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

Recognizing their longstanding and strong friendship and the need to strengthen their close economic relations;

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

Recognizing the need to strengthen the framework for broader and deeper economic cooperation;

Desiring to promote economic growth and create new employment opportunities;

Recognizing the different levels of economic development between the Parties;

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

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

Resolved to contribute to the harmonious development and expansion of world trade by removing obstacles to trade through the creation of a free trade area;

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

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

HAVE AGREED as follows:

# CHAPTER 1
# GENERAL PROVISIONS

## Article 1.1 : 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 objectives of this Agreement are to:

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

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

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

(d) adequately and effectively protect intellectual property rights; and

(e) establish a framework to enhance closer cooperation in the fields agreed by the Parties in this Agreement.

## Article 1.3 : Relations to Other Agreements

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

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

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

## Article 1.4 : Extent of Obligations

In fulfilling its obligations and commitments under this Agreement, each Party shall ensure within its territory the observance by local governments and authorities and by non-governmental bodies in the exercise of powers delegated to them by central or local governments or authorities.

**Article 1.5 : General Definitions**

For the purposes of this Agreement, unless otherwise specified,

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

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

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

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

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

(b) for Viet Nam, the General Department of Viet Nam Customs;

or their respective successors;

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

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

(b) duty imposed pursuant to a Party's laws and regulations 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; or

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

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

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

**days** means calendar days including weekends and holidays;

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

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

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

**GATT 1994** means the *General Agreement on Tariffs and Trade 1994*, including its notes and supplementary provisions, which is a part of the WTO Agreement;

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

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

**Joint Committee** means the Joint Committee established under Article 17.1(Joint Committee);

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

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

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

(a) central or local governments and authorities; and

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

**national** means:

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

(b) for Viet Nam, any person who is a citizen of Viet Nam within the meaning of its Constitution and the *Law on Vietnamese Nationality*, as amended;

**originating goods** means products or materials that qualify as originating under the Chapter 3 (Rules of Origin and Origin Procedures);

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

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

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

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

**territory** means:

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

(b) for Viet Nam, the land territory including mainland and islands, internal waters, territorial sea, and airspace above the territory, the maritime areas beyond territorial sea, including the continental shelf, exclusive economic zone, and natural resources thereof over which Viet Nam exercises its sovereignty, sovereign rights, or jurisdiction in accordance with its domestic law and international law;

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

**UNCITRAL** means the United Nations Commission on International Trade Law;

**WTO** means the World Trade Organization; and

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

# CHAPTER 2
# NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

## Article 2.1 : Scope

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

## Section A : National Treatment

## Article 2.2 : National Treatment on Internal Taxation and Regulation

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 B : Reduction or Elimination of Customs Duties

## Article 2.3 : Reduction or Elimination of Customs Duties

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

2. Upon request of a Party, the Parties will consult to consider 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 wishes to amend the Schedule to Annex 2-A. That Party shall promptly notify the other Party through a diplomatic note 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 concession 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 date of 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 2.4 : Standstill**

Except as otherwise provided for in this Agreement, neither Party may increase any existing customs duty as specified in that Party's Schedule to Annex 2-A, 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 on an originating good of the other Party that was unilaterally reduced other than as provided for in paragraph 2 or 3 of Article 2.3 to the lower of the levels established either in its Schedule to Annex 2-A or pursuant to paragraph 2 or 3 of Article 2.3; or

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

## Section C : Special Regimes

**Article 2.5 : Temporary Admission of Goods**

1. Each Party shall grant duty-free temporary admission for the following goods imported into the customs territory of a Party for specific purposes and intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the usage made of them, and meeting all the requirements of this Article, regardless of their origin:

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

(b) goods intended for display or demonstration;

(c) commercial samples and advertising materials[1]; and

(d) goods admitted for sports purposes.

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

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:

[1] Definitions and contents can be regulated by the competent authority of the importing Party.

(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, profession, or sport of that person;

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

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

(d) be capable of identification when exported;

(e) be exported on 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;

(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 laws and regulations.

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

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

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

7. In accordance with its domestic laws and regulations, each Party shall provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

8. Subject to Chapters 8 (Trade in Services) and 9 (Investment):

(a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such container[2];

[2] For greater certainty, nothing in this subparagraph shall be construed to prevent a Party from adopting or maintaining highway and railway safety or security measures of general application, or from preventing a vehicle or container from entering or exiting its territory in a location where the Party does not maintain a

(b) neither Party may require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;

(c) neither Party may condition the release of any obligation, including any security, that it imposes in respect of the entry of a container into its territory on its exit through any certain port of departure; and

(d) neither Party may require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes the container to the territory of the other Party.

**Article 2.6 : Goods Re-Entered after Repair or Alteration**

1. In accordance with its domestic laws and regulations, neither Party may apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether the repair or alteration:

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

(b) has increased the value of the good.

2. In accordance with its domestic laws and regulations, neither Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

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

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

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

**Article 2.7 : Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials**

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

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customs port. Each Party may provide a list of ports available for exit of containers in accordance with its domestic laws and regulations.

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

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

## Section D : Non-Tariff Measures

### Article 2.8 : Import and Export Restrictions

1. Except as otherwise provided for 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 its WTO rights and obligations. To this end, Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis.*

2. The Parties understand that 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 the 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.

3. In the event that a Party, in accordance with its WTO rights and obligations, 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 that 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 that 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.

4. In the event that a Party, in accordance with its WTO rights and obligations, adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, upon 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.

5. 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.

6. For greater certainty, paragraph 5 does not prevent a Party from requiring a person referred to in that paragraph to designate an agent for the purposes of facilitating communications between its regulatory authorities and that person.

7. For the purposes of paragraph 5, distributor means a person of a Party who is responsible for the commercial distribution, agency, concession, or representation in the territory of that Party of goods of the other Party.

**Article 2.9 : Import Licensing**

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.[3]

2. (a) Within 30 days 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 website. To the extent possible, that Party shall do so at least 20 days before the new procedure or modification takes effect.

**Article 2.10 : Administrative Fees and Formalities**

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*.

**Article 2.11 : Trade Related Non-Tariff Measures**

Each Party shall ensure the transparency of its non-tariff measures affecting trade between the

[3] For the purposes of this paragraph 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.

Parties and that any such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

**Article 2.12 : Administration and Implementation of Tariff Rate Quotas**

1. A Party that has established tariff rate quotas (hereinafter referred to as "TRQs") as set out in Appendix 2-A-1 shall implement and administer these TRQs in accordance with Article XIII of GATT 1994 and, for greater certainty, its interpretative notes, and the Import Licensing Agreement, and any other relevant WTO Agreement.

2. A Party shall ensure that the administration measures and implementation of its TRQs are consistent, transparent and are not adopted or maintained to create discrimination against the other Party. Accordingly, a Party shall ensure all fees and charges in connection with importation through the TRQ system are commensurate with the cost of services rendered.

**Section E : General and Institutional Provisions**

**Article 2.13 : Measures to Safeguard the Balance of Payments**

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with GATT 1994, which includes the Understanding on Balance-of-Payments Provisions of GATT 1994, adopt restrictive import measures. In adopting such measures, the Party shall immediately consult with the other Party.

**Article 2.14 : 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 upon request of a Party or the Joint Committee to consider matters arising under this Chapter.

3. The Committee's functions shall include:

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

(b) considering issues relating to non-tariff measures and addressing barriers to trade in goods between the Parties with a view to ensuring WTO rights and obligations and facilitating trade between the Parties, and, if appropriate, referring such matters to the Joint Committee for its consideration;

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

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

(ii) Annex 2-A and national nomenclatures;

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

(e) providing a forum for discussion or the exchange of information on matters related to subparagraphs (a) through (d), 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.

## Section F : Definitions

### Article 2.15 : Definitions

For the purposes of this Chapter:

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

**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;

**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;

**Import Licensing Agreement** means the *Agreement on Import Licensing Procedures*, in Annex 1A to the WTO Agreement;

**performance requirement** means a requirement that:

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

(b) domestic goods of the Party granting an import license be substituted for imported goods;

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

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

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

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

(f) subsequently exported;

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

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

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

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

## ANNEX 2-A

## REDUCTION OR ELIMINATION OF CUSTOMS DUTIES

1. Except as otherwise provided for in a Party's Schedule to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to paragraph 1 of Article 2.3:

(a) customs duties on originating goods provided for in the items in staging category "Y-1" in Section A of a Party's Schedule shall be eliminated entirely on the date this Agreement enters into force;

(b) customs duties on originating goods provided for in the items in staging category "Y-3" in Section A of a Party's Schedule shall be eliminated in three equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year three;

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

(d) customs duties on originating goods provided for in the items in staging category "Y-7" in Section A of a Party's Schedule shall be eliminated in seven equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year seven;

(e) customs duties on originating goods provided for in the items in staging category "Y-8" in Section A of a Party's Schedule shall be eliminated in eight equal annual stages from the base rate beginning on the date this Agreement enters into force, and such goods shall be free of customs duty, effective 1 January of year eight;

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

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

(h) customs duties on originating goods provided for in the items in staging category "E" in Section A of a Party's Schedule shall remain at base rates.

2. The elimination of customs duties on originating goods placed in Section B of a Party's Schedule to this Annex shall be in accordance with the rate provided for that year in Section B.

3. The base rate of customs duty set out in a Party's Schedule to this Annex reflects;

(a) for Section A, the lower of each Party's MFN applied customs duty rates in effect on 1 January 2012, and its preferential customs duty rates under the Korea-ASEAN FTA, in effect on 1 January 2012; and

(b) for Section B, the preferential customs duty rates of each Party under the Korea-ASEAN FTA on 1 January 2015.

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

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

6. For the purposes of this Annex and a Party's Schedule, **year one** means the year this Agreement enters into force as provided for in Article 17.8(Entry into Force).

7. 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 1 January of the relevant year.

8. If a customs duty on an originating good under this Agreement pursuant to (b), (c), (d), (e), (f) or (g) of paragraph 1 differs from a customs duty on the same good under the Korea-ASEAN FTA, the lower customs duty rate shall apply on the originating good under this Agreement.

9. The Parties shall ensure that the transposition of HS code shall not affect the value of tariff concessions under this Annex.

## GENERAL NOTES

## TARIFF SCHEDULE OF KOREA

1. Relation to the Harmonized Tariff Schedule of Korea (hereinafter referred to as "HSK"). The provisions of this Schedule are generally expressed in terms of the HSK, and the interpretation of the provisions 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. Staging. In addition to the staging categories listed in paragraph 1 of Annex 2-A, this Schedule contains staging category S-1, B-1, C and R:

(a) customs duties on originating goods provided for in the items in staging category "S-1" shall remain at base rates before 1 January 2016, and be reduced to zero to five percent not later than 1 January 2016;

(b) customs duties on originating goods provided for in the items in staging category "B-1" shall remain at base rates before 1 January 2016, and be reduced not less than by 20 percent of the Korea-ASEAN FTA's applied MFN customs duty rates[4] not later than 1 January 2016[5];

(c) customs duties on originating goods provided for in the items in staging category "C" shall remain at base rates before 1 January 2016, and be reduced not less than by 50 percent of the Korea-ASEAN FTA's applied MFN customs duty rates not later than 1 January 2016[6]; and

(d) no obligations regarding customs duties in this Agreement shall apply with respect to items in staging category "R". Nothing in this Agreement shall affect Korea's rights and obligations with respect to its implementation of the commitments set out in the WTO document WT/Let/492 (Certification of Modifications and Rectifications to Schedule LX − Republic of Korea) dated 13 April 2005 and any amendments thereto.

[4] "Korea-ASEAN FTA's applied MFN customs duty rates" means Korea's applied rates as of 1 January 2005.

[5] For greater certainty, if the reduced customs duty rate in this subparagraph is higher than the base rate, the base rate shall apply and remain thereafter.

[6] For greater certainty, if the reduced customs duty rate in this subparagraph is higher than the base rate, the base rate shall apply and remain thereafter.

## TARIFF SCHEDULE OF VIET NAM

1. Relation to the Harmonized Tariff Schedule of Viet Nam (hereinafter referred to as "HSVN"). The provisions of this Schedule are generally expressed in terms of the HSVN, and the interpretation of the provisions of this Schedule, shall be governed by the General Notes, Section Notes, and Chapter Notes of the HSVN. To the extent that provisions of this Schedule are identical to the corresponding provisions of the HSVN, the provisions of this Schedule shall have the same meaning as the corresponding provisions of the HSVN.

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

(a) customs duties on originating goods provided for in the items in staging category "S-2" shall remain at base rates before 1 January 2021, and be reduced to zero to five percent not later than 1 January 2021;

(b) customs duties on originating goods provided for in the items in staging category "S-3" shall remain at base rates before 1 January 2017, and be reduced to 20 percent not later than 1 January 2017 and remain at the reduced rate before 1 January 2021, and be reduced to zero to five percent not later than 1 January 2021;

(c) customs duties on originating goods provided for in the items in staging category "A" shall remain at base rates before 1 January 2021 and be reduced to not more than 50 percent not later than 1 January 2021; and

(d) customs duties on originating goods provided for in the items in staging category "B-2" shall remain at base rates before 1 January 2021, and be reduced not less than by 20 percent of the Korea-ASEAN FTA's applied MFN customs duty rates[7] not later than 1 January 2021[8].

[7] "Korea-ASEAN FTA's applied MFN customs duty rates" means Viet Nam's applied rates as of 1 January 2005.

[8] For greater certainty, if the reduced customs duty rate in this subparagraph is higher than the base rate, the base rate shall apply and remain thereafter.

## APPENDIX 2-A-1

## TARIFF RATE QUOTA ADMINISTRATION OF KOREA

1. This Appendix shall apply to TRQs provided for in this Agreement and set out modifications to the HSK that reflect the TRQs that Korea shall apply to certain originating goods under this Agreement. In particular, originating goods of Viet Nam 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 through 97 of the HSK. Notwithstanding any other provision of the HSK, originating goods of Viet Nam in the quantities described in this Appendix shall be permitted entry into the territory of Korea as provided for in this Appendix. Furthermore, any quantity of originating goods imported from Viet Nam 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 Viet Nam described in subparagraph (c) that shall be permitted to enter free of customs duties in a particular year is specified below:

| Year | Quantity (Metric Tons) |
|---|---|
| 1 | 10,000 |
| 2 | 11,000 |
| 3 | 12,100 |
| 4 | 13,310 |
| 5 | 14,641 |
| 6 | 15,000 |

After year six, the in-quota quantity shall remain the same as the quantity of year six;

(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 subparagraph 1(h) of Annex 2-A.; and

(c) Subparagraphs (a) and (b) shall apply to the following HSK provisions: 0306161090, 0306169090, 0306171090, 0306179090, 0306261000, 0306271000, and 1605219000.

# CHAPTER 3
# RULES OF ORIGIN AND ORIGIN PROCEDURES

## Section A : Rules of Origin

### Article 3.1 : Origin Criteria

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

(a) a good which is wholly obtained or produced entirely in the territory of the exporting Party as set out and defined in Article 3.2;

(b) a good not wholly obtained or produced in the territory of the exporting Party, provided that the good is eligible under Article 3.3 or 3.4 or 3.5 or 3.6; or

(c) a good which is produced entirely in the territory of the exporting Party exclusively from originating materials.

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

### Article 3.2 : Wholly Obtained or Produced Goods

Within the meaning of subparagraph 1(a) of Article 3.1, the following goods shall be considered to be wholly obtained or produced in the territory of a Party:

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

(b) live animals born and raised there;

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

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

(e) minerals and other naturally occurring substances, not included in sub paragraphs (a) through (d), extracted or taken from the soil, waters, seabed or beneath the seabed in that Party;

(f) products of sea-fishing and other marine products taken by vessels registered with the Party and entitled to fly its flag, and other products taken by the

Party or a person of that Party, from the waters, seabed or beneath the seabed outside the territorial seas of the Party, provided that the Party has the rights to exploit[1] the natural resources of such waters, seabed and beneath the seabed under international law[2];

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

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

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

(j) waste and scrap derived from:

(i) production there; or

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

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

**Article 3.3 : Not Wholly Obtained or Produced Goods**

1. For the purposes of subparagraph 1(b) of Article 3.1, goods which are not wholly obtained, as provided for in Annex 3-A, shall be deemed to be originating when the conditions set out in the Annex 3-A are satisfied.

2. The formula for calculating the regional value content (hereinafter referred to as ''RVC'') will be either[3] :

(a) Direct / Build-Up Method

[1] The Parties understand that for the purposes of determining the origin of products of sea-fishing and other products, "rights" in this subparagraph include those rights of access to the fisheries resources of a coastal state, as accruing from agreements or other arrangements concluded between a Party and the coastal state at the level of governments or duly authorized private entities.

[2] "International law" in this subparagraph refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea*.

