FREE TRADE AGREEMENT

BETWEEN

THE EFTA STATES

AND

THE REPUBLIC OF KOREA

PREAMBLE

The Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (hereinafter referred to as “the EFTA States”),

and

the Republic of Korea (hereinafter referred to as “Korea”),

hereinafter collectively referred to as “the Parties”,

CONSIDERING the important links existing between Korea and the EFTA States;

WISHING to strengthen these links through the creation of a free trade area, thus establishing close and lasting relations;

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

REAFFIRMING their commitment to the United Nations Charter and the Universal Declaration of Human Rights;

RESOLVED by way of the removal of obstacles to trade through the creation of a free trade area to contribute to the harmonious development and expansion of world trade and provide a catalyst to broader international co-operation, in particular between Europe and Asia;

AIMING to create new employment opportunities, improve living standards and ensure a large and steadily growing real income in their respective territories through the expansion of trade and investment flows;

CONVINCED that this Agreement will create conditions encouraging economic, trade and investment relations between them;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the WTO and the other agreements negotiated thereunder (hereinafter referred to as “the WTO Agreement”) and other multilateral and bilateral instruments of co-operation to which they are both parties; and

RECOGNISING that trade liberalisation should allow for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment;

HAVE AGREED, in pursuit of the above, as follows:

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 1.1

Objectives

1. Korea and the EFTA States hereby establish a free trade area in accordance with the provisions of this Agreement.

2. The objectives of this Agreement, which is based on trade relations between market economies, are:

(a) to achieve the liberalisation and facilitation of trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "the GATT 1994");

(b) to achieve the liberalisation of trade in services, in conformity with Article V of the General Agreement on Trade in Services (hereinafter referred to as "the GATS");

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

(d) to achieve further liberalisation on a mutual basis of the government procurement markets of the Parties;

(e) to ensure adequate and effective protection of intellectual property rights, in accordance with international standards; and

(f) to contribute in this way, by the removal of barriers to trade and by developing an environment conducive to increased investment flows, to the harmonious development and expansion of world trade.

ARTICLE 1.2

Geographical Scope

1. Without prejudice to Annex I, this Agreement shall apply:

(a) to the land territory, internal waters, and the territorial sea of a Party, and the air-space above the territory in accordance with international law; as well as

(b) beyond the territorial sea, with respect to measures taken by a Party in the exercise of its sovereign right or jurisdiction in accordance with international law.

2. Annex II applies with respect to Norway.

ARTICLE 1.3

Trade and Economic Relations Governed by this Agreement

1. The provisions of this Agreement apply to the trade and economic relations between, on the one side, Korea and, on the other side, the EFTA States, but not to the trade relations between individual EFTA States, unless otherwise provided for in this Agreement.

2. As a result of the customs union established by the Treaty of 29 March 1923 between the Swiss Confederation and the Principality of Liechtenstein, the Swiss Confederation shall represent the Principality of Liechtenstein in matters covered thereby.

ARTICLE 1.4

Investment

Regarding investment, reference is made to the agreement on investment separately concluded between Korea, on the one hand, and Iceland, Liechtenstein and Switzerland, on the other. This agreement shall for these Parties form part of the instruments establishing the free trade area.

ARTICLE 1.5

Relationship to other Agreements

The provisions of this Agreement shall be without prejudice to the rights and obligations of the Parties under the WTO Agreement and any other international agreement to which they are party.

ARTICLE 1.6

Regional and Local Government

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

ARTICLE 1.7

Preferential Agreements

This Agreement shall not prevent the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade and other preferential agreements to the extent that these do not adversely affect the trade regime provided for by this Agreement.

CHAPTER 2 TRADE IN GOODS

ARTICLE 2.1

Scope

1. This Chapter shall apply to the products listed below, which must originate in an EFTA State or in Korea except when the rights and obligations of the Parties are governed by the GATT 1994:

(a) all products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System (hereinafter referred to as "the HS"), excluding the products listed in Annex III;

(b) processed agricultural products as provided for in Annex IV; and

(c) fish and other marine products as provided for in Annex V.

2. Korea and each EFTA State have concluded agreements on trade in agricultural products on a bilateral basis. These agreements form part of the instruments establishing the free trade area between the EFTA States and Korea.

ARTICLE 2.2

Rules of Origin and Customs Procedures

The provisions on rules of origin and customs procedures are set out in Annex I.

ARTICLE 2.3

Customs Duties

1. Upon the entry into force of this Agreement, the EFTA States and Korea shall abolish all customs duties and other duties or charges on imports and exports of products originating in an EFTA State or in Korea except as otherwise provided for in Annex VI.

2. No new customs duties and other duties or charges on imports and exports of products originating in Korea or in an EFTA State shall be introduced.

3. "Customs duties and other duties or charges on imports and exports" includes any duty or charge of any kind imposed in connection with the importation or exportation of a product, including any form of surtax or surcharge in connection with such importation or exportation, but does not include any charge imposed in conformity with Articles III and VIII of the GATT 1994.

ARTICLE 2.4

Base Rate of Customs Duties

1. For each product the base rate of customs duties, to which the successive reductions set out in Annexes IV, V and VI are to be applied, shall be the most-favoured nation (hereinafter referred to as "MFN") customs duty rate applied on 1 January 2005.

2. If at any moment a Party reduces its MFN customs duty rates for one or more goods covered by this Agreement, that duty rate shall apply if and for as long as it is lower than the customs duty rate calculated in accordance with the tariff elimination schedule set out in Annexes IV, V and VI. During the application of the reduced MFN rate, the Parties shall consult upon request with a view to continuing the elimination schedule based on the reduced MFN customs duty rate.

3. The reduced customs duty rates calculated in accordance with Annexes IV, V and VI shall be applied rounded to the first decimal place.

