panelist shall not at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal

advantage or advantage for others or to adversely affect the interest of others.

13. A panelist shall not disclose a panel ruling or parts thereof prior to its publication in accordance with this Agreement.

14. A panelist shall not at any time disclose the deliberations of a panel or any panelist's view.

Mediators

15. The provisions described in the Annex 20-B shall apply, *mutatis mutandis*, to mediators.

CHAPTER 21
EXCEPTIONS

Article 21.1: General Exceptions

1. For the purposes of Chapters 2 (National Treatment and Market Access for Goods) through 7 (Trade Remedies), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 8 (Trade in Services), 9 (Financial Services), 10 (Telecommunications), and 13 (Electronic Commerce)[66], Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 21.2: Essential Security

For the purposes of this Agreement, Article XXI of GATT 1994 and Article XIV bis of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 21.3: Taxation

1. For purposes of this Article:

   (a) **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement to which both Parties are party; and

   (b) taxation measures do not include:

      (i) a customs duty defined in Article 1.6 (Definitions); or

      (ii) the measures listed in subparagraphs (b) through (e) of the definition of customs duty set out in Article 1.6 (Definitions).

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[66] Article 21.1 is without prejudice to whether digital products should be classified as goods or services.

2. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

3. (a) Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention to which both Parties are party. In the event of any inconsistency relating to a taxation measure between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

(b) In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

4. Notwithstanding paragraph 3, this Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under Article III of GATT 1994.

5. (a) Article 12.12 (Settlement of Investment Disputes between a Party and an Investor of the Other Party) shall apply to a taxation measure alleged to be an expropriation.

(b) Articles 12.9 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 12.9 (Expropriation and Compensation) as the basis of a claim where it has been determined in accordance with this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 12.9 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities, at the time of the submission of written request for consultation to the disputing Party under paragraph 2 of Article 12.12 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months from the date on which the written request for consultation is submitted to the disputing Party under paragraph 2 of Article 12.12 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), the investor may submit its claim to arbitration under Article 12.12.3 (Settlement of Investment Disputes between a Party and an Investor of the Other Party).

6. For the purposes of this Article, **competent authorities** means:

   (a) for China, the Ministry of Finance and State Administration of Taxation; and

   (b) for Korea, the Deputy Minister for Tax and Customs, Ministry of Strategy and Finance.

Article 21.4: Disclosure of Information

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

Article 21.5: Measures to Safeguard the Balance of Payments

Where the Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the WTO Agreement and consistent with the Articles of *Agreement of the International Monetary Fund*, adopt measures deemed necessary.

CHAPTER 22
FINAL PROVISIONS

Article 22.1: Annexes, Appendices and Footnotes

The Annexes, appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 22.2: Amendments

1. The Parties shall amend Chapters relating to Trade in Services and Investment and their corresponding annexes through the subsequent negotiations commencing from the date of entry into force of this Agreement (hereinafter referred to as "subsequent negotiations") in accordance with the general principles and negotiation guidelines specified in the Annex 22-A.

2. The results of the subsequent negotiations shall be incorporated into and made an integral part of this Agreement and substitute the corresponding Chapters of this Agreement. The entry into force of the newly amended chapters shall be subject to the procedures contained in the Article 22.4.

3. Further to the aforementioned amendment, the Parties may agree to amend this Agreement. When so agreed and entered into force according to Article 22.4, such amendments shall constitute an integral part of this Agreement.

Article 22.3: Amendment of the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult on whether to amend this Agreement accordingly.

Article 22.4: Entry into Force and Termination

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force 60 days after the date the Parties exchange written notifications through diplomatic channels that such procedures have been completed or after such other period as the Parties may agree and confirm by written notifications.

3. Either Party may terminate this Agreement by written notification to the other Party through diplomatic channels. This Agreement shall expire 180 days after the date on which such notification is sent.

Article 22.5: Accession

Any country or customs territory may accede to this Agreement subject to such terms and conditions as may be agreed between the country or customs territory and the Parties and following approval in accordance with the applicable legal requirements and procedures of each Party and acceding country or customs territory.

Article 22.6: Authentic Text

This Agreement shall be done in Chinese, Korean, and English. The three texts are equally valid and authentic. In case of any divergence, the English text shall prevail.