[3] The Parties shall be given the flexibility to adopt the method of calculating the RVC, whether it is the build-up or the build-down method.

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

VOM means value of originating materials, which includes the value of originating material cost, labor cost, overhead cost, profit and other costs, where:

(i) material cost is the value of originating materials, parts or goods that are acquired or self-produced by the producer in the production of the good;

(ii) labor cost includes wages, remuneration and other employee benefits;

(iii) overhead cost is the total overhead expense; and

(iv) other costs are the costs incurred in placing the good in the ship or other means of transport for export including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges.

or

(b) Indirect / Build-Down Method

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

VNM means value of non-originating materials, which shall be:

(i) the CIF value at the time of importation of the materials, parts or goods; or

(ii) the earliest ascertained price paid for the materials, parts or goods of undetermined origin in the territory of the Party where the working or processing has taken place.

3. For the purposes of paragraph 1 and the relevant Product Specific Rules set out in Annex 3-A, the rules requiring that the materials that are used have undergone a change in tariff classification, or a specific manufacturing or processing operation, shall apply only to non-originating materials.

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

**Article 3.4 : Product Specific Rules**

For the purposes of Article 3.1, goods which satisfy the Product Specific Rules provided in Annex 3-A shall be considered to be originating in the territory of the Party where working or processing of the goods has taken place.

**Article 3.5 : Treatment for Certain Goods**

Notwithstanding Articles 3.1, 3.3 and 3.4, certain goods shall be considered to be originating even if the production process or operation has been undertaken in the Gaeseong Industrial Complex located in the Korean Peninsula, on materials exported from a Party and subsequently re-imported to that Party provided that the conditions set out in Annex 3-B are fulfilled.

**Article 3.6 : Accumulation**

Unless otherwise provided for in this Chapter, a good originating in the territory of a Party, which is used in the territory of the other Party as material for a finished good eligible for preferential tariff treatment, shall be considered to be originating in the territory of the latter Party where working or processing of the finished good has taken place.[4]

**Article 3.7 : Non-Qualifying Operations**

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

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

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

(c) simple[5] washing, cleaning, removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles;

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

[4] The Parties agree to review this Article three years from the date of entry into force of this Agreement, taking into due consideration the economic integration agreements in force in the Asia Pacific region at the time of such review.

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

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

(g) operations to color sugar or form sugar lumps;

(h) simple[5] peeling, stoning, or un-shelling[6];

(i) sharpening, simple grinding or simple cutting;

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

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

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

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

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

(o) simple[5] testing or calibrations; or

(p) slaughtering of animals[8].

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

**Article 3.8 : Direct Transport**

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

2. Notwithstanding paragraph 1, a good of which transport involves transit through one or more non-Parties, other than the territories of the Parties, shall be considered to be transported directly, provided that:

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[6] For greater certainty, this subparagraph shall not apply to HS 0801.32.

[7] "Simple mixing" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity. However, "simple mixing" does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

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

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

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

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

**Article 3.9 : *De Minimis***

1. A good that does not undergo a change in tariff classification shall be considered as originating if:

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

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

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

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

**Article 3.10 : Treatment of Packaging and Packing Materials**

1. (a) If a good is subject to the RVC criterion as set out in Article 3.3 and Annex 3-A, the value of the packaging and packing materials for retail sale shall be taken into account in the determination of its origin, where the packaging and packing materials are considered to be forming a whole with the good.

(b) If a good is subject to a criterion other than the RVC criterion as set out in Article 3.3 and Annex 3-A, the packaging and packing materials for retail sale shall, if classified together with the packaged good, be disregarded in determining whether all the non-originating materials used in the production of the good satisfy the applicable requirements set out in Article 3.3 and Annex 3-A.

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

**Article 3.11 : Accessories, Spare Parts and Tools**

The origin of accessories, spare parts, tools, and instructional or other informational materials presented with a good shall not be taken into account in determining the origin of the good, provided that such accessories, spare parts, tools, and instructional or other informational materials are classified with the good and their customs duties are collected with the good by the importing Party.

**Article 3.12 : Neutral Elements**

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

(a) fuel and energy;

(b) tools, dies and moulds;

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

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

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

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

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

**Article 3.13 : Identical and Interchangeable Goods or Materials**

1. The determination of whether identical and interchangeable goods or materials are originating can be made by the use of generally accepted accounting principles of inventory management practiced in the territory of the exporting Party.

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

## Section B : Origin Procedures

**Article 3.14 : Certificate of Origin**

1. Goods originating in a Party shall, on importation into the other Party, benefit from the preferential tariff treatment under this Agreement on the basis of a Certificate of Origin, a form of which appears in Annex 3-C.

2. Notwithstanding paragraph 1, originating goods within the meaning of this Chapter, in the cases specified in Article 3.17, may benefit from preferential tariff treatment without any Certificate of Origin referred to in paragraph 1.

3. A Certificate of Origin shall be issued by the issuing authority of the exporting Party on application by the producer or exporter or, under its responsibility, by its authorized representative. The Certificate of Origin shall:

(a) be in a printed A4 size paper and be in the format of Attachment 1 of Annex 3-C. For multiple items declaration, the Parties may use the format of Attachment 2 of Annex 3-C as additional pages to the Certificate of Origin;

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

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

(d) be manually or electronically signed, stamped and printed;

(e) include the description, quantity, and weight of the good, corresponding to the consignment to be exported; and

(f) have a unique serial reference number given by the issuing authority.

4. A Certificate of Origin shall be issued prior to or on the date of shipment, or within three working days[9] from the date of shipment. In exceptional cases where a Certificate of Origin has not been issued prior to or on the date of shipment, or within three working days from the date of shipment due to involuntary errors, omissions or other valid causes, a Certificate of Origin may be issued retroactively but no later than one year from the date of shipment, bearing the words "ISSUED RETROACTIVELY."

5. The producer or exporter of a good, or its authorized representative applying for the issuance of a Certificate of Origin, shall be prepared to submit at any time, upon request of the issuing authority of the exporting Party issuing the Certificate of Origin, all appropriate

[9] For greater certainty, "three working days" shall include the date of shipment itself.

documents proving the originating status of such good in accordance with domestic legislation as well as the fulfilment of the other requirements of this Chapter.

6. In the event of theft, loss or destruction of a Certificate of Origin, the producer or exporter may apply to the issuing authority for a certified true copy of the original to be made out on the basis of the export documents in its possession bearing the endorsement of the words "CERTIFIED TRUE COPY" in box 12 of a Certificate of Origin. This copy shall bear the date of issuance of the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued no later than one year from the date of issuance of the original Certificate of Origin.

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

**Article 3.15 : Issuing Authority**

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

2. Each Party shall notify the other Party of the names and the impressions of seals of its issuing authority.

3. Any change to the register shall be notified to the other Party, and shall enter into force 15 days after the date of notification or on a later date indicated in such notification.

4. The issuing authority of each Party shall ensure that:

(a) the description, quantity, and weight of the good, as specified, correspond to the consignment to be exported; and

(b) a Certificate of Origin has a unique serial reference number given by the issuing authority.

**Article 3.16 : Claims for Preferential Tariff Treatment**

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on a Certificate of Origin.

2. Each Party may require that an importer who claims preferential tariff treatment for a good imported into its territory:

(a) declare in the importation document that the good is an originating good;

(b) have in its possession at the time the declaration referred to in subparagraph 2(a) is made, a Certificate of Origin as described in Article 3.14; and

(c) provide, upon request of the customs authority of the importing Party, the Certificate of Origin, supporting documents such as invoices, the through bill of lading issued in the territory of the exporting Party, and other documents as required in accordance with the domestic laws and regulations of the importing Party.

3. A Certificate of Origin shall be valid for one year after the date of its issuance.

4. Each Party shall provide that, where a good was originating when it was imported into its territory, but the importer did not gain preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the importing Party of:

(a) a Certificate of Origin; and

(b) any other documentation as the importing Party may require.

**Article 3.17 : Waiver of Certificate of Origin**

A Party shall provide that a Certificate of Origin shall not be required where the customs value of the importation does not exceed 600 U.S. dollars FOB or such higher amount as the importing Party may establish, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purposes of evading compliance with the Party's domestic laws and regulations governing claims for preferential tariff treatment under this Agreement.

**Article 3.18 : Record Keeping Requirements**

1. For the purposes of the verification process, the producer or exporter applying for the issuance of a Certificate of Origin shall, subject to the domestic laws and regulations of the exporting Party, keep its supporting records for application for not less than five years from the date of issuance of the Certificate of Origin.

2. The importer shall keep records relevant to the importation in accordance with the domestic laws and regulations of the importing Party.

3. The application for Certificates of Origin and all documents related to such application shall be retained by the issuing authority for not less than five years from the date of issuance.

4. The information related to the validity of a Certificate of Origin shall be furnished

upon request of the importing Party by an official authorized to sign a Certificate of Origin and certified by the appropriate government authorities.

5. Any information communicated between the Parties shall be treated as confidential in accordance with Article 4.6 (Confidentiality) and shall be used for the purposes of the validation of Certificates of Origin only.

**Article 3.19 : Treatment of Minor Discrepancies and Errors**

1. Where the origin of a good is not in doubt, the discovery of minor discrepancies, between the statements made in a Certificate of Origin and those made in the documents submitted to the customs authority of the importing Party for the purposes of carrying out the formalities for importing the good shall not *ipso facto* invalidate the Certificate of Origin, if it does in fact correspond to the good submitted.

2. Upon discovering minor errors in a Certificate of Origin that do not affect the originating status of the goods, the customs authority of the importing Party shall notify the importer of the errors that make the Certificate of Origin unacceptable.

3. The importer shall submit the appropriate correction of the Certificate of Origin or a new Certificate of Origin issued to replace the erroneous Certificate of Origin according to paragraph 7 of Article 3.14 within 30 days following the date of receipt of the notification.

4. If the importer fails to submit the correction or the new Certificate of Origin within the period referred to in paragraph 3, the competent authority of the importing Party may proceed to conduct verification under Article 3.21.

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

**Article 3.20 : Non-Party Invoice**

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

**Article 3.21 : Verification**

1. The importing Party may request the issuing authority[10] of the exporting Party to conduct a retroactive check at random or when the importing Party has a reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof, subject to the following procedures:

[10] For Korea, for the purposes of origin verification under this Article, "the issuing authority" refers to the customs authority in accordance with its customs laws and regulations.

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

(b) the issuing authority of the exporting Party shall, upon receipt of the origin verification request from the customs authority of the importing Party, promptly provide an acknowledgement of receipt of the request to the requesting authority by email or fax;

(c) the issuing authority of the exporting Party receiving the request for a retroactive check shall promptly respond to the request and provide the result within six months after receipt of the request. Otherwise, the importing Party may deny preferential tariff treatment to the good subject to the retroactive check;

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

(e) the issuing authority of the exporting Party shall promptly transmit the results of the verification process to the importing Party which shall then determine whether or not the subject good is originating. The entire process of the retroactive check, including the process of notifying the issuing authority of the exporting Party of the result of determination on whether or not the good is originating, shall be completed within 10 months. While the process of the retroactive check is being undertaken, subparagraph 1(d) shall be applied.

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

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

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

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

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

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

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

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

(b) the written notification mentioned in subparagraph 4(a) shall be as comprehensive as possible and shall include, *inter alia*:

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

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

(iii) the proposed date of the verification visit;

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

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

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

(d) when a written consent from the producer or exporter is not obtained within 30 days from the date of receipt of the notification pursuant to subparagraph 4(a)**,** the notifying Party may deny preferential tariff treatment to the good referred to in the Certificate of Origin that would have been subject to the verification visit; and

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

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

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

7. The producer or exporter shall be allowed 30 days from the date of receipt of the written determination to provide in writing comments or additional information regarding the

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

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

**Article 3.22 : Denial of Preferential Tariff Treatment**

Except as otherwise provided in this Chapter, the importing Party may deny a claim for preferential tariff treatment or recover unpaid duties in accordance with its domestic laws and regulations, where the good does not meet the requirements of this Agreement.

**Article 3.23 : Implementation of Direct Transport**

For the purposes of implementing Article 3.8, where transportation is effected through the territory of one or more intermediate countries, other than those of the exporting Party and the importing Party, the following shall be produced to the relevant government authorities of the importing Party:

(a) a through bill of lading issued in the territory of the exporting Party;

(b) a Certificate of Origin;

(c) a copy of the original commercial invoice in respect of the good; and

(d) other relevant supporting documents, if any, as evidence that the requirements of Article 3.8 are complied with.

**Article 3.24 : Transitional Provision for Goods in Transit or Storage**

The provisions of this Agreement may be applied to goods which comply with the provisions of this Chapter and which, on the date of entry into force of this Agreement, are either in transit, in temporary storage in customs warehouses or in free zones in the Parties, subject to the submission to the customs authorities of the importing Party, within 12 months of that date, of a Certificate of Origin issued retrospectively together with the documents showing that the goods have been transported directly in accordance with Articles 3.8 and 3.23.

**Article 3.25 : Implementation**

The Parties agree to review the origin certification system aside from Certificate of Origin three years from the date of entry into force of this Agreement, taking into due consideration the development of the domestic implementation procedures in the approved exporter system.

## Section C : Definitions

### Article 3.26 : Definitions

For the purposes of this Chapter:

**aquaculture** means the farming of aquatic organisms including fish, molluscs, 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;

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

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

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

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

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

**issuing authority** means the competent authority designated by the exporting Party to issue a Certificate of Origin and notified to the other Party in accordance with this Chapter;

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

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

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

**producer** means a person who carries out the production of goods in the territory of a Party;

**Product Specific Rules** means the rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a RVC or a combination of any of these criteria; and

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

## ANNEX 3-A

## PRODUCT SPECIFIC RULES

### Headnote

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 of origin, or specific set of rules of origin, that applies to a particular subheading, is set out immediately adjacent to the subheading.

3. When a subheading is subject to alternative specific rules of origin, the rule will be considered to be met if a good satisfies one of the alternatives.

4. 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.

5. 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.

6. For the purposes of this Annex:

**chapter** means the first two digits of the tariff classification number under the Harmonized System;

**heading** means the first four digits of the tariff classification number under the Harmonized System; and

**subheading** means the first six digits of the tariff classification number under the Harmonized System.

7. 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 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 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 six-digit level;

**RVC(XX)** means that the good must have a regional value content of not less than XX percent as calculated under Article 3.3; and

**WO** means that the good must be wholly produced or obtained in accordance with Article 3.2.

# CHAPTER 4
# CUSTOMS ADMINISTRATION AND TRADE FACILITATION

## Article 4.1 : Publication

1. Each Party shall, to the extent possible, publish, including on the internet, its customs laws, regulations, and general administrative procedures in English.

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

3. Each Party shall, to the extent possible, publish in advance any regulation of general application governing customs matters that it proposes to adopt and shall provide interested persons with the opportunity to comment before adopting them.

## Article 4.2 : Release of Goods

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

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

(a) provide for the release of goods within a period no greater than required to ensure compliance with its domestic customs laws and regulations;

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

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

(d) allow importers to withdraw goods prior to the final determination of customs duties, taxes, and fees by the importing Party's customs authority when these are not determined prior to or promptly upon arrival, provided that all other regulatory requirements have been met.[1]

## Article 4.3 : Automation

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

[1] A Party may require importers to provide guarantees in the form of sureties, deposits, or other appropriate instruments sufficient to cover payment of the customs duties, taxes, and fees it ultimately applies in connection with the importation of the good.

(a) make electronic systems accessible to customs users;

(b) endeavor to use international standards;

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

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

**Article 4.4 : Risk Management**

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

**Article 4.5 : Cooperation**

To the extent possible, the Parties affirm their commitments to facilitate the legitimate movement of goods and shall exchange expertise on measures to improve customs techniques and procedures on computerized systems, and other issues as the Parties mutually determine.

**Article 4.6 : Confidentiality**

1. A Party shall maintain the confidentiality of the information provided by the other Party pursuant to this Chapter and Chapter 3 (Rules of Origin and Origin Procedures), and protect it from disclosure that could prejudice the competitive position of the person providing the information. Any violation of the confidentiality shall be treated in accordance with the domestic laws and regulations 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 except to the extent that it may be required to be disclosed in administrative proceedings or subsequent appeal proceedings.

**Article 4.7 : Express Shipments**

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

(a) provide a separate and expedited customs procedures for express shipments;

(b) provide for information necessary to release an express shipment to be submitted and processed electronically before the shipment arrives;

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

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

(e) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments that do not exceed certain value established by the domestic laws and regulations of the Party.[2]

**Article 4.8 : Review and Appeal**

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

(a) a level of administrative review independent of the official or office that issued the determinations;[3] and

(b) judicial review of the determinations.

For greater certainty, each Party shall allow an exporter or producer to provide information directly to the Party conducting the review and to request that Party to treat that information as confidential in accordance with Article 4.6.