ARTICLE 2.5

Import and Export Restrictions

1. Upon the entry into force of this Agreement, all import or export prohibitions or restrictions on trade in goods between the Parties, other than customs duties and taxes, whether made effective through quotas, import or export licenses or other measures, shall be eliminated on all products of each Party, except as specified in Annex V.

2. No new measures as referred to in paragraph 1 shall be introduced.

ARTICLE 2.6

National Treatment

The Parties shall apply national treatment in accordance with Article III of the GATT 1994, including its interpretative notes, which is hereby incorporated into and made part of this Agreement.

ARTICLE 2.7

Sanitary and Phytosanitary Measures

1. The rights and obligations of the Parties in respect of sanitary and phytosanitary measures shall be governed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

2. The Parties shall exchange names and addresses of contact points with sanitary and phytosanitary expertise in order to facilitate technical consultations and the exchange of information.

ARTICLE 2.8

Technical Regulations

1. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment shall be governed by the WTO Agreement on

Technical Barriers to Trade (hereinafter referred to as "the TBT Agreement"), which is hereby incorporated into and made part of this Agreement.

2. The Parties shall strengthen their cooperation in the field of technical regulations, standards and conformity assessment with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they shall in particular cooperate in:

(a) reinforcing the role of international standards as a basis for technical regulations, including conformity assessment procedures;

(b) promoting the accreditation of conformity assessment bodies on the basis of relevant Standards and Guides of the International Standards Organisation (ISO)/International Electrotechnical Commission (IEC); and

(c) promoting the mutual acceptance of conformity assessment results of bodies referred to in paragraph 2(b) which have been recognised under an appropriate multilateral agreement between their respective accreditation systems or bodies.

3. The Parties shall, within the context of this Article, expeditiously broaden the exchange of information and give favourable consideration to any written request for consultation.

4. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in another Party's territory, including:

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

(b) accreditation procedures for qualifying conformity assessment bodies;

(c) government designation of conformity assessment bodies;

(d) recognition by one Party of the results of conformity assessments performed in another Party's territory;

(e) voluntary arrangements between conformity assessment bodies in each Party's territory; and

(f) the importing Party's acceptance of a supplier's declaration of conformity.

The Parties shall, at the latest three years after the date of entry into force of this Agreement, assess in the Joint Committee referred to in Article 8.1 (hereinafter referred to as the "Joint Committee") progress with regard to the acceptance of the results of conformity assessment between them and, to the extent necessary, agree on further steps.

5. Without prejudice to paragraph 1, the Parties agree to exchange information and to hold expert consultations to address any matter that may arise from the application of specific technical regulations, standards and conformity assessment procedures and which according to Korea or one or more of the EFTA States has created or is likely to create an obstacle to trade between the Parties, with a view to working out an appropriate solution in conformity with the TBT Agreement. The Joint Committee shall be informed of such consultations.

ARTICLE 2.9

Subsidies and Countervailing Measures

1. The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, except as provided for in paragraph 2.

2. Before a Party initiates an investigation to determine the existence, degree and effect of any alleged subsidy in an EFTA State or in Korea, as provided for in Article 11 of the WTO Agreement on Subsidies and Countervailing Measures, the Party considering initiating an investigation shall notify in writing the Party whose goods are subject to investigation and allow for a 30 day period with a view to finding a mutually acceptable solution. The consultations shall take place in the Joint Committee if any Party so requests within ten days from the receipt of the notification.

ARTICLE 2.10

Anti-Dumping

1. The Parties retain their rights and obligations under Article VI of the GATT 1994 and the Agreement on Implementation of Article VI of the GATT 1994 (hereinafter referred to as the "WTO Agreement on Anti-Dumping"), subject to the following:

(a) The Parties shall endeavour to refrain from initiating anti-dumping procedures against each other. To this end, when a Party receives a properly documented application and before initiating an investigation under the WTO Agreement on Anti-Dumping, the Party shall notify in

writing the other Party whose goods are allegedly being dumped and allow for consultations with a view to finding a mutually acceptable solution. The outcome of the consultations shall be communicated to the other Parties.

(b) If a Party takes a decision to impose an anti-dumping duty pursuant to Article 9.1 of the WTO Agreement on Anti-Dumping, the Party taking such a decision shall 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.

2. Five years after the entry into force of this Agreement, the Parties shall in the Joint Committee review whether there is need to maintain the possibility to take anti-dumping measures between them. If the Parties decide, after the first review, to maintain the possibility they shall thereafter conduct biennial reviews of this matter in the Joint Committee.

ARTICLE 2.11

Bilateral Safeguard Measures

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in a Party is being imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to constitute a substantial cause of serious injury or threat thereof to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take emergency measures to the minimum extent necessary to remedy or prevent the injury, subject to the provisions of the following paragraphs of this Article.

2. Emergency measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures laid down in the WTO Agreement on Safeguards.

3. The Party intending to take an emergency action under this Article shall immediately, and in any case before taking a measure, make notification to the other Parties and the Joint Committee. The notification shall contain all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved, and the proposed measure, proposed date of introduction, expected duration and timetable for the progressive removal of the measure. A Party that may be affected by the measure shall be offered compensation in the form of substantially equivalent trade liberalization in relation to the imports from any such Party.

4. If the conditions in paragraph 1 are met, the importing Party may:

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

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

(i) the MFN rate of duty applied at the time the action is taken; or

(ii) the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

5. Emergency measures shall be taken for a period not exceeding one year. In very exceptional circumstances, after review by the Joint Committee, measures may be taken up to a total maximum period of three years. No measures shall be applied to the import of a product, which has previously been subject to such a measure, for a period of, at least, three years since the expiry of the measure.