ANNEX 22-A
GUIDELINES FOR SUBSEQUENT NEGOTIATION

A. *General Principles*

1. The Parties aim at achieving high-level liberalization for trade in services and investment in the subsequent negotiation.

2. The subsequent negotiations will cover, among others, Chapters 8 (Trade in Services), 9 (Financial Services) and 12 (Investment) including their respective Annexes, and the related provisions concerning rules in other Chapters.

3. The subsequent negotiations will be conducted based on a negative list approach covering pre-establishment phase of investment and trade in services in mode 3.

4. The Parties agreed to generate combined reservation lists associated with the Chapter 8 (Cross-Border Trade in Services), Chapter 9 (Financial Services), and Chapter 12 (Investment) based on a negative list approach. The newly-generated combined reservation lists such as Annex I (List of Existing Non-Conforming Measures), Annex II (List of the Specific Sectors, Subsectors, or Activities for Which a Party May Maintain Existing, or Adopt New or More Restrictive Measures that Do not Conform with Obligations under the Relevant Chapters), and Annex III (Financial Services), shall be attached to this Agreement and constitute an integral part of this Agreement.

5. The Parties shall ensure that the level of liberalization commitments of a specific sector attained in this Agreement will not be decreased at the subsequent negotiations.

6. In the subsequent negotiations, the Parties may revisit any Articles in the relevant Chapters.[67]

7. Nothing in this Agreement shall be construed as preventing a Party from making new textual proposals in the subsequent negotiations.

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[67] For greater certainty, the subsequent negotiations will be conducted based on the Parties' respective textual proposals, not on the Articles in this Agreement.

B. *Timeframes*

8. The Parties shall commence the subsequent negotiations as soon as possible, but not later than two years following the date of entry into force of this Agreement.

9. The Parties shall endeavor to conclude the subsequent negotiations within two years from the date of the starting of the negotiations.

C. *Guidelines for Negotiations for Trade in Services*

10. The Chapter on Cross-Border Trade in Services which will be established through subsequent negotiations applies to trade in services in mode 1 and 2.

11. The Parties shall include, among others, the provision concerning Future MFN (Most-Favored Nation Treatment) in the result of the subsequent negotiations for the Chapter on Cross-Border Trade in Services.

12. The Parties shall include, among others, the provisions concerning Future MFN (Most-Favored Nation Treatment), Transfer of Information and New Financial Services in the result of the subsequent negotiations for the Chapter on Financial Services.

13. The list of existing non-conforming measures and the list of the specific sectors, subsectors, or activities for which a Party may maintain existing, or adopt new or more restrictive measures that do not conform with the obligations under the Chapter on Financial Services shall be attached to as Annex III to this Agreement.

D. *Guidelines for Negotiations for Investment*

14. The Parties shall revisit all the Articles in Chapter 12 (Investment) with a view to including pre-establishment phase of the investment covering all kinds of investment including supply of services through commercial presence.

15. The negotiation shall include the Articles addressing Definition, Scope and Coverage, National Treatment, Most-Favored- Nation Treatment, Minimum Standard of Treatment, Expropriation, Transfer, Performance Requirements, Senior Management

and Boards of Directors, Non-Confirming Measures, Investor-State Dispute Settlement, and other provisions.

16. The Parties shall include, in the result of the subsequent negotiations, an Article on Performance Requirement with a view to incorporating high level commitment for both pre-establishment and post-establishment phase of the investment.

17. The Parties shall negotiate on issues such as relevant consideration for, and exceptions to the indirect expropriation in the subsequent negotiation.

E. Guidelines for Negotiations for related provisions concerning rules

18. The Parties shall negotiate on the related provisions concerning rules in other Chapters at the subsequent negotiations.

F. Termination and Modification of the Annex and Relevant Article

19. This Annex and the paragraphs 1 and 2 of Article 22.2 (Amendments) shall be terminated at the time when the result of the subsequent negotiations enters into force.

20. The paragraph 3 of Article 22.2 (Amendments) shall, at the time when the result of the subsequent negotiations enters into force, be modified as follows

> "The Parties may agree to amend this Agreement. When so agreed and entered into force according to Article 22.4 (Entry into Force and Termination), such amendment shall constitute an integral part of this Agreement."

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Seoul, this First day of June, 2015, in duplicate, each Party shall keep one copy in the Chinese, Korean and English languages.

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA	FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA
____________________	____________________