**Article 4.9 : Penalties**

Each Party shall adopt or maintain measures that allow for the imposition of penalties by a Party's customs authority for violations of its domestic customs laws, regulations, and procedural requirements, including those governing tariff classification, customs valuation, country of origin, and claims for preferential tariff treatment under this Agreement.

**Article 4.10 : Advance Rulings**

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

[2] Notwithstanding this subparagraph, a Party may require express shipments to be accompanied by an airway bill or another bill of lading. For greater certainty, a Party may assess customs duties or taxes, and may require formal entry documents, for restricted goods.

[3] For Korea, administrative review under this subparagraph may include review by Korea's Tax Tribunal.

exporter or producer in the territory of the other Party[4] with regard to:

(a) tariff classification;

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

(c) whether a good is originating; and

(d) other matters as the Parties may agree.

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

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

4. The issuing Party may modify or revoke an advance ruling where:

(a) the ruling was based on an error of fact or law (including human error);

(b) the information provided is false or inaccurate;

(c) there is a change in its domestic laws consistent with this Agreement; or

(d) there is a change in a material fact or circumstances on which the ruling was based.

5. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information provided by the applicant.

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

7. Subject to any confidentiality requirements in its domestic laws and regulations, each Party shall publish its advance rulings, including on the internet.

[4] For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorized representative.

**Article 4.11 : Consultations**

1. Each customs authority may request consultations with the other customs authority on any matter arising from the operation or implementation of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures). Such consultations shall be conducted through the relevant contact points.

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

**Article 4.12 : Customs Committee**

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

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

3. The functions of the Committee shall include:

(a) monitoring and implementing of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures)

(b) establishing uniform guidelines for the effective, uniform, and consistent interpretation of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures);

(c) revising Annex 3-A (Product Specific Rules) on the basis of the transposition of the Harmonized System;

(d) where necessary, finding solutions for issues related to tariff classification, customs valuation, calculation of the regional value content and other customs matters which may adversely affect trade facilitation between the Parties in the process of implementation of this Chapter or Chapter 3 (Rules of Origin and Origin Procedures); and

(e) reviewing revision, and reaching agreement on revision, of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

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

# CHAPTER 5
# SANITARY AND PHYTOSANITARY MEASURES

## Article 5.1 : Objectives

The objectives of this Chapter are to:

(a) enhance the Parties' implementation of the SPS Agreement, taking into account international standards, guidelines and recommendations developed by relevant international organizations;

(b) minimize negative effects on bilateral trade while protecting human, animal or plant life or health in the territories of the Parties; and

(c) strengthen technical cooperation and consultations between the competent authorities of the Parties.

## Article 5.2 : Scope and Definitions

1. This Chapter shall apply to the adoption or enforcement of all sanitary and phytosanitary (hereinafter referred to as "SPS") measures of a Party which may, directly or indirectly, affect bilateral trade between the Parties.

2. For the purposes of this Chapter:

(a) **SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures* in Annex 1A to the WTO Agreement; and

(b) the definitions contained in Annex A to the SPS Agreement shall apply.

## Article 5.3 : General Provisions

1. The Parties reaffirm their existing rights and obligations with respect to each other under the SPS Agreement, taking into account international standards, guidelines and recommendations developed by relevant international organizations.

2. Neither Party shall apply its SPS measures as an arbitrary or unjustifiable discrimination or a disguised restriction on trade between the Parties.

## 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, building capacity of the Parties, acquiring confidence between competent authorities of the Parties, and minimizing the negative effects on bilateral trade.

2. The Parties shall give due consideration to cooperation relating 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 or pest control methods, and laboratory testing techniques;

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

(d) exchanging information, upon request of a Party, on outbreak of any significant animal disease or incident related to food safety, and follow-up measures including related domestic regulations and their explanations;

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

(f) carrying out joint research and sharing the result of such research in SPS areas including animal disease, plant pest and food safety; and

(g) any other cooperative activity mutually agreed by the Parties.

**Article 5.5 : Committee on Sanitary and Phytosanitary Measures**

1. For the purposes of effective implementation and operation of this Chapter, the Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as the "Committee") comprising representatives of each Party's competent authorities of SPS matters.

2. The Committee's functions shall include:

(a) monitoring the implementation of this Chapter;

(b) providing a forum to exchange relevant information regarding each Party's SPS measures, which may, directly or indirectly, affect trade between the Parties;

(c) conducting consultations on and review of any matter relating to the development or application of SPS measures that affect, or may affect, trade between the Parties, and if necessary, upon request of a Party, giving positive consideration to establishing technical working group, within a reasonable period of time, on the basis of terms and conditions to be agreed by the Committee;

(d) enhancing mutual understanding of each Party's SPS measures and the regulatory processes related to those measures;

(e) identifying, discussing and reviewing technical cooperation between the Parties including the cooperative efforts in international fora; and

(f) carrying out other functions mutually agreed by the Parties.

3. Each Party shall ensure that appropriate representatives with responsibility for SPS matters participate in the Committee meetings, and all decisions made by the Committee shall be by mutual agreement.

4. The Committee shall meet in person within one year from the date of entry into force of this Agreement and at least once annually thereafter or at any time mutually determined by the Parties. The meetings may be conducted via teleconference, via videoconference, or through other means as mutually agreed by the Parties.

5. In order to find the most effective way to implement the SPS Agreement, with respect to SPS measures adopted by a Party affecting bilateral trade, upon request of the other Party, the Parties shall, if necessary, enter into consultations on the basis of terms and conditions to be agreed by the Committee, within a reasonable period of time from the date of the request, with a view to seeking to address SPS matters of mutual interest of the Parties.

6. 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.

7. With a view to coordinating the Committee meetings and providing a means of information exchange within a reasonable period of time, the Parties shall designate the following contact points, ensuring the provided information is kept up to date:

(a) for Korea, the Ministry of Agriculture, Food and Rural Affairs; and

(b) for Viet Nam, the Ministry of Agriculture and Rural Development;

or their respective successors.

**Article 5.6 : Dispute Settlement**

The provisions of Chapter 15 (Dispute Settlement) shall not apply to any matter arising under this Chapter.

# CHAPTER 6
# TECHNICAL BARRIERS TO TRADE

## Article 6.1 : Objectives

The objectives of this Chapter are to:

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

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

(c) enhance joint cooperation between the Parties.

## Article 6.2 : 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, *mutatis mutandis*.

## Article 6.3 : Scope

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

2. Notwithstanding paragraph 1, this Chapter shall not apply to sanitary and phytosanitary measures as defined in Annex A to the *Agreement on the Application of Sanitary and Phytosanitary Measures* in Annex 1A to the WTO Agreement or to technical specifications prepared by governmental bodies for production or consumption requirements of such bodies.

## Article 6.4 : International Standards

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

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2.4, 5.4 and Annex 3 of the TBT Agreement exists, each Party shall apply the *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the*

*Agreement*[1] adopted on 13 November 2000 by the WTO Committee on Technical Barriers to Trade (hereinafter referred to as the "TBT Committee").

**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. Each Party shall give positive consideration to accepting the results of conformity assessment procedures of the other Party, even where those procedures differ from its own, provided that it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

2. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party with a view to increasing efficiency, avoiding duplication and ensuring cost effectiveness of the conformity assessments. In this regard, each Party may choose, depending on the situation of the Party and the specific sectors involved, a broad range of approaches. These may include, but are not limited to:

(a) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;

(b) adoption of accreditation or nomination procedures for qualifying conformity assessment bodies located in the territory of the other Party;

(c) designation of conformity assessment bodies located in the territory of the other Party;

(d) recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;

(e) voluntary arrangements between conformity assessment bodies in the territory of each Party; and

(f) supplier's declaration of conformity.

[1] Annex 2 to Part 1 of G/TBT/1/Rev.11 and the subsequent revisions

3. The Parties shall exchange information on their experience in the development and application of the approaches in subparagraphs 2(a) through (f) and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, upon request of the other Party, explain its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.

5. A Party shall, upon written request of the other Party, give positive consideration to accrediting, approving, or otherwise recognizing the conformity assessment bodies recommended by the other Party, which have a local presence in the former Party's territory.

6. The Parties shall endeavor to promote information exchange relating to the *APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment*.

**Article 6.7 : Transparency**

1. Upon request of the other Party, each Party shall provide, whenever possible, the other Party with an online link to, or a copy of, the complete text of the technical regulations and conformity assessment procedures which are notified according to Articles 2.9.3 and 5.6.3 of the TBT Agreement.

2. Each Party shall allow, whenever possible, a period of at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise.

3. 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.

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

5. The Parties shall ensure, whenever possible, that all adopted technical regulations and conformity assessment procedures are available on official websites.

**Article 6.8 : Joint Cooperation**

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

In particular, the Parties will seek to identify, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors.

2. These initiatives may include:

(a) information exchange on standards, technical regulations, and conformity assessment procedures;

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

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

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

3. A Party shall endeavor to give favorable consideration to any specific sector proposed by the other Party for further cooperation under this Chapter, for example, construction materials, cosmetics products, pharmaceutical products and medical devices, *et cetera*.

**Article 6.9 : Information Exchange**

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

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

**Article 6.10 : Committee on Technical Barriers to Trade**

1. For the purpose of the effective implementation and operation of this Chapter, the Committee on Technical Barriers to Trade (hereinafter referred to as the "Committee") shall be established. The Committee shall be composed of representatives of the Parties.

2. The functions of the Committee shall include:

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

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

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

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

(e) identifying mutually agreed priority sectors for enhanced cooperation, including giving favorable consideration to any proposal made by either Party,

(f) exchanging information, upon request of a Party, on standards, technical regulations, and conformity assessment procedures;

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

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

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

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

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

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

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

4. Where the Parties have had recourse to consultations under subparagraph 2(h), the Committee shall, if the Parties agree, constitute consultations according to the Article 15.4 (Consultations).

5. The Committee shall be coordinated by:

(a) for Korea, the Korean Agency for Technology and Standards; and

(b) for Viet Nam, the Directorate for Standards Metrology and Quality, Ministry of Science and Technology;

or their respective successors.

6. Each Party shall designate a contact point who shall have the responsibility to coordinate the implementation of this Chapter; and provide the other Party with the name of this designated contact point and the contact detail of relevant officials in that organization, including information on telephone, facsimile, e-mail and other relevant details. Each Party shall promptly notify the other Party of any change of its contact point or any amendment to the information of the relevant officials.

**Article 6.11 : Definitions**

1. For the purposes of this Chapter, **TBT Agreement** means the *Agreement on Technical Barriers to Trade*, in Annex 1A to the WTO Agreement.

2. The definitions of Annex 1 to the TBT Agreement shall apply.

# 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 that the imports of such originating good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good in the territory of the importing Party, the Party may take a safeguard measure in the form of:

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

(b) increasing 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 at the time the action is taken; or

(ii) the base rate of customs duty specified in the Schedule to Annex 2-A (Reduction or Elimination of Customs Duties) pursuant to Article 2.3 (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 a 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 a part of this Agreement, *mutatis mutandis*.

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

5. Neither Party may apply a safeguard measure:

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

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

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

6. Neither Party may apply a safeguard measure more than once against the same good.

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 customs duty rate shall be the rate that, according to the Party's Schedule to 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 constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

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

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

4. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of paragraphs 2 and 3 of Article 7.2.

5. The Party shall promptly refund any tariff increase if the investigation described in paragraph 2 of Article 7.2 does not result in a finding that the requirements of Article 7.1 are met. The duration of any provisional measure shall be counted as part of the period described in subparagraph 5(b) of Article 7.2.

**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 agree on compensation through consultations under paragraph 1 within 30 days after consultations begin, the Party against whose originating good the measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure.

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

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

5. The right of suspension referred to in paragraph 2 shall not be exercised for the first 24 months during which a safeguard measure is in effect, provided that the safeguard measure has been applied as a result of an absolute increase in imports and that the safeguard measure conforms to the provisions of 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, except that a Party taking a global safeguard measure may exclude imports of an originating good of the other Party if such imports are not a substantial cause of serious injury or threat thereof.

2. Upon request of the other Party, the Party intending to take safeguard measures shall promptly provide written notification of all pertinent information on the initiation of a

safeguard investigation, the preliminary determination and the final finding of the investigation.

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

(a) a safeguard measure; and

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

## Section B : Anti-dumping and Countervailing Duties

### Article 7.6 : General Provisions

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

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

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

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

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

(c) the investigating Party shall request an exporter or producer in the territory of the other Party for the timely response to its questionnaires. When the investigating Party finds major deficiency in information in a questionnaire response from relevant exporter or producer received before the deadline or requires clarifications for the purposes of investigation, the investigating Party shall demand missing information or request clarification of information concerning the answers to the questionnaires. This procedure shall not be used

to cause unwarranted delays in the investigation or to circumvent the deadlines which are provided in the Party's domestic laws and regulations.

**Article 7.7 : Notification and Consultations**

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

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

**Article 7.8 : Undertakings**

1. After a Party's competent authorities initiate an anti-dumping or countervailing duty investigation, 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 timeframes for offering and concluding any such undertaking if practicable.

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 adequate opportunity for consultations, to exporters of the other Party regarding proposed price undertakings which, if accepted, may result in suspension of the investigation without imposition of anti-dumping duties, through the means provided for in the Party's domestic laws, regulations 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 adequate opportunity for consultations, to the other Party and exporters of the other Party, regarding proposed undertakings on price, which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, through the means provided for in the Party's domestic laws, regulations and procedures.

**Article 7.9 : Investigation after Termination Resulting from a Review**

The Parties agree to examine, with special care, any application for initiation of an anti-dumping investigation on a good originating in the other Party and on which anti-dumping measures have been terminated in the previous 12 months as a result of a review. Unless this

pre-initiation examination indicates that the circumstances have changed, the investigation shall not proceed.

### Article 7.10 : Cumulative Assessment

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

## Section C : Committee on Trade Remedies

### Article 7.11 : Committee on Trade Remedies

1. The Parties hereby establish a Committee on Trade Remedies (hereinafter referred to as the "Committee"), comprising representatives at an appropriate level from relevant agencies of each Party who have responsibility for trade remedies matters, including anti-dumping, subsidies and countervailing measures, and safeguards issues.

2. The functions of the Committee shall include:

   (a) enhancing a Party's knowledge and understanding of the other Party's trade remedies laws, regulations, policies and practices;

   (b) overseeing the implementation of this Chapter;

   (c) improving cooperation between the Parties' authorities having responsibility for matters on trade remedies;

   (d) providing a forum for the Parties to exchange information on issues relating to anti-dumping, subsidies and countervailing measures and safeguards;

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

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

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

   (f) cooperating on any other matter that the Parties agree as necessary.

3. The Committee shall meet at least once a year and may meet more frequently as the Parties may agree.

## Section D : Definitions

### Article 7.12 : Definitions

For the purposes of this Chapter:

**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;

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

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

**transition period** means the ten-year period following the date this Agreement enters into force, except that for any good for which the Schedule to Annex 2-A (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.

# CHAPTER 8
# TRADE IN SERVICES

## Article 8.1 : Scope

1. This Chapter shall apply to measures by a Party affecting trade in services. Such measures include measures in respect of:

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

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

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

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

(a) central or local governments or authorities; and

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

3. This Chapter shall not apply to:

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

(b) 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 services;

(c) cabotage in maritime transport services;

(d) subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, except as provided for in Article 8.16; or

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

4. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in a manner to nullify or impair the benefits[1] accruing to the other Party under the terms of a specific commitment.

5. Articles 8.2 through 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 8.2 : National Treatment**

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 favorable than that it accords, in like circumstances, to its own services and service suppliers.

**Article 8.3 : Most-Favored-Nation Treatment**

1. If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party in which it provides treatment to services or service suppliers of that non-Party more favorable than that it accords, in like circumstances, to services or service suppliers of the other Party under this Agreement, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favorable than that provided under the agreement with the non-Party. The requested Party shall enter into consultations with the requesting Party bearing in mind the overall balance of benefits.

2. The treatment, as set out in paragraph 1, shall not include any preferential treatment accorded to services or service suppliers under:

(a) any existing bilateral, regional or international agreements with any non-Party; or

(b) any bilateral or plurilateral agreement among ASEAN Member States.

**Article 8.4 : Market Access**

[1] 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.

1. With respect to the market access through the modes of supply of trade in services defined in Article 8.20, a Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.[2]

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, are defined as:

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[3]

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

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

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

**Article 8.5 : Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.2 or 8.4, including those regarding qualifications**,** standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments.

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[2] If a Party undertakes a market access commitment relating to the supply of a service through the mode of supply referred to in subparagraph (a) of "trade in services" defined in Article 8.20 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allowing such movement of capital. If a Party undertakes a market access commitment relating to the supply of a service through the mode of supply referred to in subparagraph (c) of "trade in services" defined in Article 8.20, it is thereby committed to allowing related transfers of capital into its territory.