6. The Joint Committee shall, within 30 days from the date of notification, examine the information provided under paragraph 3 in order to facilitate a mutually acceptable resolution of the matter. In the absence of such resolution, the importing Party may adopt a measure pursuant to paragraph 4 to remedy the problem, and, in the absence of mutually agreed compensation, the Party against whose product the measure is taken may take compensatory action. The safeguard measure and the compensatory action shall be immediately notified to the other Parties and the Joint Committee. In the selection of the safeguard measure and the compensatory action, priority must be given to the action which least disturbs the functioning of this Agreement. The compensatory action shall normally consist of suspension of concessions having substantially equivalent trade effects or concessions substantially equivalent to the value of the additional duties expected to result from the emergency action. The Party taking such action shall apply the action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the measure under paragraph 4 is being applied.

7. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

8. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional emergency measure pursuant to a preliminary determination that there is clear evidence that increased imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry. The Party intending to take such a measure shall immediately notify the other Parties and the Joint Committee thereof. Within 30 days of the date of the notification, the pertinent procedures set out in paragraphs 2 to 6, including for compensatory action,

shall be initiated. Any compensation shall be based on the total period of application of the provisional emergency measure and of the emergency measure.

9. Any provisional measures shall be terminated within 200 days at the latest. The period of application of any such provisional measure shall be counted as part of the duration of the measure set out in paragraph 4 and any extension thereof. Any tariff increases shall be promptly refunded if the investigation described in paragraph 2 does not result in a finding that the conditions of paragraph 1 are met.

10. Five years after the date of entry into force of this Agreement, the Parties shall in the Joint Committee review whether there is need to maintain the possibility to take safeguard measures between them. If the Parties decide, after the first review to maintain the possibility, they shall thereafter conduct biennial review of this matter in the Joint Committee.

ARTICLE 2.12

Balance-of-Payments Difficulties

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance-of-payments purposes.

2. A Party in serious balance-of-payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under the GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions, adopt trade restrictive measures, which shall be of limited duration and non-discriminatory, and may not go beyond what is necessary to remedy the balance-of-payments situation. The relevant provisions of the GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions are hereby incorporated into and made part of this Agreement.

3. The Party introducing a measure under this Article shall promptly notify the other Parties and the Joint Committee thereof.

ARTICLE 2.13

Exceptions and other Rights and Obligations

The following rights and obligations of the Parties shall be governed by the corresponding Articles of the GATT 1994, which are hereby incorporated into and made part of this Agreement:

(a) in respect of state trading enterprises, by Article XVII and the Understanding on the Interpretation of Article XVII;

(b) in respect of general exceptions, by Article XX; and

(c) in respect of security exceptions, by Article XXI.

CHAPTER 3 TRADE IN SERVICES

ARTICLE 3.1

Scope and Coverage

1. This Chapter applies to measures affecting trade in services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. It applies to measures in all services sectors except as provided for in Article 4.1. It does not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the GATS Annex on Air Transport Services.

2. Articles 3.4, 3.5 and 3.6 shall not apply to laws, regulations or requirements governing the procurement by government agencies of services purchased for governmental purposes and not for commercial resale or for use in the supply of services for commercial sale.

ARTICLE 3.2

Incorporation of Provisions from the GATS

Wherever a provision of this Chapter provides that a provision of the GATS is incorporated into and made part of this Chapter, the meaning of the terms used in the GATS provision shall be understood as follows:

(a) "Member" shall mean "Party", except that "among Members" shall mean "among Members of the WTO";

(b) "Schedules" shall mean the Schedules referred to in Article 3.16 and contained in Annex VII; and

(c) "Specific Commitment" shall mean a specific commitment in a Schedule referred to in Article 3.16.

ARTICLE 3.3

Definitions

For purposes of this Chapter:

1. The following definitions of Article I of the GATS are incorporated into and made part of this Chapter:

(a) "trade in services";

(b) "services"; and

(c) "a service supplied in the exercise of governmental authority".

2. "Service supplier" means any person that supplies, or seeks to supply, a service.[1]

3. "Natural person of a Party" is, under its legislation, a national of that Party, or a permanent resident of that Party if that Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services.

4. "Juridical person of a Party" means a juridical person which is either:

(a) constituted or otherwise organised under the law of that Party, and

(i) is engaged in substantive business operations in the territory of any Party; or

(ii) is engaged in substantive business operations in the territory of any Member of the WTO and is owned or controlled by natural persons of that Party or by juridical persons that meet the conditions of paragraph 4(a)(i);

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

or

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

(i) natural persons of that Party; or

(ii) juridical persons that meet the conditions of paragraph 4(a).

5. The following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Chapter:

(a) "measure";

(b) "supply of a service";

(c) "measures by Members affecting trade in services";

(d) "commercial presence";

(e) "sector" of a service;

(f) "service of another Member";

(g) "monopoly supplier of a service";

(h) "service consumer";

(i) "person";

(j) "juridical person";

(k) "owned", "controlled" and "affiliated"; and

(l) "direct taxes".

ARTICLE 3.4

Most Favoured Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN-exemptions contained in Annex VIII, a Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of another Party

treatment no less favourable than the treatment it accords to like services and service suppliers of any non-Party.

2. Treatment granted under other agreements concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS shall not be subject to paragraph 1.

3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall upon request from another Party afford adequate opportunity to that Party to negotiate the benefits granted therein.

4. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.5

Market Access

Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.6

National Treatment

Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.7

Additional Commitments

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.8

Domestic Regulation

The rights and obligations of the Parties in respect of domestic regulation shall be governed by Article VI of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.9

Recognition

1. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licenses or certifications granted in the territory of a non-Party, that Party shall accord another Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the territory of that other Party should also be recognised.

2. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of the GATS.

3. Annex IX applies to mutual recognition of, *inter alia*, education or experience, qualifications, licenses, certification or accreditation of service suppliers.

ARTICLE 3.10

Movement of Natural Persons

The rights and obligations of the Parties in respect of the movement of natural persons of a Party supplying services shall be governed by the GATS Annex on Movement of Natural Persons Supplying Services, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.11

Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Chapter.

ARTICLE 3.12

Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 3.13

Payments and Transfers

1. Subject to its specific commitments and except under the circumstances envisaged in Article 3.14, a Party shall not apply restrictions on international transfers and payments for current transactions relating to the supply of a service with another Party.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (IMF), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments, except under Article 3.14 or at the request of the IMF.

ARTICLE 3.14

Restrictions to Safeguard the Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which are hereby incorporated into and made part of this Chapter.

3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee thereof.

ARTICLE 3.15

Exceptions

The rights and obligations of the Parties in respect of general and security exceptions shall be governed by Articles XIV and XIV *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

ARTICLE 3.16

Schedules of Specific Commitments

1. Each Party shall set out in a Schedule the specific commitments it undertakes under Articles 3.5, 3.6 and 3.7. With respect to sectors where such specific commitments are undertaken, each Schedule shall specify the elements set forth in paragraphs (a) to (d) of paragraph 1 of Article XX of the GATS.

2. Measures inconsistent with both Articles 3.5 and 3.6 shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.

3. The Parties' Schedules of specific commitments are set out in Annex VII.

4. Particular aspects of market access, national treatment and additional commitments applicable to telecommunications services and to co-production of broadcasting programmes are dealt with in Annexes X and XI.

ARTICLE 3.17

Modification of Schedules

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in its Schedule of specific commitments. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments not less favourable to trade than that provided for in the Schedule of specific commitments prior to such consultations is maintained. Modifications of Schedules are subject to the procedures set out in Article 8.1.

ARTICLE 3.18

Transparency

The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

ARTICLE 3.19

Review

With the objective of further liberalisation of trade in services between them, the Parties commit themselves to review every two years their Schedules of specific commitments and their Lists of MFN-exemptions. The first review shall take place not later than three years after the entry into force of this Agreement.

ARTICLE 3.20

Annexes

The following Annexes attached to this Agreement form an integral part of this Chapter:

- Annex VII (Schedules of Specific Commitments);
- Annex VIII (Lists of MFN-exemptions);
- Annex IX (Mutual Recognition);
- Annex X (Telecommunications Services); and
- Annex XI (Co-production of Broadcasting Programmes).

CHAPTER 4 FINANCIAL SERVICES

ARTICLE 4.1

Scope and Coverage

1. This Chapter applies to measures affecting trade in financial services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

2. Articles 4.4, 4.5 and 4.6 shall not apply to laws, regulations or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not for commercial resale or for use in the supply of services for commercial sale.

3. Chapter 3 applies to measures described in paragraph 1 where this is specifically provided for by this Chapter.

ARTICLE 4.2

Incorporation of Provisions from the GATS

Article 3.2 shall apply to this Chapter.

ARTICLE 4.3

Definitions

1. Except for its paragraph 1(c), Article 3.3 shall apply to this Chapter.

2. The following definitions of the GATS Annex on Financial Services are incorporated into and made part of this Chapter:

(a) "services supplied in the exercise of governmental authority" (paragraphs 1 (b) and (c) of the Annex);

(b) "a financial service" (paragraph 5 (a) of the Annex);

(c) "financial service supplier" (paragraph 5 (b) of the Annex); and

(d) "public entity" (paragraph 5 (c) of the Annex).

ARTICLE 4.4

Most Favoured Nation Treatment

Article 3.4 shall apply to this Chapter.

ARTICLE 4.5

Market Access

Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 4.6

National Treatment

1. Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Chapter.

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

3. Where membership or participation in, or access to, a self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association is required by a Party in order for financial service suppliers of any other Party to supply financial services on an equal basis with financial service suppliers of the Party, or where the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure that such entities accord national treatment to financial service suppliers of any other Party established in its territory.

ARTICLE 4.7

Additional Commitments

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 4.8

Domestic Regulation

1. The rights and obligations of the Parties in respect of domestic regulation shall be governed by Article VI of the GATS, which is hereby incorporated into and made part of this Chapter.

2. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, including for:

(a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or

(b) ensuring the integrity and stability of a Party's financial system.

Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions. Such measures shall not be more burdensome than necessary to achieve their aim.

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

ARTICLE 4.9

Recognition

1. Article 3.9 shall apply to this Chapter.

2. In addition, where a Party recognises prudential measures of a non-Party in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for another Party to negotiate its accession to such agreement or arrangement, or to negotiate a comparable agreement or arrangement with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords such recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

ARTICLE 4.10

Movement of Natural Persons

The rights and obligations of the Parties in respect of the movement of natural persons of a Party supplying services shall be governed by the GATS Annex on Movement of Natural Persons Supplying Services, which is hereby incorporated into and made part of this Chapter.

ARTICLE 4.11

Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Chapter.

ARTICLE 4.12

Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 4.13

Payments and Transfers

Article 3.13 shall apply to this Chapter.

ARTICLE 4.14

Restrictions to Safeguard the Balance of Payments

Article 3.14 shall apply to this Chapter.

ARTICLE 4.15

Exceptions

The rights and obligations of the Parties in respect of general and security exceptions shall be governed by Articles XIV and XIV *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

ARTICLE 4.16

Schedules of Specific Commitments

Each Party shall set out in its schedule referred to in Article 3.16 the specific commitments it undertakes for services defined under paragraph 2(b) of Article 4.3 in accordance with the provisions of paragraphs 1 to 3 of Article 3.16.

ARTICLE 4.17

Modification of Schedules

Article 3.17 shall apply to this Chapter.