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

**Article 8.6 : Schedules of Specific Commitments**

1. Each Party shall set out in a Schedule the Specific Commitments it undertakes under Articles 8.2, 8.4, and 8.5. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate, the timeframe for implementation of such commitments; and

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

2. Measures inconsistent with Article 8.2 shall be inscribed in the column relating to Article 8.2, and measures inconsistent with Article 8.4 shall be inscribed in the column relating to Article 8.4.

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

**Article 8.7 : Transparency**

Further to Chapter 14 (Transparency):

(a) each Party shall establish or maintain appropriate mechanisms for responding to inquiries from the other Party regarding its regulations of general application relating to the subject matter of this Chapter;

(b) if, consistent with paragraphs 2 and 4 of Article 14.1 (Publication), a Party does not publish in advance, and provide opportunity for comment on, regulations of general application it proposes to adopt relating to the subject matter of this Chapter, it shall, upon request in writing by the other Party, address in writing, to the extent possible, the reasons for not doing so; and

(c) in accordance with its domestic laws and regulations, each Party shall allow a reasonable period of time between publication of final regulations of general application relating to the subject matter of this Chapter and their effective date.

**Article 8.8 : 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, upon request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

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

3. Where authorization 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. Upon request of the applicant, the competent authorities of the Party shall provide, without 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 Joint Committee shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall 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 entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraph 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 subparagraph (a), account shall be taken of international standards of relevant international organizations[4] applied by that Party.

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

**Article 8.9 : Recognition**

1. For the purposes of fulfillment of its respective standards or criteria for the authorization, licensing or certification of service suppliers, each Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or the relevant competent bodies or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in the other Party's territory should be recognized.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of service suppliers, or a disguised restriction on trade in services.

4. Each Party shall endeavor:

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

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

[4] 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.

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

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

**Article 8.10 : 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 specific commitments under this Chapter.

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

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

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

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

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

**Article 8.11 : Business Practices**

1. The Parties recognize that certain business practices of service suppliers, other than those falling under Article 8.10, may restrain competition and thereby restrict trade in services.

2. Each Party shall, upon request of the other Party (hereinafter referred to as the "requesting Party"), enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed (hereinafter referred to as the "requested Party"), shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party shall also provide other information available to the requesting

Party, subject to its domestic laws and regulations and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

**Article 8.12 : Payments and Transfers**[5]

1. Except under the circumstances envisaged in Article 8.13, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of any Party who is a member of the International Monetary Fund (hereinafter referred to as "IMF") under the *Articles of Agreement of the International Monetary Fund*, including the use of exchange actions which are in conformity with the *Articles of Agreement of the International Monetary Fund*, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 8.13 or upon request of the IMF.

**Article 8.13 : Restrictions to Safeguard the Balance of Payments**

1. Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may adopt or maintain restrictions on trade in services in accordance with Article XII of GATS.

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

**Article 8.14 : Denial of Benefits**

1. A Party may deny the benefits of this Chapter:

   (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;

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

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

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

[5] For greater certainty, Annex 9-C (Transfers) shall apply to this Article.

(c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party.

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

(a) if the juridical person is owned or controlled by a person or persons of a non-Party and the denying Party adopts or maintains measures with respect to the non-Party or a person or persons 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; or

(b) if the juridical person is owned or controlled by a person or persons of a non-Party or the denying Party and the juridical person has no substantial business activities in the territory of the other Party.

3. The denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party upon the other Party's request.

**Article 8.15 : Consultations for Safeguard**

In the event that the implementation of this Chapter causes substantial adverse impact to a service sector of a Party, the affected Party may request consultations with the other Party for the purposes of discussing any measure with respect to the affected service sector. Any measure taken pursuant to this Article shall be mutually agreed by the Parties. The other Party shall take into account the circumstances of the particular case and give sympathetic consideration to the Party seeking to take a measure.

**Article 8.16 : Subsidies**

1. If subsidies or grants by a Party significantly affect trade in services committed under this Chapter, the other Party may request consultations with a view to an amicable resolution of this matter.

2. Pursuant to this Chapter, a Party shall, upon request by the other Party, provide information on subsidies related to trade in services committed under this Chapter to the other Party.

**Article 8.17 : Modification of Schedules**

1. A Party may modify or withdraw any commitment in its Schedule of Specific Commitments, at any time after three years have elapsed from the date on which that commitment has entered into force, provided that:

(a) it notifies the other Party of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and

(b) it enters into negotiations with the other Party to agree to the necessary compensatory adjustment.

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

**Article 8.18 : Miscellaneous Provisions**

Annexes 8-A through 8-D and all future legal instruments agreed pursuant to this Chapter shall form an integral part of this Agreement.

**Article 8.19 : Renegotiation Based on the Negative List Approach**

1. If, after the entry into force of this Agreement, a Party ratifies any agreement on trade in services adopting a negative list approach with a non-Party, or non-Parties, the other Party may request the former to renegotiate the Chapters with the Annexes relating to trade in services and investment based on a negative list approach.

2. Upon such request, and subject to each Party's domestic procedures and requirements, the Parties shall enter into negotiations with an objective of concluding the negotiations within one year.

3. The Parties shall undertake the negotiations taking into account the overall balance of benefits between the Parties in the mutually agreed areas. At any event, the Parties shall not decrease the level of liberalization commitments of this Agreement at the negotiations.

4. Neither Party shall have recourse to Chapter 15 (Dispute Settlement) for any matter arising under this Article.

**Article 8.20 : Definitions**

For the purposes of this Chapter:

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

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

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

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

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

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

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

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

(i) a natural person of the other Party; or

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

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;

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

**natural person of the other Party** means a natural person who resides in the territory of the other Party or elsewhere, and who is a national of the other Party under the domestic laws and regulations of that Party;

**sector of a service** means:

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

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

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

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

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

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

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

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

**service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

**service supplier** means any person that supplies a service;[6]

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

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

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

[6] 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 commercial 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 part of the supplier located outside the territory where the service is supplied.

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

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

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

**traffic rights** means the right for scheduled and non-scheduled services to operate 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.

# CHAPTER 9
# INVESTMENT

## Section A : Investment

### Article 9.1 : Scope

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

   (a) investors of the other Party;

   (b) covered investments; and

   (c) with respect to Article 9.9, all investments in the territory of the Party.[1]

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

3. This Chapter shall not apply to:

   (a) measures adopted or maintained by a Party relating to government procurement;

   (b) subsidies or grants provided by a Party or to any condition attached to the receipt or continued receipt of such subsidies or grants, except for Article 9.9, whether or not such subsidies or grants are offered exclusively to domestic investors or investments; or

   (c) measures adopted or maintained by a Party affecting the supply of services by a service supplier of the other Party in its territory pursuant to Chapter 8 (Trade in Services) regardless of whether or not specific services sectors[2] are scheduled in the Party's Schedule of Specific Commitments in Annex 8-D (Schedule of Specific Commitments).

4. Notwithstanding subparagraph 3(c), Articles 9.5 through 9.8 and 9.14, and Section B[3] shall apply, *mutatis mutandis*, to any measure affecting the supply of service by a service

[1] For greater certainty, an investor of a non-Party shall not claim any right based on this Chapter.

[2] For the purposes of the relationship between Chapter 8 (Trade in Services) and this Chapter, the Parties confirm that services encompass any service in any sector including, but not limited to those classified in service sectors, subsectors and activities under the Services Sectoral Classification List of the WTO contained in the document MTN.GNS/W/120, dated 10 July 1991.

[3] For greater certainty, the Annexes and exceptions to the above mentioned Articles are an integral part of this paragraph.

supplier of a Party through commercial presence[4] in the territory of the other Party pursuant to the provisions of Chapter 8 (Trade in Services), only to the extent that they relate to a covered investment.

**Article 9.2 : Relation to Chapter 8 (Trade in Services)**

In the event of any inconsistency between this Chapter and Chapter 8 (Trade in Services), Chapter 8 (Trade in Services) shall prevail to the extent of the inconsistency.

**Article 9.3 : National Treatment**

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

**Article 9.4 : Most-Favored-Nation Treatment**

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

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

3. The treatment, as set out in paragraphs 1 and 2, shall not include:

   (a) any preferential treatment accorded to investors or their investments under any existing bilateral, regional or international agreements or any forms of economic or regional cooperation with any non-Party; and

   (b) any existing or future preferential treatment accorded to investors or their investments in any agreement or arrangement between or among ASEAN Member States.

4. Notwithstanding paragraphs 1 and 2, if a Party accords more favorable treatment to investors of any non-Party or their investments by virtue of any future agreements or arrangements to which the Party is a party, it shall not be obliged to accord such treatment to investors of the other Party or their investments. However, upon request of the other Party, it shall accord adequate opportunity to negotiate the benefits granted therein.

[4] Commercial presence shall have the same meaning as that in Chapter 8 (Trade in Services).

**Article 9.5 : Standard of Treatment**[5]

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

2. The concepts of "fair and equitable treatment" and "full protection and security" in this Article do not require treatment in addition to or beyond that which is required by the applicable rules of customary international law and do not create additional substantive rights. For greater certainty:

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

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

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

**Article 9.6 : Compensation for Losses**

1. Each Party shall accord to investors of the other Party, and to covered investments, treatment no less favorable than that accorded, in like circumstances, to its own investors or to investors of any non-Party, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory due to war or other armed conflict, or revolt, insurrection, riot, or other civil strife.

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

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

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

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective.

**Article 9.7 : Expropriation and Compensation**[6]

[5] This Article shall be interpreted in accordance with Annex 9-A.
[6] This Article shall be interpreted in accordance with Annex 9-B.

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

(a) for a public purpose;

(b) in a non-discriminatory manner;

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

(d) in accordance with due process of law.

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

(a) be paid without undue delay;

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

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

(d) be fully realizable and freely transferable.

3. The compensation referred to in subparagraph 1(c) shall include appropriate interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party, or if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely usable currency, the compensation referred to in subparagraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. Notwithstanding paragraphs 1 through 4, in the case where Viet Nam is the expropriating Party, any measure of expropriation relating to land, which shall be as defined in its existing domestic laws and regulations on the date of entry into force of this Agreement, shall be, for a purpose, and upon payment, of compensation, made in accordance with the aforesaid laws and regulations. Such compensation shall be subject to any subsequent amendment to the aforesaid laws and regulations relating to the amount of compensation where such amendment follows the general trends in the market value of the land.

6. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation, or creation of intellectual property rights, in accordance with the TRIPS Agreement.

**Article 9.8 : Transfers**[7]

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

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

(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 9.6 and 9.7; and

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

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

3. 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 domestic laws and regulations relating to:

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

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

(c) criminal or penal offenses;

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

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

(f) social security, public retirement or compulsory savings scheme;

(g) severance entitlement of employees; and

[7] For greater certainty, Annex 9-C applies to this Article.

(h) taxation.

**Article 9.9 : Performance Requirements**

1. Neither Party shall impose or enforce any of the following requirements, relating to the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party:

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

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

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

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

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

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

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

2. Paragraph 1 shall not be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, relating to the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of the other Party or a non-Party, on compliance with any of the requirements set forth in subparagraphs 1(e) through 1(g).

3. For greater certainty, paragraphs 1 and 2 shall not apply to any requirement other than the requirements set out in those paragraphs.

4. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties.

5. Nothing in this Article shall be construed to derogate from the rights and obligations of the Parties under the *Agreement on Trade-Related Investment Measures* in Annex 1A to the WTO Agreement.

**Article 9.10 : Senior Management and Boards of Directors**

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

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

**Article 9.11 : Denial of Benefits**

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

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

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

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise. The denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party upon the other Party's request.

**Article 9.12 : Non-Conforming Measures**

1. Articles 9.3, 9.4, 9.9, and 9.10 shall not apply to:

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

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

(ii) a local level of government;[8]

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of Annex I, with Articles 9.3, 9.4, 9.9, and 9.10.

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

2. Articles 9.3, 9.4, 9.9, and 9.10 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in Annex II.

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

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

5. The Parties shall begin negotiations on Annexes I and II immediately after the entry into force of this Agreement with a view to concluding them within one year from the date of entry into force of this Agreement:

(a) Articles 9.3, 9.4, 9.9, and 9.10 shall not apply until Annexes I and II have entered into force; and

(b) The Parties shall make best endeavor to reflect the most advanced level of liberalization commitments in the Schedules of their agreements on investment at the time of the negotiations to ensure the overall balance of benefits of the Parties.[9]

**Article 9.13 : Special Formalities and Information Requirements**

1. Nothing in Article 9.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under its domestic laws and regulations,[10] provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 9.3 and 9.4, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its domestic laws and regulations.

[9] For greater certainty, the negotiations on Schedules to Annexes I and II do not affect the scope of this Chapter and paragraphs 1 through 4 of this Article.

[10] For greater certainty, for Viet Nam, this requirement includes the requirement that the covered investment to be registered in accordance with the laws and regulations of Viet Nam.

## Article 9.14 : Subrogation

1. Where a Party or an agency authorized by that Party has granted a contract of insurance or any form of financial guarantee against non-commercial risks with regard to a covered investment by one of its investors in the territory of the other Party and when payment has been made under this contract or financial guarantee by the former Party or the agency authorized by it, the latter Party shall recognize the rights of the former Party or the agency authorized by the former Party by virtue of the principle of subrogation to the rights of the investor.[11]

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

## Section B : Investor-State Dispute Settlement

## Article 9.15 : Scope of Investor-State Dispute Settlement[12]

1. This Section shall apply to investment disputes between a Party and an investor of the other Party concerning a claim that the former Party has breached an obligation under Section A, other than Articles 9.11 through 9.14 and the breach has caused loss or damage, by reason of, or arising out of, that breach to:

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

(b) the covered investment that has been made by that investor,

relating to the management, conduct, operation or sale or other disposition of a covered investment.

2. A natural person possessing the nationality or citizenship of a Party shall not pursue a claim against that Party under this Chapter.

## Article 9.16 : Consultation and Negotiation

In the event of an investment dispute, the disputing investor and the disputing Party shall initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding third-party procedures. Consultations shall be held within 30 days of the submission of the notice of intent to submit a claim to arbitration, unless the disputing parties agree otherwise.

[11] For greater certainty, the subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

[12] An investment may not make a claim under this Section.

**Article 9.17 : Notice of Intent to Submit a Claim to Arbitration**

1. The disputing investor shall deliver to the disputing Party written notice of its intent to submit a claim to arbitration (hereinafter referred to as the "Notice of Intent") at least 90 days before submitting the claim. The Notice of Intent shall specify:

(a) the name and address of the disputing investor;

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

(c) the legal and the factual basis for the claim, including the measures at issue; and

(d) the relief sought and the approximate amount of damages claimed.

2. The disputing investor shall also deliver with its Notice of Intent, evidence establishing that it is an investor of the other Party.

**Article 9.18 : Conditions Precedent to Submission of a Claim to Arbitration**

1. A disputing investor may submit a claim to arbitration pursuant to Article 9.15 only if:

(a) the disputing investor consents to arbitration in accordance with the procedures set out in this Agreement;

(b) at least six months have elapsed since the events giving rise to the claim;

(c) not more than three years have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby;

(d) the disputing investor has delivered the Notice of Intent required under Article 9.17; and

(e) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate before an administrative tribunal or court under the domestic laws and regulations of any Party, or other dispute settlement procedures, proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in paragraph 1 of Article 9.15, except for proceedings for interim injunctive relief, not involving the payment of damages, before an administrative tribunal or court under the domestic laws and regulations of the disputing Party.[13]

[13] For greater certainty, the interim injunctive relief can be pursued only if the action is brought for the sole purpose of preserving the disputing investor's rights and interests during the pendency of the arbitration.

2. A consent and waiver required by this Article shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

3. A waiver from the enterprise under subparagraph 1(e) shall not be required only if a disputing Party has deprived a disputing investor of control of the enterprise.

4. Failure to meet any of the conditions provided for in paragraphs 1 through 3 nullifies the consent of the Parties given in Article 9.20.

**Article 9.19 : Submission of a Claim to Arbitration**

1. A disputing investor who meets the conditions provided for in Article 9.18 may submit the claim to arbitration:[14]

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, if both Parties are party to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, if only one Party is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules; or

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

2. The applicable arbitration rules shall govern the arbitration unless they are modified by this Section.

3. Once the investor has submitted the dispute to the courts or administrative tribunals of the disputing Party or any of the arbitration mechanisms provided for in paragraph 1, such choice of forum shall be final.