ARTICLE 4.18

Transparency

1. The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

2. In addition, each Party commits to promote regulatory transparency in financial services. Accordingly, the Parties undertake to consult, as appropriate, with the goal of promoting objective and transparent regulatory processes in each Party, taking into account:

(a) the work undertaken by the Parties in the GATS and the Parties' work in other fora relating to trade in financial services; and

(b) the importance of regulatory transparency of identifiable policy objectives and clear and consistently applied regulatory processes that are communicated or otherwise made available to the public.

ARTICLE 4.19

Review

Article 3.19 shall apply to this Chapter.

ARTICLE 4.20

Sub-Committee on Financial Services

1. A Sub-Committee on Financial Services (hereinafter referred to as "the Sub-Committee") is to be set up under the Joint Committee. The principal representative of each Party shall be from an authority competent for this Agreement or from a financial authority.

2. The mandate of the Sub-Committee shall be:

(a) to supervise the implementation of this Chapter, assess its functioning, and oversee its further elaboration; and

(b) to consider issues regarding financial services that are referred to it by a Party.

3. The Sub-Committee shall meet in conjunction with Joint Committee meetings, or as otherwise agreed upon between the Parties.

4. The Sub-Committee shall be chaired jointly by Korea and one of the EFTA States. It shall act by consensus.

ARTICLE 4.21

Dispute Settlement

1. Relevant Articles in Chapter 9 shall apply to the settlement of disputes arising under this Chapter as modified by this Article.

2. Consultations regarding financial services held pursuant to Chapter 9 shall include officials from an authority competent for this Agreement or from a financial authority. The Parties shall report the results of their consultations to the Sub-Committee.

3. Article 9.4 shall apply, with the following modifications:

(a) where the Parties to the disputes so agree, the arbitration panel shall be composed entirely of individuals meeting the qualifications in paragraph 4; and

(b) in any other case,

(i) each Party to the dispute may select individuals meeting the qualifications set out in paragraph 7 of Article 9.5; and

(ii) if the Party complained against invokes Article 4.8, the chair of the panel shall meet the qualifications set out in paragraph 4, unless the Parties to the dispute agree otherwise.

4. Unless otherwise provided for in this Chapter, financial services panellists shall:

(a) meet the qualifications set out in Article 9.5; and

(b) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. With regard to paragraph 5 of Article 9.10, the following shall apply wherever practical. Where the measure under dispute affects:

(a) only the financial services sector, the complaining Party shall first seek to suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party shall first seek to suspend benefits in the respective sectors and with an effect equivalent to the effect of the measure complained against in each sector; or

(c) only a sector other than the financial services sector, the complaining Party shall seek to avoid suspending benefits in the financial services sector.

CHAPTER 5 COMPETITION

ARTICLE 5.1

Rules of Competition concerning Enterprises

1. The Parties recognise that anti-competitive business conduct may frustrate the benefits arising from this Agreement. Such conduct is therefore incompatible with the proper functioning of this Agreement in so far as it may affect trade between an EFTA State and Korea.

2. For the purposes of this Agreement, "anti-competitive business conduct":

(a) means all agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises, as well as abuse by one or more enterprises of a dominant position in the territories of the Parties as a whole or in a substantial part thereof, which have, as their object or effect, the prevention, restriction or distortion of competition; and

(b) may occur with regard to trade in goods or services. Such conduct may be effected by private or public enterprises, or by enterprises to which special or exclusive rights have been granted unless the particular tasks assigned to them are obstructed.

3. The provisions of paragraphs 1 and 2 shall not be construed to create any direct obligations for enterprises.

4. The Parties undertake to apply their respective competition laws with a view to removing anti-competitive business conduct. To that end, they shall notify each other of relevant enforcement activities and exchange information. No Party shall be required to disclose information that is confidential according to its laws.

5. Upon request, competition authorities and/or other relevant authorities of the Parties shall enter into consultations in order to facilitate the removal of anti-competitive business conduct. The Party addressed shall accord full and sympathetic consideration to that request.

6. Upon request, consultations shall also be held in the Joint Committee if a Party considers that an anti-competitive business conduct in the territory of another Party continues to affect trade between them. Consultations shall be held within 30 days of receipt of the request. The Parties concerned shall give to the Joint Committee all the support and information in order for the Joint Committee to examine the case and to assist the Parties concerned in removing the conduct objected to and, where

appropriate, in re-establishing the balance of rights and obligations under this Agreement.

CHAPTER 6 GOVERNMENT PROCUREMENT

ARTICLE 6.1

Scope and Coverage

1. The rights and obligations of the Parties in respect of government procurement shall be governed by the WTO Agreement on Government Procurement (hereinafter referred to as "the GPA").

2. The Parties agree to co-operate in the Joint Committee with the aim of increasing the mutual understanding of their respective government procurement systems, and achieving further liberalisation and mutual opening up of their government procurement markets.

ARTICLE 6.2

Exchange of Information

To facilitate communication between the Parties on any matter regarding government procurement, contact points, responsible for providing information on the rules and regulations in the field of government procurement, are listed in Annex XII.

ARTICLE 6.3

Further Negotiations

1. Upon conclusion of bilateral negotiations between the Parties on further liberalisation of their respective government procurement markets in the framework of the negotiations aimed at amending the GPA, such liberalisation, including provisions from the agreement amending the main part of the GPA in so far as they are relevant for these additional liberalisations, shall be included in this Agreement. The Joint Committee shall take a decision to this effect within three months after conclusion of these bilateral negotiations. This decision shall be subject to ratification or acceptance by the Parties.

2. If a Party grants to a non-Party, after the entry into force of this Agreement, additional benefits with regard to the access to its government procurement markets, this Party shall agree to enter into negotiations on the possible extension of these benefits to another Party on a reciprocal basis.

CHAPTER 7 INTELLECTUAL PROPERTY

ARTICLE 7.1

Protection of Intellectual Property

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of those rights against infringement, including counterfeiting and piracy, in accordance with this Article as well as Annex XIII and the international agreements referred to therein.

2. The Parties shall accord to each other's nationals treatment no less favourable than the treatment they accord to their own nationals. Exemptions from this obligation must be in accordance with the substantive provisions of Articles 3 and 5 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as "the TRIPS Agreement").

3. With regard to the protection of intellectual property, the Parties shall, in accordance with the TRIPS Agreement, in particular Articles 4 and 5 thereof, grant to each other's nationals treatment no less favourable than that accorded to nationals of any third State.

4. The Parties agree, upon request of any Party made to the Joint Committee, and subject to consensus of the Parties, to review the provisions on intellectual property of this Agreement as appropriate, with a view to avoiding or remedying trade distortions caused by actual levels of protection of intellectual property rights, and to promoting intellectual property that facilitates trade and investment relations between the Parties.

ARTICLE 7.2

Scope of Intellectual Property

"Intellectual property" refers in particular to copyright, including computer programmes and compilations of data, as well as related rights, trademarks for goods and services, geographical indications, including appellations of origin, industrial

designs, patents, plant varieties, layout-designs/topographies of integrated circuits, as well as undisclosed information.

ARTICLE 7.3

Co-operation in the Field of Intellectual Property

1. The Parties, recognising the growing importance of intellectual property rights as a factor of social, economic and cultural development, shall enhance their co-operation in this field.

2. The Parties agree, if circumstances permit, to co-operate on activities relating to the identified or to future international conventions on harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations, such as the WTO and the Word Intellectual Property Organization (WIPO), as well as to share experiences and exchange information on relations of the Parties with third countries on matters concerning intellectual property.

3. The Parties, pursuant to paragraph 1, may co-operate in:

(a) programmes for personnel interchange, including for examiners, between the Parties;

(b) the field of information systems on intellectual property;

(c) the promotion of mutual understanding of each Party's policy, activities and experiences in the field of intellectual property; and

(d) the promotion of education on intellectual property and invention awareness.

CHAPTER 8 INSTITUTIONAL PROVISIONS

ARTICLE 8.1

The Joint Committee

1. The Parties hereby establish the Korea-EFTA Joint Committee. It shall be composed of representatives of the Parties, which shall be headed by Ministers or by senior officials delegated by them for this purpose.

2. The Joint Committee shall:

(a) supervise and review the implementation of this Agreement, *inter alia* by means of a comprehensive review of the application of the provisions of this Agreement, with due regard to any specific reviews contained in this Agreement;

(b) keep under review the possibility of further removal of barriers to trade and other restrictive measures concerning trade between Korea and the EFTA States;

(c) oversee the further development of this Agreement;

(d) supervise the work of all sub-committees and working groups established under this Agreement;

(e) endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement; and

(f) consider any other matter that may affect the operation of this Agreement.

3. The Joint Committee may decide to set up such sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks. Except where otherwise provided for in this Agreement, the sub-committees and working groups shall work under a mandate established by the Joint Committee.

4. The Joint Committee shall take decisions as provided for in this Agreement, and may make recommendations, by consensus.

5. The Joint Committee shall meet within one year of the entry into force of this Agreement. Thereafter, it shall meet whenever necessary upon mutual agreement but normally every two years. Its meetings shall be chaired jointly by Korea and one of the EFTA States. The Joint Committee shall establish its rules of procedure.

6. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.

7. The Joint Committee may decide to amend the Annexes and Appendices to this Agreement. Subject to paragraph 8, it may set a date for the entry into force of such decisions.

8. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfilment of constitutional requirements, the decision shall enter into force on the date that the last Party notifies that its internal requirements have been

fulfilled, unless the decision itself specifies a later date. The Joint Committee may decide that the decision shall enter into force for those Parties that have fulfilled their internal requirements, provided that Korea is one of those Parties. A Party may apply a decision of the Joint Committee provisionally until it enters into force, subject to the constitutional requirements of this Party.

ARTICLE 8.2

Secretariat

1. The Parties hereby designate the following competent organs to serve as their respective secretariats for purposes of this Agreement:

(a) in the case of Korea, the Ministry of Foreign Affairs and Trade; and

(b) in the case of the EFTA States, the EFTA Secretariat.

2. Without prejudice to Article 10.7 and unless otherwise agreed by the Parties or stated in this Agreement, all official communications or notifications to or by a Party for purposes of this Agreement shall be made through its secretariat.

CHAPTER 9 DISPUTE SETTLEMENT

ARTICLE 9.1

Scope and Coverage

1. The provisions of this Chapter shall apply with respect to the avoidance or the settlement of any dispute arising from this Agreement, taking into account the modalities set out in Article 4.21 of this Agreement and Article 25 of Annex I.

2. Disputes on the same matter arising under both this Agreement and the WTO Agreement may be settled in either forum at the discretion of the complaining Party. The forum thus selected shall be used to the exclusion of the other.

3. For purposes of this Article, dispute settlement proceedings under the WTO Agreement or this Agreement are deemed to be initiated upon a request for a panel by a Party.

4. Before a Party initiates dispute settlement proceedings under the WTO Agreement against another Party or Parties as regards a matter arising under both this Agreement and the WTO Agreement, it shall notify all the Parties of its intention.

5. The arbitration rules provided for in Articles 9.4 to 9.10 do not apply to Articles 2.7, 2.9, 2.10 and Chapter 5.

ARTICLE 9.2

Good Offices, Conciliation or Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the Parties involved so agree. They may begin at any time and be terminated at any time.

2. Proceedings involving good offices, conciliation and mediation shall be confidential and without prejudice to the Parties' rights in any other proceedings.