4. A claim shall be deemed submitted to arbitration under this Section when:

(a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party; or

(d) the notice of, or request for, arbitration referred to under any arbitral institution

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[14] For greater certainty, a disputing investor may submit the dispute referred to in Article 9.15 to the courts or administrative tribunals of the disputing Party.

or arbitral rules selected under subparagraph 1(d) is received by the disputing Party.

**Article 9.20 : Consent to Arbitration**

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

2. The consent given in paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of:

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

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

**Article 9.21 : Arbitrators**

1. Except in respect of a Tribunal established pursuant to Article 9.22, and unless the disputing parties agree otherwise, the Tribunal shall be composed of three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. Arbitrators must:

(a) have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements; and

(b) be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor.

3. The disputing parties should agree on the arbitrators' remuneration. If the disputing parties do not agree on such remuneration before the Tribunal is constituted, the prevailing ICSID rate for arbitrators applies.

4. If a Tribunal, other than a Tribunal established pursuant to Article 9.22, is not constituted within 90 days from the date that a claim is submitted to arbitration, the Appointing Authority, at the request of either disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The presiding arbitrator shall not be a national of either Party.

**Article 9.22 : Consolidation**

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, unless otherwise provided for in this Section.

2. If a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article 9.19 have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

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

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing Party that seeks an order under paragraph 2 shall request that the Appointing Authority establish a Tribunal and shall specify in the request:

(a) the name of the disputing investors against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds for the order sought.

4. The disputing Party shall deliver a copy of the request to the disputing investors against which the order is sought.

5. The Secretary-General shall, within 60 days of receipt of the request, establish a Tribunal composed of three arbitrators who shall be chosen at the discretion of the Secretary-General.

6. If a Tribunal is established pursuant to this Article, a disputing investor that has submitted a claim to arbitration pursuant to Article 9.19 and that has not been named in paragraph 2 may submit a written request to the Tribunal that it be included in an order made pursuant to paragraph 2, and shall specify in the request:

(a) the name and address of the disputing investor;

(b) the nature of the order sought; and

(c) the grounds for the order sought.

7. A Tribunal established pursuant to Article 9.19 does not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established pursuant to this Article has assumed jurisdiction.

**Article 9.23 : Conduct of the Arbitration**

1. Upon request of the Tribunal, on written notice to the disputing parties, the non-disputing Party may make oral or written submissions to a Tribunal on a question of interpretation of this Agreement. Upon request of a disputing party, the non-disputing Party

shall submit its oral submission in writing.

2. Unless otherwise agreed by the disputing parties, a Tribunal shall hold an arbitration in the territory of a Party that is party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules, if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules, if the arbitration is under those Rules.

3. Unless otherwise agreed by the disputing parties, the Tribunal may determine a place for meetings and hearings, other than the legal place of arbitration. In doing so, the Tribunal shall take into consideration, its convenience for the parties and the arbitrators, the location of the subject matter, and the proximity of the evidence.

4. If issues relating to jurisdiction or admissibility are raised as preliminary objections, the Tribunal shall, whenever possible, decide the matter before proceeding to the merits. The disputing parties shall be given a reasonable opportunity to present their views and observations to the Tribunal. If the Tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the Tribunal, it shall render an award to that effect.

5. The Tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the Tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

6. The Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. The Tribunal shall not order the seizure of assets nor may it prevent the application of the measure alleged to constitute a breach referred to in Article 9.15. For the purposes of this Article, an order shall include a recommendation.

7. Unless otherwise agreed by the disputing parties, the language of the arbitration proceedings, including hearings, decisions, and awards, shall be:

(a) Korean and English if Korea is a disputing Party; and

(b) Vietnamese and English if Viet Nam is a disputing Party.

**Article 9.24 : Joint Interpretation**

1. The interpretation by the Joint Committee of a provision of this Agreement[15] shall be binding on a Tribunal established under this Section and an award under this Section shall be consistent with that interpretation.

[15] For greater certainty, "a provision of this Agreement" includes all the Annexes to this Agreement.

2. If the disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or II, the Tribunal shall, upon request of that disputing Party, request the Joint Committee to interpret the issue. Within 60 days of delivery of the request, the Joint Committee shall submit in writing its interpretation to the Tribunal. The interpretation shall be binding on the Tribunal. If the Joint Committee fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

**Article 9.25 : Final Award**

1. If the Tribunal makes a final award against a disputing Party, the Tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; or

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

The Tribunal may also award costs in accordance with the applicable arbitration rules.

2. The Tribunal shall not order a disputing Party to pay punitive damages.

**Article 9.26 : Finality and Enforcement of an Award**

1. An award made by the Tribunal does not have binding force except between the disputing parties and in respect of that particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

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

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

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

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

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

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

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

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

5. The mechanism for the settlement of investment disputes established under this Section is without prejudice to the rights and obligations of the Parties under Chapter 15 (Dispute Settlement).

6. A disputing party may seek to enforce an arbitration award under the ICSID Convention, or the New York Convention.

7. A claim that is submitted to arbitration under this Section is considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

**Article 9.27 : Service of Documents**

Notices and other documents shall be delivered to a Party at the place named for that Party below:

(a) for Korea:
International Legal Affairs Division
Ministry of Justice
Building #1, Government Complex-Gwacheon
47, Gwanmun-ro, Gwacheon-si, Gyeonggi-do
Republic of Korea; and

(b) for Viet Nam:
Ministry of Justice of Viet Nam
60, Tran Phu Street, Ha Noi
Viet Nam;

or their respective successors.

## Section C : Definitions

**Article 9.28 : Definitions**

For the purposes of this Chapter:

**Appointing Authority** means:

(a) in the case of arbitration or conciliation under the ICSID or ICSID Additional Facility Rules in subparagraphs 1(a) and 1(b) of Article 9.19, Secretary-General of ICSID;

(b) in the case of arbitration under the UNCITRAL Rules in subparagraph 1(c) of Article 9.19, the Secretary-General of the Permanent Court of Arbitration; or

(c) any person as agreed between the disputing parties;

**covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and has been admitted[16] in accordance with its domestic laws and regulations;

**disputing investor** means an investor that makes a claim under Section B;

**disputing parties** means a disputing investor and a disputing Party;

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

**disputing party** means either a disputing investor or a disputing Party;

**enterprise** means any entity constituted or organized under applicable laws and regulations, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, or association, and a branch[17] of an enterprise;

**enterprise of a Party** means an enterprise constituted or organized under the domestic laws and regulations of a Party, and a branch[18] located in the territory of a Party and carrying out business activities there;

**freely usable currency** means any currency designated as such by the International Monetary Fund (IMF) under its Articles of Agreement and any amendments thereto;

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

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

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

[16] For greater certainty, for Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be."

[17] For greater certainty, a branch of a legal entity of a non-Party shall not be considered as an enterprise of a Party.

[18] For greater certainty, the branch in this term is that of an enterprise organized and constituted under the laws of that Party. A branch of a legal entity of a non-Party shall not be considered as an enterprise of a Party.

**investment** means[19] every asset that an investor owns or controls, that 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 an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise and rights derived therefrom including futures and options;

(c) bonds, debentures, loans and other forms of debt instruments[20] of an enterprise including rights derived therefrom;

(d) turnkey, construction, management, production, concession, revenue-sharing, and other business concessions[21]conferred by laws or under contract;

(e) intellectual property rights; and

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

but **investment** does not include claims to payment that arise solely from:

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

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

**investor of a non-Party** means, with respect to a Party, an investor that is seeking to make[22], is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

**investor of a Party** means a natural person or an enterprise of a Party, a Party[23] that is seeking to make,[24] is making, or has made an investment in the territory of the other Party;

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

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

[21] Business concessions may include investment funds for projects such as Build-Operate and Transfer (BOT) and Build-Operate and Own Schemes (BOO).

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

[23] For greater certainty, a Party may not pursue a claim against the other Party under Section B in all circumstances.

**natural person of a Party** means any natural person possessing the nationality or citizenship of that Party in accordance with its domestic laws and regulations;

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

**non-disputing Party** means the Party of the disputing investor;

**returns** means amounts yielded by or derived from an investment particularly, though not exclusively, any profits, interests, capital gains, dividends, royalties or fees;

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

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law as revised in 2010.[25]

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

[25] For greater certainty, UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applied in this Chapter.

## ANNEX 9-A

## CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 9.5 and Annex 9-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 9.5, the applicable rules of customary international law refer to all customary international law principles that protect the economic rights and interests of aliens.

## ANNEX 9-B

## EXPROPRIATION

The Parties confirm their shared understanding that:

(a) an action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment;

(b) paragraph 1 of Article 9.7 addresses two situations. The first is direct expropriation, where a covered investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure;

(c) the second situation addressed by paragraph 1 of Article 9.7 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:

(i) the determination of whether an action or a series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:

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

(B) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(C) the character of the government action, including its objectives and context.[26];

(ii) except in rare circumstances, such as, for example, when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, do not constitute indirect expropriations.[27, 28]

[26] For greater certainty, for Korea, relevant considerations may include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest.

[27] For greater certainty, this subparagraph includes the right of the Party to exercise its regulatory actions in accordance with its Constitution.

[28] For greater certainty, the list of "legitimate public welfare objectives" in this subparagraph is not exhaustive. It may include measures such as the real estate price stabilization (through, for example, measures to improve the housing conditions for low-income households).

## ANNEX 9-C

## TRANSFERS

1. Nothing in this Chapter or Chapter 8 (Trade in 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 economic or financial disturbance or serious difficulties for the operation of monetary policy or exchange rate policy in either Party.

2. The measures referred to in paragraph 1:

(a) shall be phased out within one year or when conditions would no longer justify their institution or maintenance;[29]

(b) shall be consistent with the *Articles of Agreement of the International Monetary Fund* (hereinafter referred to as "Articles of Agreement"), as may be amended;

(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 other Party;

(e) shall be temporary and phased out progressively as the situation calling for imposition of such measures improves;

(f) shall promptly be notified to the other Party; and

(g) shall be applied in a manner consistent with Articles 9.3 and 8.2 (National Treatment) and Articles 9.4 and 8.3 (Most-Favored-Nation Treatment) subject to the Schedules set out in Annexes I and II[30] and Annex 8-D (Schedule of Specific Commitments).[31]

[29] For greater certainty, the measures may be extended beyond the one year period should conditions warrant.

[30] This subparagraph shall not apply until the Parties' Schedules to Annexes I and II have entered into force.

[31] For greater certainty, the measures referred to in paragraph 1 which are within the scope of this Chapter shall be applied in a manner consistent with Articles 9.3 and 9.4 subject to the Schedules set out in Annexes I and II, and the measures referred to in paragraph 1 which are within the scope of Chapter 8 shall be applied in a manner consistent with Articles 8.2 and 8.3 subject to the Schedules set out in Annex 8-D(Schedule of Specific Commitments), respectively.

3. Nothing in this Chapter or Chapter 8 (Trade in Services) shall be regarded to affect the rights enjoyed and obligations undertaken by a Party as party to the Articles of Agreement, including the use of exchange actions which are in conformity with the Articles of Agreement.

# CHAPTER 10
# ELECTRONIC COMMERCE

## Article 10.1 : General Provisions

The Parties recognize the economic growth and opportunity that electronic commerce provides, and the importance of promoting electronic commerce between the Parties, enhancing cooperation between the Parties regarding the development of electronic commerce, and promoting the wider use of electronic commerce globally.

## Article 10.2 : Customs Duties

1. A Party may not impose customs duties on electronic transmissions in compliance with any agreement relating to electronic commerce under the WTO, to which both Parties are party.

2. For greater certainty, nothing in paragraph 1 shall preclude a Party from imposing internal taxes, fees, or other internal charges on content transmitted electronically.

## Article 10.3 : Electronic Authentication, Electronic Signatures and Digital Certificates

1. Each Party shall endeavor to adopt or maintain legislation for electronic authentication that would:

(a) permit parties to an electronic transaction to mutually determine the appropriate authentication technologies and implementation models for their electronic transactions;

(b) permit parties to an electronic transaction to have the opportunity to prove that their electronic transaction complies with the Party's domestic laws and regulations in respect to electronic authentication; and

(c) not limit the recognition of authentication technologies and implementation models.

2. The Parties shall, where possible, endeavor to work towards the mutual recognition of digital certificates and electronic signatures that are issued or recognized by them based on internationally accepted standards.

3. The Parties shall encourage the interoperability of digital certificates used by business.

## Article 10.4 : Domestic Regulatory Frameworks

Each Party shall endeavor to adopt or maintain its domestic laws and regulations governing electronic transactions taking into account the *UNCITRAL Model Law on Electronic Commerce 1996.*

**Article 10.5 : Online Consumer Protection**

1. The Parties shall endeavor to adopt or maintain transparent measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

2. Each Party shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant domestic laws, regulations and policies.[1]

**Article 10.6 : Personal Data Protection**

1. Each Party shall endeavor to adopt or maintain legislative measures which ensure the protection of the personal data of the users of electronic commerce. In the development of personal data protection standards in electronic commerce, each Party recognizes the importance of taking into account the international standards and the criteria of relevant international organizations.

2. Each Party recognizes the necessity of taking an adequate level of safeguards for the protection of personal data of the users of electronic commerce that is transferred between the Parties.

**Article 10.7 : Paperless Trading**

1. Each Party shall endeavor to make electronic versions of its trade administration documents publicly available.

2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.[2]

3. Each Party shall, where possible, work towards the implementation of initiatives which provide for the use of paperless trading.

**Article 10.8 : Cooperation on Electronic Commerce**

[1] A Party shall not be obliged to apply this paragraph before the date on which that Party enacts its domestic laws or regulations or adopts policies on protection for consumers using electronic commerce.

[2] For Viet Nam, the obligation may be applied, where possible, in compliance with its domestic laws and regulations on respective sectors.

1. Recognizing the global nature of electronic commerce, the Parties shall maintain mechanisms on cooperation, including research and training activities, which would enhance the development of electronic commerce. These may include, but are not limited to:

(a) the electronic signatures and the electronic authentication;

(b) the security of electronic commerce, including protection of personal data and online consumers and facilitation of prompt investigation and resolution of fraudulent incidents;

(c) the promotion of the use of electronic versions of trade administration documents used by either Party;

(d) exploring ways to provide assistance between the Parties in implementing an electronic commerce legal framework; and

(e) actively participating in regional and multilateral fora to promote development of electronic commerce.

2. The Parties shall endeavor to share information and experiences on laws and regulations relating to electronic commerce and to assist small and medium enterprises to overcome the obstacles encountered in the use of electronic commerce.

3. Each Party shall, to the extent possible, make cooperative efforts with competent authorities when personal data transferred across its borders are leaked.

4. The Parties recognize the importance of cooperation between their respective national consumer protection authorities on activities related to cross-border electronic commerce in order to enhance consumer welfare.

**Article 10.9 : Definitions**

For the purposes of this Chapter:

**digital certificates** means electronic documents or files that are issued or otherwise linked to a participant in an electronic communication or transaction for the purpose of establishing the participant's identity;

**electronic signature** means data in electronic form 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; and

**trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

# CHAPTER 11
# COMPETITION

## Article 11.1 : Objectives

The Parties recognize the importance of undistorted competition in their trade relations. The Parties understand that proscribing anti-competitive practices of enterprises, implementing competition laws[1] and 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 11.2 : Principles in Law Enforcement

1. Each Party shall adopt or maintain comprehensive competition laws that promote competition in its market by proscribing anti-competitive practices, and shall take appropriate actions with respect to anticompetitive practices with the objective of promoting economic efficiency and consumer welfare.

2. Each Party shall maintain an authority or authorities responsible for the enforcement of its competition laws.

3. The enforcement of a Party's competition laws shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness.

## Article 11.3 : Implementation

1. The Parties recognize the value of making the enforcement of their competition laws as transparent as possible and shall endeavor to publish or otherwise make publicly available their laws and regulations addressing fair competition, including information on any exemption provided under such laws and regulations.

2. Each Party shall ensure that any exemption provided under its competition laws shall be transparent and undertaken on the grounds of public policy or public interest.

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[1] For greater clarity, the respective competition laws shall effectively address:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention of new entry into the market, restriction or distortion of competition;

(b) abuses by one or more enterprises of a dominant or monopoly position; and

(c) economic concentrations which are conduct of enterprises comprising merger of enterprises, consolidation of enterprises, acquisition of an enterprise, joint venture between enterprises, and other forms of concentration of enterprises.

3. Each Party shall ensure that all official decisions by its competition authorities finding a violation of its competition laws are in writing and set out any relevant findings of fact and the reasoning and legal analysis on which the decisions are based. Each Party shall further ensure that the decisions are notified to the persons concerned. The version of the decisions may omit business confidential information that is protected by its domestic laws and regulations from public disclosure.

4. Upon request of the other Party, a Party shall make available to the requesting Party public information concerning the enforcement policies and practices of its competition laws.