ARTICLE 9.3

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

2. Any one or more of the EFTA States may request in writing consultations with Korea and vice-versa whenever a Party considers that a measure applied by the Party or Parties to which the request is made is inconsistent with this Agreement or that any benefit accruing to it directly or indirectly under this Agreement is impaired or nullified by such measure. Consultations shall take place in the Joint Committee unless the Party or Parties making or receiving the request for consultations disagree.

3. Consultations shall be held within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable agricultural goods, shall commence within 15 days from the receipt of the request for consultations.

4. The Parties involved in the consultations shall provide sufficient information to enable a full examination of how the measure or other matter might affect the operation of this Agreement and treat any confidential or proprietary information exchanged in the course of consultations in the same manner as the Party providing the information.

5. The consultations shall be confidential and without prejudice to the rights of the Parties involved in any further proceedings.

6. The Parties involved in the consultations shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 9.4

Establishment of Arbitration Panel

1. If the matter has not been resolved within 60 days, or 30 days in relation to a matter of urgency, after the date of receipt of the request for consultations, it may be referred to arbitration by one or more of the Parties involved by means of a written request addressed to the Party or Parties complained against. A copy of this request shall also be communicated to all Parties so that each Party may determine whether to participate in the dispute.

2. Where more than one Party requests the establishment of an arbitration panel relating to the same matter, a single arbitration panel shall be established to examine these complaints whenever feasible[2].

3. A request for arbitration shall give the reason for the complaint including the identification of the measure at issue and an indication of the legal basis of the complaint.

ARTICLE 9.5

Arbitration Panel

1. The arbitration panel referred to in Article 9.4 shall consist of three members.

2. Each Party to the dispute shall appoint one member of the arbitration panel within 15 days of the receipt of the request under Article 9.4.

3. The Parties to the dispute shall agree on the appointment of the third member within 30 days of the appointment of the second member. The member thus appointed shall chair the arbitration panel.

4. If all three members have not been designated or appointed within 45 days from the date of receipt of the request referred to in Article 9.4, the necessary

---

[2] In the following, the terms “Party to the dispute”, “complaining Party”, “Party complained against” are used regardless of whether two or more Parties are involved in a dispute.

designations shall be made at the request of any Party to the dispute by the Director-General of the WTO within a further 30 days. Where the designation of the members of the arbitration panel by the Director-General of the WTO is not made within the specified period, the Parties to the dispute shall within the next ten days exchange lists comprising four nominees each who shall not be nationals of either Party. The panel members shall then be appointed in the presence of both Parties by lot from the lists within ten days from the date of exchange of their respective lists. If a Party fails to submit its list of four nominees, the panel members shall be appointed by lot from the list already submitted by the other Party.

5. The chair of the arbitration panel shall not be a national of any of the Parties, nor have his or her usual place of residence in the territory of any of the Parties, nor be employed or previously have been employed by any of the Parties, nor have dealt with the case in any capacity.

6. If a member dies, withdraws or is removed, a replacement shall be selected within 15 days in accordance with the selection procedure followed to select him or her. In such a case, any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date the member dies, withdraws or is removed and ending on the date the replacement is selected.

7. Any person appointed as a member of the arbitration panel shall have expertise or experience in law, international trade, other matters covered by this Agreement or in the resolution of disputes arising under international trade agreements. A member shall be chosen strictly on the basis of objectivity, reliability, sound judgement and independence and shall conduct himself or herself according to these characteristics throughout the course of the arbitration proceedings. If a Party believes that a member is in violation of the bases stated above, the Parties shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article, and following the procedure outlined in paragraph 6.

8. The date of establishment of the arbitration panel shall be the date on which the chair is appointed.

ARTICLE 9.6

Procedures of the Arbitration Panel

1. Unless the Parties to the dispute agree otherwise, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure that shall be adopted at the first meeting of the Joint Committee. Pending the adoption of those rules, the arbitration panel shall regulate its own procedures, unless the Parties to the dispute agree otherwise.

2. Notwithstanding paragraph 1, for all arbitration panel proceedings the procedures shall ensure that:

(a) the Parties to the dispute have the right to at least one hearing before the arbitration panel as well as the opportunity to provide initial and rebuttal written submissions;

(b) the Parties to the dispute be invited to all the hearings held by the arbitration panel;

(c) all submissions and comments made to the arbitration panel be available to the Parties to the dispute, subject to any requirements of confidentiality; and

(d) hearings, deliberations, initial report and all written submissions to and communications with the arbitration panel be confidential.

3. Unless the Parties to the dispute otherwise agree within 20 days from the date of delivery of the request for the establishment of the arbitration panel, the terms of reference shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 9.4 and to make findings of law and fact together with the reasons therefor as well as recommendations, if any, for the resolution of the dispute."

4. At the request of a Party to the dispute or on its own initiative, the arbitration panel may seek scientific information and technical advice from experts as it deems appropriate.

5. The arbitration panel shall make its ruling based on the provisions of this Agreement, applied and interpreted in accordance with the rules of interpretation of public international law.

6. Decisions of the arbitration panel shall be taken by a majority of its members. Any member may furnish separate opinions on matters not unanimously agreed. No arbitration panel may disclose which members are associated with majority or minority opinions.

7. The expenses of the arbitration panel, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares.

ARTICLE 9.7

Withdrawal of Complaint

A complaining Party may withdraw its complaint at any time before the initial report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

ARTICLE 9.8

Initial Report

1. The arbitration panel shall present to the Parties to the dispute an initial report within 90 days from the date of the establishment of the arbitration panel.

2. The arbitration panel shall base its report on the submissions and arguments of the Parties to the dispute and on any scientific information and technical advice obtained pursuant to paragraph 4 of Article 9.6.

3. A Party to the dispute may submit written comments to the arbitration panel on the initial report within 14 days of presentation of the report.