5. Each Party shall ensure that a person subject to investigation is afforded the opportunity to be heard and to present evidence in a hearing. Each Party shall also provide a person subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to raise complaint about the sanction or remedy through administrative and judicial review in accordance with its competition laws.

**Article 11.4 : Application of Competition Laws**

1. All enterprises engaged in economic activities, regardless of their ownership, whether state or private, shall be subject to the competition legislation referred to in Article 11.2, in so far as the application of such rules does not obstruct the performance, in law and in fact, of the particular public tasks assigned to them.

2. Each Party shall ensure that enterprises operating in the state-monopolized sectors and domains do not adopt or maintain any anti-competitive practices based on its competition laws.

**Article 11.5 : Cooperation**

1. The Parties recognize the importance of cooperation and coordination between their respective competition authorities to promote the effective enforcement of their respective competition laws and to fulfill the objectives of this Agreement. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

2. Each Party, through its competition authority, shall notify the competition authority of the other Party of an enforcement activity regarding anti-competitive practices in due course when the competition authority of a Party becomes aware that the important interests of the other Party are likely to be affected, provided that it is not contrary to each Party's competition laws and does not affect any investigations being carried out.

3. The competition authority of a Party may request coordination from the competition authority of the other Party with respect to a specific case, when important interests of the requesting Party are substantially affected. Such request is without prejudice to the full freedom of the final decision of the competition authority concerned. The other Party may accord sympathetic considerations to such request, as appropriate and in accordance with its competition laws.

**Article 11.6 : Exchange of Information**

The competition authority of a Party shall, upon request of the competition authority of the other Party, endeavor to provide available information to facilitate effective enforcement of its competition laws provided that it is not confidential information.

**Article 11.7 : Confidentiality**

1. Each Party shall maintain the confidentiality of any information provided in confidence by the competition authority of the other Party.

2. The competition authority of a Party shall not disclose such information to any entity that is not authorized by the competition authority providing the information.

**Article 11.8 : Consultation**

1. To foster mutual understanding between the Parties or to address specific matters that arise under this Chapter and without prejudice to the autonomy of each Party to develop, maintain and enforce its competition laws and policies, a Party shall, upon request of the other Party, enter into consultations on issues raised by the requesting 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 sympathetic consideration to the concerns of the other Party.

**Article 11.9 : Technical Assistance**

The Parties may engage in technical assistance activities subject to their reasonably available resources in the field of competition, including:

(a) exchange of experience regarding the promotion and enforcement of competition laws and policies;

(b) exchange of publicly available information about competition laws and policies;

(c) exchange of officials for training purposes;

(d) exchange of consultants and experts on competition laws and policies;

(e) participation of officials as lecturers, consultants, or participants at training courses on competition laws and policies;

(f) participation of officials in advocacy programs;

(g) exchange of information and experiences on activities related to competition advocacy and the promotion of competition culture; and

(h) any other form of technical cooperation as agreed by the Parties.

**Article 11.10 : Dispute Settlement**

The provisions of Chapter 15 (Dispute Settlement) shall not apply to any matter arising under this Chapter.

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**Article 11.11 : Definitions**

For the purposes of this Chapter:

**competition authority** means:

(a) for Korea, the Korea Fair Trade Commission; and

(b) for Viet Nam, Vietnam Competition Authority and Vietnam Competition Council;

or their respective successors; and

**competition laws** means:

(a) for Korea, the *Monopoly Regulation and Fair Trade Act* and its implementing regulations;

(b) for Viet Nam, *Competition Law of Viet Nam* and its implementing regulations; and

(c) any change that the above-mentioned legislation may undergo after the entry into force of this Agreement.

# CHAPTER 12
# INTELLECTUAL PROPERTY

## Article 12.1 : Objectives

The objectives of this Chapter are to:

(a) enhance the role of intellectual property in promoting economic and social development, particularly in relation to technological innovation, transfer and dissemination of technology and trade;

(b) reduce impediments to trade and investment through effective and adequate creation, utilization, protection and enforcement of intellectual property rights, taking into account the different levels of economic development and capacity as well as differences in their national legal systems;

(c) maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users and the community in subject matters protected by intellectual property; and

(d) ensure that the intellectual property rights are effectively enforced with a view, *inter alia*, to eliminating trade in goods infringing intellectual property rights and that measures and procedures for enforcement do not themselves become barriers to legitimate trade.

## Article 12.2 : General Principles

1. Each Party shall provide adequate, effective, and non-discriminatory protection of intellectual property rights, and provide for appropriate measures for the enforcement of such rights.

2. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals[1] of the other Party treatment no less favorable than that it accords to its own nationals with regard to the protection[2] and enjoyment of such intellectual property rights and any benefit derived from such rights in accordance with Articles 3 and 5 of the TRIPS Agreement.

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[1] For the purposes of this Article, the term "nationals" shall have the same meaning as in the TRIPS Agreement.

[2] For the purposes of this paragraph, "protection" shall have the same meaning as in the TRIPS Agreement, and shall include:

(a) 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; and

(b) the rights and obligations concerning encrypted program-carrying satellite signals set out in Article 12.8.

3. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

4. Each Party shall recognize the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives. Nothing in this Chapter shall be construed to prevent a Party from taking any action which it considers necessary for protection of its essential security interests.

**Article 12.3 : Affirmation of International Agreement**

1. Each Party affirms its existing rights and obligations under the TRIPS Agreement and other intellectual property agreements to which both Parties are party. Nothing in this Chapter shall derogate from existing rights and obligations that the Parties have to each other under such agreements.

2. Each Party will make reasonable efforts to ratify or accede to the following agreements:

(a) the *World Intellectual Property Organization* (hereinafter referred to as "WIPO") *Copyright Treaty* (1996); and

(b) the *WIPO Performances and Phonograms Treaty* (1996).

When a Party intends to accede to any of the treaties above, it may seek cooperation from the other Party to support its accession to and implementation of such treaties.

**Article 12.4 : More Extensive Protection**

Each Party may, but shall not be obliged to, provide more extensive protection for intellectual property rights under its domestic laws and regulations than this Chapter requires, provided that such protection does not contravene this Chapter.

**Article 12.5 : Trademarks**

*Trademarks Protection*

1. Each Party shall ensure adequate and effective protection of trademark in accordance with the TRIPS Agreement. However, neither Party may deny registration of a trademark solely on the grounds that the sign of which it is composed is figurative elements or the shape of goods or of their packaging.

2. 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.

*Exceptions to Trademarks Rights*

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

*Well-Known Trademarks*

4. Neither Party may require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party.

5. Article 6*bis* of the *Paris Convention for the Protection of Industrial Property* (1967) shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark[3], whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

6. Each Party shall provide for appropriate measures to refuse an application or cancel a registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for identical or similar goods or services, if the use of that trademark is likely to:

(a) cause confusion with;

(b) mislead, or deceive the connection between the trademark with the owner of; or

(c) cause harm to the reputation of,

the prior well-known trademark.

The Parties are encouraged to apply the same measures, *mutatis mutandis*, to goods or services that are related to those identified by the well-known trademark.

*Registration and Applications of Trademarks*

7. Each Party shall provide a system for the registration of trademarks, in which the reasons for a refusal to register a trademark shall be communicated in writing and may be provided electronically to the applicant, who will have the opportunity to contest such refusal and to judicially appeal a final refusal.

8. Each Party shall introduce the possibility to oppose trademark applications.

[3] For the purposes of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

9. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than 10 years.

**Article 12.6 : Protection against Unfair Competition**

1. Each Party shall provide effective protection against unfair competition. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following in particular shall be prohibited:

(a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods; and

(d) acts of using, or acquiring or holding the right to use, a domain name identical with or confusingly similar to well-known trademark in each Party for the purposes specified in that Party's domestic laws and regulations, such as the intention to gain unfair profit or to cause damage to another person.

2. Each Party shall ensure in its domestic laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

3. Each Party shall establish appropriate remedies to prevent or punish acts of unfair competition. In particular, each Party shall ensure that any person that considers its business interests to be damaged by an act of unfair competition may bring legal action and request suspension or prevention of the act, destruction of the goods which constitute the act, removal of materials and implements used for the act, or damages to compensate for the injury which result from the act, unless otherwise provided for in the domestic laws and regulations of the Party.

**Article 12.7 : Patents**

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application.

2. Each Party may exclude from patentability:

(a) 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 domestic laws and regulations;

(b) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and

(c) 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.

3. 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.

4. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure:

(a) was made or authorized by the patent applicant, or made without authorization by the patent applicant, in accordance with its domestic laws and regulations[4]; and

(b) occurred within six months prior to the date of filing of the application in the territory of the Party.

*Accelerated Examination*

5. Each Party may, in accordance with domestic laws and regulations, provide an applicant with accelerated examination for the patent application on conditions that the claimed invention is:

(a) being practiced after publication of the application by a person, other than the applicant; or

(b) being practiced or being prepared to practice by the patent applicant.

**Article 12.8 : Copyright and Related Rights**

*Protection of Copyright and Related Rights*

[4] The Parties agree to review the expansion of the exceptions to the novelty and inventiveness requirements for patentability contained in this subparagraph, when necessary.

1. Each Party shall provide that authors, performers, producers of phonograms and broadcasting organizations have the right to authorize or prohibit all reproductions of their works, performances, phonograms and broadcasts, in any manner or form.

2. Each Party shall provide that persons[5] that directly or indirectly use phonograms already published for commercial purposes for broadcasting are not required to obtain permission but must pay remunerations[6] to performers and producers of phonograms.

*Collective Management of Rights*

3. The Parties recognize the importance of collective management societies for copyright and related rights, in order to ensure an effective management of the rights entrusted to them, and an equitable distribution of the collected remunerations, which are proportional to the utilization of the works, performances, or phonograms, in a context of transparency and good management practices, according to the laws and regulations of each Party.

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

*Protection of Encrypted Program-Carrying Satellite Signals*

5. Each Party shall provide administrative or criminal measures in accordance with its domestic laws and regulations for the following actions:

(a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and

(b) willfully to receive, or further distribute, a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the authorization of the lawful distributor of the signal.

*Limitation and Exceptions*

6. Each Party shall confine limitations or exceptions to the exclusive rights granted to the right holders referred to in this Article in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holders.

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[5] "Persons" shall be understood as natural or juridical persons.

[6] The remuneration shall be paid under the terms agreed between the user and the performers or producers of phonograms or otherwise determined in accordance with the domestic laws and regulations of each Party.

**Article 12.9 : Enforcement of Intellectual Property Rights**

*General Obligation*

1. The Parties recognize the importance of providing for the enforcement of intellectual property rights as set out in the TRIPS Agreement and in particular Articles 41 through 61 thereof.

*Presumption of Authorship or Ownership*

2. In civil, criminal, and if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner is the right holder in the work, performance, phonogram or broadcast as designated.

*Civil and Administrative Procedures and Remedies*

3. Each Party shall provide that, in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engages in infringing activity.

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 the prevailing party shall be awarded payment by the losing party of court costs or fees and reasonable attorney's fees, as provided for under that Party's domestic laws and regulations.

5. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain pre-established damages. The pre-established damages shall be set out in an amount sufficient to compensate the right holder for the harm caused by the infringement.[7]

6. 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, materials, and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.[8]

[7] Neither Party is required to apply this paragraph to actions for infringement against a Party or a third party acting with the authorization or consent of a Party.

[8] A Party may fulfill this obligation by provisional measures.

7. Each Party shall provide that in relation to civil proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to impose sanctions on parties, 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.

8. Each Party shall endeavor, as necessary, to improve its judicial system with a view to providing effective civil remedies against infringement of intellectual property rights.

*Provisional Measures*

9. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures on request. The judicial authorities shall also have the authority to adopt provisional measures *inaudita altera parte*, where appropriate, in particular, where any delay is likely to cause irreparable harm to the right holder, or where there is demonstrable risk of evidence being destroyed.

10. 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.

*Special Requirements Related to Border Measures*

11. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of counterfeit trademark or pirated copyright goods[9] into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws and regulations of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficiently detailed description of goods to make the suspected goods readily recognizable by its competent authorities.

12. Each Party may, without prejudice to that Party's domestic laws and regulations pertaining to the privacy or the confidentiality of information, authorize that Party's competent authorities, where they have detained, or seized, goods suspected of infringing an intellectual property right, to provide a right holder who has filed a request for assistance with information about goods that could assist them in pursuing a remedy. This information may include the description and quantity of the goods, the name and address of the consignor, importer, exporter or consignee, and, if known, the country of origin of the goods and the name and address of the manufacturer of the goods.

13. Each Party shall provide that goods that have been suspended from release by its customs authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed or disposed of outside the channels of commerce in a manner to avoid any harm to the right

[9] For the purposes of this paragraph, the terms "counterfeit trademark goods" and "pirated copyright goods" shall have the same meanings as referred to in Article 51 of the TRIPS Agreement.

holder. 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.

*Criminal Procedures and Remedies*

14. 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. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

*Special Measures against Repetitive Copyright Infringers on the Internet*

15. Each Party shall endeavor to provide measures to curtail repeated copyright and related right infringement on the internet.

**Article 12.10 : Cooperation**

1. The Parties agree to promote mutual cooperation in the field of intellectual property in order to improve the efficiency and development of their intellectual property systems in a beneficial and balanced manner.

2. Upon request of a Party, the other Party will, to the extent possible and as appropriate, render assistance to the requesting Party in creation, acquisition, protection, utilization and enforcement of intellectual property for domestic innovation and economic development of that Party.

3. The Parties agree to exchange views and information on their legal frameworks, administration, registrations and protection, including information on their efforts to provide effective enforcement, of intellectual property rights.

4. The Parties also agree to cooperate, through their intellectual property offices, on the following issues:

(a) capacity building for officials or experts on intellectual property rights;

(b) intellectual property administration, and registration systems, including publicly accessible databases;

(c) education and public awareness of intellectual property rights;

(d) intellectual property commercialization and technology transfer;

(e) improvement of quality management procedures; and

(f) other areas agreed by the Parties.

5. The Parties, with a view to promoting transparency in their administration systems of intellectual property protection, further agree to cooperate in making available to the public information on applications for and registrations of patents, utility models, industrial designs, trademarks and other subject matters, where appropriate.

6. The Parties also agree to promote dialogue on intellectual property issues by:

(a) designating contact points for implementation of cooperation activities under this Article; and

(b) encouraging interaction between intellectual property stakeholders in order to broaden understanding of each other's intellectual property systems.

7. Cooperation activities shall be conducted on mutually agreed terms and subject to the availability of funds.

**Article 12.11 : Definitions**

For the purposes of this Chapter, **intellectual property** refers to all categories of intellectual property that are the subject of this Chapter and/or that are under Sections 1 through 7 of Part II of the TRIPS Agreement.

# CHAPTER 13
# ECONOMIC COOPERATION

## Article 13.1 : Basic Principles

1. Recognizing the importance of economic cooperation between the Parties, the Parties shall promote cooperation in areas of mutual interest, taking into account the different levels of development and capacity of the Parties.

2. To promote and facilitate the implementation of economic cooperation, the Parties shall undertake cooperation between their respective governments and, where necessary and appropriate, encourage and facilitate cooperation, where one or both sides are entities other than the governments of the Parties. Based on mutual benefits of the Parties towards the cooperative sectors in which the Parties have mutual interests, the Parties will cooperate on relevant forms of activities.

3. Reaffirming the value of ongoing economic cooperation initiatives between the Parties, the Parties shall respect and encourage their existing economic cooperation under frameworks other than this Agreement.

4. The Parties acknowledge the provisions to encourage and facilitate economic cooperation as provided for in this Agreement in accordance with their respective domestic laws and regulations.

## Article 13.2 : Sectors of Cooperation

1. The Parties, on the basis of mutual benefit, shall explore and undertake cooperative activities.

2. Sectors related to industry may include:

(a) automotive;

(b) steel and metal;

(c) petrochemicals;

(d) electronics;

(e) machinery;

(f) garment, textiles and footwear;

(g) distribution and logistics; and

(h) other sectors of cooperation as may be agreed by the Parties.

3. Sectors related to agriculture, fishery and forestry may include:

(a) livestock and crop production;

(b) horticulture;

(c) improvement of investment conditions in the fields of fisheries and aquaculture;

(d) satisfying the needs of investors of fisheries and aquaculture sectors in accordance with each Party's relevant domestic laws and regulations;

(e) fishery resources management;

(f) forest management;

(g) agro-based and food processing; and

(h) other sectors of cooperation as may be agreed by the Parties.

4. Sectors related to rules and procedures for trade may include:

(a) standards, technical regulations and conformity assessment procedures;

(b) customs procedure;

(c) rules of origin and other aspects of implementation of tariff commitments;

(d) intellectual property; and

(e) other sectors of cooperation as may be agreed by the Parties.

5. Other sectors may include:

(a) supporting policy for small and medium-sized enterprises;

(b) statistics;

(c) fair competition;

(d) infrastructure;

(e) investment;

(f) services related to culture; and

(g) other sectors of cooperation as may be agreed by the Parties.

**Article 13.3 : Forms of Cooperation**

The forms of economic cooperation may include, but are not limited to:

(a) technical assistance;

(b) training of human resources;

(c) exchange of views and information;

(d) exchange of experts;

(e) seminar and workshop;

(f) design and improvement of institutions;

(g) formulation of sectoral master plan;

(h) formulation of development strategy;

(i) sharing of best practices;

(j) basic study;

(k) joint research and development;

(l) joint trade and investment promotion activities;

(m) model and technology transfer; and

(n) other forms of cooperation as may be agreed by the Parties.

**Article 13.4 : Implementation**

1. The cooperation shall be implemented in accordance with each Party's domestic laws and regulations.

2. For the purposes of the effective implementation and operation of this Chapter, a Committee on Economic Cooperation (hereinafter referred to as the "Committee") shall be established. The Parties shall conclude an implementing arrangement setting out the forms and functions of the Committee.

3. The Parties shall undertake cooperation projects at mutually agreed periods of time. The implementation of such projects shall be monitored and reviewed by the Committee to ensure their effective implementation.

4. Taking into account the different levels of development and capacity, the Parties shall contribute appropriately to the cost of implementation, according to mutual agreement.

Funding for implementation of cooperation sectors shall be set out in detail in the implementing arrangement.

**Article 13.5 : Resources for Economic Cooperation**

1. The Parties shall cooperate to employ the most effective means for the implementation of this Chapter.

2. The Parties shall endeavor to make available necessary financial and other resources for the implementation of economic cooperation under this Chapter in accordance with their respective domestic laws and regulations.

3. Funding for economic cooperation under this Chapter shall be borne according to mutual agreement, taking into account the different levels of development of the Parties.

## ANNEX 13-A

## COOPERATION IN SERVICES RELATED TO CULTURE

1. For the purposes of mutual benefits, recognizing that cooperation contributes to the enhancement of understanding between the Parties and the development of their services industries, the Parties shall endeavor to cooperate in service sectors, such as audio-visual, tourism, entertainment (including theater, live bands and circus services), cultural heritage, museum and library services.

2. With a view to improving relevant industries' development, in accordance with domestic laws and regulations, the cooperation shall be facilitated through the information and experience exchange as well as support for capacity building, with regard to each Party's domestic policies, standard technologies, and relevant laws and regulations.

# CHAPTER 14
# TRANSPARENCY

## Article 14.1 : Publication

1. Each Party shall ensure that its domestic laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made publicly available.

2. To the extent possible, each Party, in accordance with its domestic laws and regulations, shall:

(a) publish in advance measures referred to in paragraph 1 that it proposes to adopt; and

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

3. With respect to domestic laws and regulations of general application[1] relating to any matter covered by this Agreement, each Party shall publish such laws and regulations in a single official journal[2] of national circulation and shall encourage their distribution through additional outlets.

4. With respect to draft laws and regulations of general application[3] proposed by its central level of government respecting any matter covered by this Agreement that are published in accordance with subparagraph 2(a), each Party should in most cases publish such proposed laws and regulations not less than 40 days before the date public comments are due.

## Article 14.2 : Provision of Information

Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure referred to in Article 14.1 that the requesting Party considers might affect the operation of this Agreement.

## Article 14.3 : Administrative Proceedings

[1] For the purposes of this paragraph, "regulations of general application" means, for Korea, Presidential Decrees, Ordinances of the Prime Minister, and Ministerial Ordinances, and for Viet Nam, Orders and Decisions of the State President, Decrees of the Government, Decisions of the Prime Minister, and Ministerial Circulars.

[2] For the purposes of this paragraph, "single official journal" means, for Viet Nam, its Official Gazette.

[3] For the purposes of this paragraph, "regulations of general application" means, for Korea, Presidential Decrees, Ordinances of the Prime Minister, and Ministerial Ordinances, and for Viet Nam, Decrees of the Government, Decisions of the Prime Minister, and Ministerial Circulars.

With a view to administering in a consistent, impartial and reasonable manner its domestic laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings, in which these measures are applied to particular persons, goods or services of the other Party in specific cases, that:

(a) wherever possible, in accordance with its applicable domestic laws and regulations, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;

(b) persons of the other Party that are directly affected by a proceeding are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its domestic laws and regulations.

**Article 14.4 : Review and Appeal**

1. In accordance with its domestic laws and regulations, each Party shall establish or maintain judicial or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative actions relating to any matter covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by its domestic laws and regulations the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic laws and regulations, that any decision referred to in subparagraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

**Article 14.5 : Definitions**

For the purposes of this Chapter:

**administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

# CHAPTER 15
# DISPUTE SETTLEMENT

## Article 15.1 : Objective

1. The objective of this Chapter is to provide an effective, efficient and transparent process for the avoidance and settlement of disputes arising under this Agreement.

2. 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 raised in accordance with this Chapter.

## Article 15.2 : Scope

1. Except as otherwise provided for in this Agreement or agreed by the Parties, this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement 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.

2. Notwithstanding paragraph 1, this Chapter shall not apply to Chapters 5 (Sanitary and Phytosanitary Measures), 11 (Competition) and 13 (Economic Cooperation), Article 8.19 (Renegotiation Based on the Negative List Approach), and Annex 3-B (Treatment for Certain Goods).

## Article 15.3 : Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested the establishment of, or referred a matter to, a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora, unless the forum selected fails for procedural or jurisdictional reasons to initiate a dispute settlement proceeding.

## Article 15.4 : Consultations

1. Each Party may request consultations with respect to any matter relating to the interpretation and application of this Agreement, pursuant to paragraph 1 of Article 15.2.

2. A request for consultations shall be submitted in writing and shall give the reasons for the request, including the identification of the specific measure or other matter at issue and an indication of the legal basis for the complaint.

3. If a request for consultations is made, the Party complained against shall reply within 10 days of the date of the receipt of the request. The Parties shall enter into consultations in good faith within a period of no more than 30 days of the date of receipt of the request with a view to reaching a mutually satisfactory solution. Consultations shall take place, unless the Parties otherwise agree, in the territory of the Party complained against.

4. In cases of urgency, including those concerning perishable goods, the Parties shall enter into consultations within a period of no more than 15 days of the date of receipt of the request by the Party complained against.

5. Upon initiation of consultations, the Parties shall provide information to enable the examination of how the measure at issue might affect the interpretation and application of this Agreement, and give confidential treatment to the information exchanged during consultations.

6. Consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings under this Agreement or other proceedings.

**Article 15.5 : Good Offices, Conciliation or Mediation**

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties and be terminated at any time upon request of either Party.

2. If the Parties agree, good offices, conciliation, or mediation may continue while the proceedings of the arbitration panel provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation or mediation, and, in particular, positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under this Agreement or other proceedings.

**Article 15.6 : Establishment of the Arbitration Panel**

1. The complaining Party that made a request for consultations under Article 15.4 may request in writing the establishment of an arbitration panel to the Party complained against,

(a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in cases of urgency including those concerning perishable goods, of the date of receipt of the request for such consultations; or

(b) if the Parties fail to resolve the dispute through such consultations within 60 days, or within 30 days in cases of urgency including those concerning perishable goods, of the date of receipt of the request for such consultations.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against. The complaining Party shall identify in its request, the measure or other matter at issue, and the factual and legal basis for the complaint sufficient to present the problem clearly.

**Article 15.7 : Terms of Reference of the Arbitration Panel**

Unless the Parties otherwise agree within 20 days of the date of receipt of the request for the establishment of an arbitration panel, the terms of reference of the arbitration panel shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 15.6, to make findings together with the reasons on the compatibility of the measure with this Agreement, and to issue a written report containing the reasons for the findings for the resolution of the dispute."

**Article 15.8 : Composition of the Arbitration Panel**

1. Unless otherwise agreed by the Parties, an arbitration panel shall consist of three arbitrators.

2. Each Party shall appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitration panel within 30 days of the date of receipt of the request for the establishment of the arbitration panel. The Parties shall endeavor to agree on and appoint the third arbitrator who shall serve as the chair of the arbitration panel within 45 days of the date of receipt of the request for the establishment of the arbitration panel, taking into account the candidates proposed. If the Parties fail to agree on and appoint the third arbitrator within 45 days, the Parties shall meet within seven days and select the chair by lot from the list of candidates proposed by both Parties.

3. The candidates for the third arbitrator referred to in paragraph 2 shall not be nationals of either Party, nor have their usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

4. The date of the establishment of an arbitration panel shall be the date on which the third arbitrator is appointed.

5. All arbitrators shall have expertise or experience in law, international trade or other matters relating to this Agreement, or in the resolution of disputes arising under international trade agreements. Each arbitrator shall be independent, serve in his or her individual

capacities and not be affiliated with, nor take instructions from, either Party or organization related to the dispute, and shall comply with Annex 15-B.

6. Where a Party considers that an arbitrator does not comply with the requirements of Annex 15-B, the Parties shall consult and replace, if so agreed, that arbitrator in accordance with paragraph 7.

7. If an arbitrator appointed under this Article resigns or becomes unable to participate in the proceedings, or is to be replaced according to paragraph 6, a successor shall be selected within 15 days in accordance with the appointment method provided for in paragraphs 2 and 3, *mutatis mutandis*. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended for a period beginning on the date the arbitrator resigns or becomes unable to participate in the proceeding, or is to be replaced according to paragraph 6. The work of the arbitration panel shall resume on the date the successor is appointed.

**Article 15.9 : Proceedings of the Arbitration Panel**

1. The arbitration panel shall meet in closed sessions. The Parties shall be present at the meetings only when invited by the arbitration panel to appear before it.

2. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information provided or written submissions made by a Party to the arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.

3. A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

4. The arbitration panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

5. The arbitration panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international laws including the *Vienna Convention on the Law of Treaties*, taking due account of the interpretation adopted by the Joint Committee in accordance with paragraph 4 of Article 17.1 (Joint Committee) and of the fact that the Parties shall perform this Agreement in good faith and avoid circumvention of their obligations.

6. The arbitration panel shall aim to make its decisions, including its reports, by consensus but may also make its decisions, including its report, by majority vote.

7. Upon request of a Party, or on its own initiative, the arbitration panel may seek information from any relevant source and may consult experts to obtain their opinion or advice on certain aspects of the matter. The arbitration panel shall provide the Parties with a

copy of any advice or opinion obtained and an opportunity to provide comments.

8. The deliberations of the arbitration panel and the documents submitted to it shall be kept confidential.

9. Notwithstanding paragraph 8, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential information and written submissions delivered by the other Party to the arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, within 20 days of a request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

10. The reports of the arbitration panel shall be drafted without the presence of the Parties. The arbitration panel shall base its report on the relevant provisions of this Agreement, and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitration panel.

11. The reports of the arbitration panel shall contain both the descriptive parts summarizing the submissions and/or arguments of the Parties, and the findings and determinations of the arbitration panel. If the Parties agree, the arbitration panel may make recommendations for resolution of the dispute in its reports. The findings and determinations and, if applicable, any recommendations of the arbitration panel cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

12. The venue for the arbitration panel proceedings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first meeting of the arbitration panel proceedings to be held in the capital of the Party complained against.

**Article 15.10 : Suspension or Termination of Proceedings**

1. Where the Parties agree, the arbitration panel may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Upon request of a Party, the arbitration panel proceedings shall be resumed after such suspension. In the event of such suspension, the timeframes regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If, in any case, each period of the suspension of the work of the arbitration panel exceeds 12 months, the authority of the arbitration panel shall lapse unless the Parties otherwise agree. This lapse shall not prejudice the rights of the complaining Party to request, at a later stage, the establishment of an arbitration panel on the same subject matter.

2. The Parties may agree to terminate the proceedings of an arbitration panel by jointly so notifying the chair of the arbitration panel at any time before the issuance of the final report to the Parties.

3. Before the arbitration panel makes its decision, it may, at any stage of the proceedings, propose to the Parties that the dispute be settled amicably.

**Article 15.11 : Interim Report**

1. Unless the Parties otherwise agree, the arbitration panel shall, within 90 days of the date of the establishment of the arbitration panel, issue to the Parties an interim report containing the descriptive parts, the findings and determinations, and, if applicable, any recommendations as to:

(a) whether the measure at issue is inconsistent with the obligations of this Agreement; or

(b) whether a Party has otherwise failed to carry out its obligations under this Agreement,

as well as the applicability of the relevant provisions and the basic rationale behind any findings.

2. Where the arbitration panel considers that the deadline for interim report cannot be met, it may extend the period with the consent of the Parties with the written notification stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of the establishment of the arbitration panel.

3. Either Party may submit written comments to the arbitration panel on its interim report within 15 days of the issuance of the report. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate.

**Article 15.12 : Final Report**

1. Unless the Parties otherwise agree, the arbitration panel shall issue a final report to the Parties within 30 days of the date of issuance of the interim report.

2. Where the arbitration panel considers that the deadline for its final report cannot be met, it may extend the period with the consent of the Parties with the written notification stating the reasons for the delay and the date on which the panel plans to issue its final report. Under no circumstances should the final report be issued later than 150 days after the date of the establishment of the arbitration panel.

3. In cases of urgency, including those concerning perishable goods, the arbitration panel shall make every effort to issue its interim and final reports within half of the respective time periods under paragraph 1 of Article 15.11 and paragraph 1 of Article 15.12.

**Article 15.13 : Implementation of the Final Report**

1. The determinations of the final report of the arbitration panel shall be final and binding on the Parties and shall not be subject to appeal.

2. If, in its final report, the arbitration panel determines that the Party complained against has not conformed to its obligations under the relevant provisions of this Agreement, unless the Parties otherwise agree, the Party complained against shall eliminate the non-conformity immediately, or if this is not practicable, within a reasonable period of time.

3. The reasonable period of time referred to in paragraph 2 shall be mutually agreed by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days of the date of issuance of the final report of the arbitration panel, either Party may refer the matter to the original arbitration panel, which shall determine the reasonable period of time.

4. The Party complained against shall notify to the complaining Party the implementing measures that it has taken to comply with the determinations of the arbitration panel, before the expiry of the reasonable period of time agreed by the Parties or determined by the original arbitration panel in accordance with paragraph 3. Where there is disagreement between the Parties as to whether the Party complained against has eliminated the non-conformity as determined in the final report of the arbitration panel within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to the original arbitration panel.

**Article 15.14 : Non–Implementation, Compensation and Suspension of Concessions or Other Obligations**

1. If the Party complained against fails to notify the implementing measures before the expiry of the reasonable period of time, or notifies to the complaining Party that implementation is impracticable, or the arbitration panel to which the matter is referred pursuant to paragraph 4 of Article 15.13 determines that the Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the Party complained against shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no agreement on satisfactory compensation within 20 days of the date of receipt of the request mentioned in paragraph 1, the complaining Party may, at any time, provide written notice to the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement. The complaining Party may begin suspending concessions or other obligations 30 days after the notification of such suspension. The notification of suspension shall not be made within 20 days of the date of receipt of the request mentioned in paragraph 1.

3. The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitration panel. The suspension shall only be applied until such time as the non-conformity is fully eliminated or a mutually satisfactory solution is reached.

4. In considering what concessions or other obligations to suspend pursuant to paragraph 2:

(a) the complaining Party should first seek to suspend concessions or other obligations with respect to the same sector or sectors as that in which the report of the arbitration panel referred to in Article 15.12 has found a failure to comply with the obligations under this Agreement;

(b) if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector or sectors, it may suspend concessions or other obligations with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based; and

(c) the level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

5. If the Party complained against considers that the requirements for the suspension of concessions or other obligations by the complaining Party set out in paragraph 2, 3, or 4 have not been met, it may refer the matter to an arbitration panel.

6. The arbitration panel that is established for the purposes of this Article or Article 15.13 shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for the purposes of this Article or Article 15.13 shall be appointed pursuant to Article 15.8. The arbitration panel established under this Article or Article 15.13 shall issue its report to the Parties within 20 days on the reasonable period of time and 45 days on the other issues after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

**Article 15.15 : Rules of Procedure**

1. Dispute settlement proceedings under this Chapter shall be governed by the Rules of Procedure for Arbitration set out in Annex 15-A. The Parties in consultation with the arbitration panel may agree to adopt additional rules of procedures not inconsistent with the provisions of the Annex.

2. Any period of time or other rule of procedure for arbitration panel provided for in this Chapter and Annex 15-A may be modified by mutual consent of the Parties. The Parties may also agree at any time not to apply any provision of this Chapter.

**Article 15.16 : Expenses**

1. Unless the Parties otherwise agree, each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

2. Unless the Parties otherwise agree, the costs of the chair of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal shares by the Parties.