4. In such an event, and after considering the written comments, the arbitration panel, on its own initiative or at the request of a Party to the dispute, may:

(a) request the views of any of the Parties to the dispute;

(b) reconsider its report; and/or

(c) make any further examination that it considers appropriate.

ARTICLE 9.9

Final Report

1. The arbitration panel shall present to the Parties to the dispute the final report, containing the matters referred to in paragraph 2 of Article 9.8, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report.

2. Unless the Parties to the dispute decide otherwise, the final report shall be published 15 days after it is presented to them.

ARTICLE 9.10

Implementation of Arbitration Panel Reports

1. The final report shall be final and binding on the Parties to the dispute. Each Party to the dispute shall be bound to take the measures involved in carrying out the final report.

2. On receipt of the final report of an arbitration panel, the Parties to the dispute shall agree on:

(a) the means to resolve the dispute, which normally shall conform with the determinations or recommendations, if any, of the arbitration panel; and

(b) the reasonable period of time which may be necessary in order to implement the means to resolve the dispute. If the Parties to the dispute fail to agree, a Party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in the light of the particular circumstances of the case. The determination of the arbitration panel shall be presented within 15 days from that request.

3. If, in its final report, the arbitration panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure has caused nullification or impairment, the means to resolve the dispute shall be, whenever possible, to eliminate the inconsistency or the nullification or impairment.

4. If the Parties to the dispute are unable to agree on the means to resolve the dispute pursuant to paragraph 2(a) within 30 days of issuance of the final report, or have agreed on the means to resolve the dispute but the Party complained against fails to implement the means within 30 days following the expiration of the reasonable period of time determined in accordance with paragraph 2(b), the Party complained against shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement that are equivalent to those affected by the measure found to violate this Agreement.

5. In considering the benefits to be suspended, the complaining Party shall first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to violate this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

6. The complaining Party shall notify the other Party of the benefits which it intends to suspend no later than 60 days before the date on which the suspension is due to take effect. Within 15 days from that notification, any of the Parties to the dispute may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to violate this Agreement, and whether the proposed suspension is in accordance with paragraphs 4 and 5. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

7. The suspension of benefits shall be temporary and only be applied by the complaining Party until the measure found to violate this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or the Parties to the dispute have reached agreement on a resolution of the dispute.

8. At the request of a Party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

9. The rulings provided for in paragraphs 2 (b), 6 and 8 shall be binding.

ARTICLE 9.11

Other Provisions

Any time period mentioned in this Chapter may be modified by mutual agreement of the Parties involved.

CHAPTER 10 FINAL PROVISIONS

ARTICLE 10.1

Transparency

1. The Parties shall publish their laws, or otherwise make publicly available their laws, regulations, and administrative rulings and judicial decisions of general application as well as their respective international agreements that may affect the operation of this Agreement.

2. The Parties shall promptly respond to specific questions, and provide upon request information to each other, on matters referred to in paragraph 1.

3. Nothing in this Agreement shall require any Party to disclose confidential information, which would impede law enforcement, otherwise be contrary to the public interest or prejudice the legitimate commercial interests of any economic operator.

4. In the case of any inconsistency between the provisions of this Article and provisions relating to transparency in other Chapters, the latter shall prevail to the extent of the inconsistency.

ARTICLE 10.2

Annexes and Appendices

The Annexes and Appendices to this Agreement form an integral part thereof.

ARTICLE 10.3

Amendments

1. Amendments to this Agreement other than those referred to in paragraph 7 of Article 8.1 shall, after approval by the Joint Committee, be submitted to the Parties for ratification, acceptance or approval, in accordance with each Party's constitutional requirements.

2. Unless otherwise agreed by the Parties, amendments shall enter into force on the first day of the second month following the deposit of the last instrument of ratification, acceptance or approval.

3. The text of the amendments as well as the instruments of ratification, acceptance or approval shall be deposited with the Depositary.

ARTICLE 10.4

Accession

1. Any State, Member of the European Free Trade Association, may accede to this Agreement, provided that the Joint Committee decides to approve its accession, on terms and conditions to be negotiated between the acceding State and the existing Parties. The instrument of accession shall be deposited with the Depositary.

2. In relation to an acceding State, this Agreement shall enter into force on the first day of the second month following the deposit of its instrument of accession or the approval of the terms of accession by the existing Parties, whichever is later.

ARTICLE 10.5

Withdrawal and Termination

1 Any Party may withdraw from this Agreement by means of a written notification to the Depositary. The withdrawal shall take effect six months after the date on which the notification is received by the Depositary.

2. If Korea withdraws, this Agreement shall expire on the date specified in paragraph 1.

3. In case any EFTA State withdraws from the Convention establishing the European Free Trade Association, this EFTA State shall withdraw from this Agreement in accordance with paragraph 1.

ARTICLE 10.6

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 July 2006 in relation to those Signatory States which by then have ratified this Agreement, provided they have deposited their instruments of ratification, acceptance or approval with the Depositary at least one month before the entry into force, and provided that Korea is among the States that have deposited their instruments.

3. In case this Agreement does not enter into force on 1 July 2006, it shall enter into force on the first day of the second month following the latter date on which Korea and at least one EFTA State have deposited their instruments of ratification, acceptance, or approval with the Depositary.

4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the second month following the deposit of its instrument.

5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

ARTICLE 10.7

Depositary

The Government of Norway shall act as Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Hong Kong, this 15th day of December 2005, in a single original in the English language, which shall be deposited with the Government of Norway. The Depositary shall transmit certified copies to all Signatory States.

For the Republic of Iceland

.....

For the Republic of Korea

.....

For the Principality of Liechtenstein

.....

For the Kingdom of Norway

.....

For the Swiss Confederation

.....