**Article 15.17 : Annexes**

Annexes 15-A and 15-B shall form an integral part of this Chapter.

**Article 15.18 : Definitions**

For the purposes of this Chapter:

**arbitration panel** means a panel established under Article 15.6;

**arbitrator** means a member of an arbitration panel established under Article 15.6;

**candidate** means an individual who is under consideration for appointment as the third arbitrator under Article 15.8;

**complaining Party** means a Party that requests the establishment of an arbitration panel under Article 15.6;

**Party complained against** means the Party that is alleged to be in violation of this Agreement, as referred to in Article 15.2; and

**proceeding**, unless otherwise specified, means an arbitration panel proceeding under this Chapter.

## ANNEX 15-A

## RULES OF PROCEDURE FOR ARBITRATION

*Logistical Administration*

1. In case the arbitration panel proceedings are held in the territory of a Party, that Party shall be in charge of the logistical administration of arbitration proceedings, in particular the organisation of hearings, unless the Parties otherwise agree.

*Notifications*

2. Any request, notice, written submissions or other documents delivered by either Party or the arbitration panel shall be transmitted 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.

3. A Party shall provide a copy of each of its written submissions to the other Party and to each of the arbitrators. A copy of the document shall also be provided in electronic format.

4. All notifications shall be made and delivered to the Ministry of Trade, Industry, and Energy of Korea and, to the Ministry of Industry and Trade of Viet Nam, respectively.

5. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

6. If the last day for delivery[1] of a document falls on a legal holiday of either Party, the document may be delivered on the next business day.

*First Submissions*

7. The complaining Party shall deliver its first written submission no later than 30 days after the date of the establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 30 days after the date of receipt of the complaining Party's first written submission.

*Operation of Arbitration Panels*

8. The chair of the arbitration panel shall preside at all of its meetings. The arbitration panel may delegate to the chair authority to make administrative and procedural decisions.

[1] For greater certainty, for the purposes of this Annex, the delivery date is the date on which documents that have been submitted arrive at the intended place.

9. Except as otherwise provided for in this Chapter, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

10. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit assistants of the arbitrators to be present during such deliberations.

11. The drafting of any decision and ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

12. Where a procedural question arises that is not covered by this Chapter, the arbitration panel, after consulting with the Parties, may adopt an appropriate procedure that is not inconsistent with this Chapter.

13. When the arbitration panel considers that there is a need to modify any time periods set out in this Chapter applicable in the proceedings, or to make any other procedural or administrative adjustment in the proceedings, it shall inform the Parties in writing of the reasons for the modification or adjustment with the indication of the period or adjustment needed.

14. Unless the Parties otherwise agree, the remuneration and expenses to be paid to the arbitrators will normally conform to WTO standards.

*Hearings*

15. Unless the Parties otherwise agree, at least one hearing shall be held. The chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel. The chair of the arbitration panel shall notify the Parties of the date, time and location of the hearing in writing. That information shall also be made publicly available by the Party in charge of the logistical administration of the proceeding, when the Parties decide to make the hearings open to the public in accordance with paragraph 20 of this Annex.

16. The arbitration panel may convene additional hearings if the Parties so agree.

17. All arbitrators shall be present during the entirety of any hearing.

18. Representatives of a Party, advisers to a Party, experts, administration staff, interpreters, translators, court reporters, and assistants of the arbitrators may attend the hearing(s), irrespective of whether the hearings are open to the public or not. Unless otherwise decided by the arbitration panel, only the representatives and advisers of a Party may address the arbitration panel.

19. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of those persons who will make oral arguments or presentations at the hearing on behalf of that Party and of representatives, advisers, interpreters and translators of that Party who will be attending the hearing.

20. The hearings of the arbitration panels shall be closed to the public. The Parties may decide to open the hearings partially or completely to the public.

21. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

*argument*

(a) argument of the complaining Party; and

(b) argument of the Party complained against.

*rebuttal argument*

(a) reply of the complaining Party; and

(b) counter-reply of the Party complained against.

22. The arbitration panel may direct questions to either Party or experts at any time during a hearing.

23. The arbitration panel shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties. The Parties may comment on the transcript, and the arbitration panel will decide whether to reflect those comments.

24. Within 10 days of the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arises during the hearing.

*Questions in Writing*

25. The arbitration panel may at any time during the proceedings address questions in writing to a Party or both Parties. The arbitration panel shall deliver the written questions to the Party whom the questions are addressed and shall send a copy of the questions to the other Party.

26. A Party to whom the arbitration panel addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitration panel. Each Party shall be given the opportunity to provide written comments on the reply within seven days of the date of receipt.

*Ex Parte Communications*

27. There shall be no *ex parte* communications with the arbitration panel concerning matters under consideration by the arbitration panel.

28. No arbitrator may discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other arbitrators.

*Suspension of Time Periods on Request of Technical Advice*

29. The arbitration panel, consulting with the Parties and experts, may determine the time period that the experts are to submit their opinions or advice. If the experts cannot submit their opinions or advice within the period established pursuant to the first sentence of this paragraph, the arbitration panel, consulting with the Parties, may give additional time to experts. In no case this additional period exceeds the half of the period established pursuant to first sentence of this paragraph.

30. When a request is made for a written report of an expert, any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date of delivery of the request and ending on the date the report is delivered to the arbitration panel.

*Amicus Curiae Submissions*

31. Unless the Parties otherwise agree within three days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions from interested natural or juridical persons of the Parties, provided that they are made within 10 days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to factual and legal issues under consideration by the arbitration panel.

32. The submissions referred to in paragraph 31 shall contain a description of the person, whether natural or juridical, making the submission, including the nature of its activities and the source of its financing, and specify its nationality or place of establishment and the nature of the interest that person has in the arbitration proceedings. It shall be made in the common working language in accordance with paragraph 34.

33. The arbitration panel shall list in its ruling all the submissions that it has received and that conform to the paragraphs 31 and 32. The arbitration panel shall not be obliged to address, in its ruling, the arguments made in such submissions. Any submission obtained by the arbitration panel under paragraphs 31 through 33 shall be submitted to the Parties for their comments.

*Interpretation and Translation*

34. Unless otherwise agreed during the consultations referred to in Article 15.4, and no later than the meeting referred to in paragraph 8, the common working language for the proceedings of the arbitration panel shall be English. If a Party decides to use interpretation during the proceedings, the arrangement and the cost shall be borne by that Party.

35. Any document submitted for use in any proceeding pursuant to this Chapter shall be in the English language. If any original document is not in the English language, a Party

submitting it for use in the proceedings shall provide an English language translation of that document.

*Computation of Time*

36. All periods of time laid down in this Chapter shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

37. Where, by reason of the operation of paragraph 6, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from the last date of receipt of such document.

*Other Proceedings*

38. In accordance with paragraphs 3 and 4 of Article 15.13 and paragraphs 5 and 6 of Article 15.14, the referring Party shall deliver its first written submission within 15 days of the date the referral is made, and the Party complained against shall deliver its written counter-submission within 15 days of the date of receipt of the first written submission.

39. If appropriate, the arbitration panel shall fix the time periods for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject to the time periods for arbitration panel proceedings set out in Articles 15.13 and 15.14 and this Annex.

40. Unless otherwise provided, this Annex is also applicable to procedures established under Articles 15.13 and 15.14.

*Definitions*

41. For the purposes of this Chapter:

**adviser** means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

**assistant** means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator; and

**representative of a Party** means any person appointed by a Party according to its domestic laws and regulations.

## ANNEX 15-B

## CODE OF CONDUCT FOR ARBITRATORS

*Responsibilities to the Process*

1. Every candidate and arbitrator 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 proceeding are preserved. Former arbitrators must comply with the obligations established in paragraphs 14 through 17.

*Disclosure Obligations*

2. Prior to confirmation of his or her appointment as an arbitrator under Article 15.8, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

3. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 2 and shall disclose them. The obligation to disclose is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The arbitrator shall disclose such interests, relationships or matters by communicating them in writing to the Joint Committee for consideration by the Parties.

*Duties*

4. Upon appointment, an arbitrator shall perform an arbitrator's duties thoroughly and expeditiously throughout the course of the proceedings.

5. An arbitrator shall carry out all duties fairly and diligently.

6. An arbitrator shall consider only those issues raised in the proceeding and necessary for a decision and shall not delegate the duty to decide to any other person.

7. An arbitrator shall take all appropriate steps to ensure that the arbitrator's assistants and staff are aware of and comply with paragraphs 1, 2, 3, 15, 16 and 17.

8. An arbitrator shall not engage in *ex parte* communications concerning the proceeding in accordance with paragraphs 27 and 28 of Annex 15-A.

*Independence and Impartiality of Members of Arbitration Panels*

9. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner, shall avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party or fear of criticism.

10. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the arbitrator's duties.

11. An arbitrator shall not use his or her position on the arbitration panel to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator.

12. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgement.

13. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the arbitrator's impartiality or that might reasonably create an appearance of impropriety or bias.

*Obligations of Former Arbitrators*

14. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

*Confidentiality*

15. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceedings, or acquired during the proceedings, except for the purposes of those proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others, or to affect adversely the interest of others.

16. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication.

17. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any arbitrator's view.

*Definitions*

18. For the purposes of this Chapter:

> **staff**, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

# CHAPTER 16
# EXCEPTIONS

## Article 16.1 : General Exceptions

1. For the purposes of Chapters 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Administration and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures), 6 (Technical Barriers to Trade), and 7 (Trade Remedies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 8 (Trade in Services) and 9 (Investment), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis.*

## Article 16.2 : Security Exceptions

1. Nothing in this Agreement shall be construed to:

   (a) require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

   (b) prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

      (i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purposes of supplying or provisioning a military establishment;

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

      (iii) taken so as to protect critical public infrastructure, including communications, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure; or

      (iv) taken in time of domestic emergency, or war or other emergency in international relations; or

   (c) prevent a Party from taking any action in pursuance of its obligations under the *United Nations Charter* for the maintenance of international peace and security.

2. The Joint Committee shall be informed to the fullest extent possible of measures taken under subparagraphs 1(b) and (c) and of their termination.

**Article 16.3 : Taxation**

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between Korea and Viet Nam, the competent authorities under that convention shall have sole responsibility for jointly determining whether any inconsistency exists between this Agreement and that convention.

3. Paragraph 2 of Article 16.1 shall apply to taxation measures[1].

4. Notwithstanding paragraph 2, Article 2.2(National Treatment on Internal Taxation and Regulation) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994.

5. Subparagraph 4(h) of Article 9.8(Transfers) shall apply to taxation measures.

6. The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 9-B (Expropriation) and the following considerations:

(a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

(b) a taxation measure that is consistent with internationally recognized tax policies, principles, and practices does not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;

(c) a taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and

(d) a taxation measure does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

[1] For the purposes of this paragraph, the application of paragraph 2 of Article 16.1 to taxation measures refers to Article XIV (d) and (e) of GATS.

7. (a) No investor may invoke Article 9.7(Expropriation and Compensation) as the basis for a claim where it has been determined pursuant to this subparagraph that the measure is not an expropriation. An investor that seeks to invoke Article 9.7(Expropriation and Compensation) with respect to a taxation measure must first provide written request to the competent authorities, at the time that it gives its Notice of Intent under Article 9.17(Notice of Intent to Submit a Claim to Arbitration), for decision on the issue of whether taxation measure is not an expropriation. The request should include the Notice of Intent. 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 of such referral, the investor may submit its claim to arbitration under paragraph 1 of Article 9.19(Submission of a Claim to Arbitration).

(b) For the purposes of this paragraph, **competent authorities** means:

(i) for Korea, the Deputy Minister for Tax and Customs, Ministry of Strategy and Finance; and

(ii) for Viet Nam, the Director General of the General Department of Taxation, Ministry of Finance;

or their respective successors.

8. For the purposes of this Article:

(a) **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

(b) taxes and taxation measures do not include customs duties as defined in Article 1.5(General Definitions) and measures listed in exceptions (b), (c), (d), and (e) of that definition.

**Article 16.4 : Disclosure of Information**

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

# CHAPTER 17
# INSTITUTIONAL AND FINAL PROVISIONS

## Section A: Institutional Provisions

### Article 17.1 : Joint Committee

1. The Parties hereby establish a Joint Committee.

2. The Joint Committee shall be composed of relevant government officials of each Party and co-chaired by ministerial level officials of the Ministry of Trade, Industry and Energy of Korea and the Ministry of Industry and Trade of Viet Nam, or their respective designees. The Joint Committee shall agree on its meeting schedule and set its agenda.

3. The Joint Committee shall:

   (a) review and monitor the implementation and operation of this Agreement;

   (b) supervise and coordinate the work of all committees, working groups and other bodies established under this Agreement;

   (c) consider ways to further enhance trade and investment relations between the Parties;

   (d) without prejudice to the procedures under Chapter 15 (Dispute Settlement), seek to resolve problems or disputes that may arise relating to the interpretation or application of this Agreement;

   (e) adopt its own rules of procedure; and

   (f) carry out any other function relating to the areas covered by this Agreement as the Parties may agree.

4. The Joint Committee may:

   (a) establish and delegate responsibilities to committees, working groups or other bodies;

   (b) recommend to the Parties amendments to this Agreement;

   (c) adopt interpretations of the provisions of this Agreement; and

   (d) make recommendations.

5. When a Party submits information considered as confidential under its domestic laws and regulations to the Joint Committee, committees, working groups or any other body, the other Party shall treat that information as confidential.

**Article 17.2 : Procedures of the Joint Committee**

1. Unless the Parties otherwise agree, the Joint Committee shall convene:

   (a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and

   (b) in special session within 30 days of the request of either Party, with such sessions to be held in the territory of the other Party or at such locations as the Parties may agree.

2. The meetings of the Joint Committee may be held in person or, if agreed by the Parties, by any technological means available to them.

3. All decisions of the Joint Committee shall be taken by mutual agreement.

**Article 17.3 : Committees and Working Groups**

1. The committees, working groups or any other body may be established under the auspices of the Joint Committee.

2. The composition, frequency of meetings, and functions of the committees, working groups or any other body shall be in accordance with the relevant provisions of this Agreement or determined by the Joint Committee consistent with this Agreement.

3. The committees, working groups or any other body shall inform the Joint Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Joint Committee on their activities at each regular meeting of the Joint Committee. The creation or existence of a committee, a working group or any other body shall not prevent either Party from bringing any matter directly to the Joint Committee.

4. The Joint Committee may decide to change or undertake the task assigned to a committee, a working group or any other body or may dissolve a committee, a working group or any other body.

**Section B : Final Provisions**

**Article 17.4 : Contact Points**

1. In order to facilitate communications between the Parties on any trade matter covered by this Agreement, the Parties hereby establish the following contact points:

   (a) for Korea, the Ministry of Trade, Industry and Energy; and

(b) for Viet Nam, the Ministry of Industry and Trade;

or their respective successors.

2. Upon request of either Party, the contact point of the other Party shall indicate the office or official responsible for any matter relating to the implementation of this Agreement, and provide the required support to facilitate communications with the requesting Party. Each Party shall notify the other Party of any change in its contact point in due time.

**Article 17.5 : Amendments**

The Parties may agree, in writing, to amend this Agreement. Any amendment shall enter into force after the Parties exchange written notifications through diplomatic channels certifying that they have completed all necessary domestic legal procedures, on such date as the Parties may agree. The amendments shall form an integral part of this Agreement.

**Article 17.6 : Amendments to the WTO Agreement**

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall consult to consider amending the relevant provisions of this Agreement, as appropriate, in accordance with Article 17.5.

**Article 17.7 : Annexes, Appendices, and Footnotes**

The Annexes, Appendices, and footnotes to this Agreement shall form an integral part of this Agreement.

**Article 17.8 : Entry into Force**

1. The entry into force of this Agreement is subject to the completion of necessary domestic legal procedures by each Party.

2. This Agreement shall enter into force on the first day of the second month, following the date of the exchange of the written notifications through diplomatic channels, by which the Parties inform each other that all necessary domestic legal procedures for the entry into force of this Agreement have been completed, or on such other date as the Parties may agree.

**Article 17.9 : Duration**

1. This Agreement shall be valid indefinitely.

2. Either Party may notify the other Party of its intention to denounce this Agreement in writing through diplomatic channels.

3. The denunciation shall take effect six months after the notification under paragraph 2.

**Article 17.10 : Authentic Texts**

This Agreement is drawn up in duplicate in the Korean, Vietnamese, and English languages, each of these texts being equally authentic. In case of divergence, the English text shall prevail.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

**DONE** at _____ on this _____ day of _____ in the year_____.

| | |
|---|---|
| **For the Government of the Republic of Korea:** | **For the Government of the Socialist Republic of Viet Nam:** |