

CHAPTER ONE

INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A – Initial Provisions

Article 1.1: Establishment of a Free Trade Area

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

Article 1.2: Relation to Other Agreements

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

Article 1.3: Relation to Multilateral Environmental Agreements

In the event of an inconsistency between a Party's obligations under this Agreement and the Party's obligations under an agreement listed in Annex 1-A, a Party is not precluded from taking a particular measure necessary to comply with its obligations under an agreement listed in Annex 1-A, provided that the measure is not applied in a manner that would constitute, where the same conditions prevail, arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

Article 1.4: Extent of Obligations

1. Each Party is fully responsible for the observance of all provisions of this Agreement and shall take such reasonable measures as may be available to it to ensure observance of this Agreement by sub-national governments and authorities within its territory.

2. For greater certainty, the provisions of Chapter Twenty-One (Dispute Settlement) may be invoked in respect of measures affecting the observance of this Agreement taken by sub-national governments within the territory of each Party. If a Panel established under Article 21.6 (Establishment of a Panel) has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to suspension of benefits or other obligations apply in cases where it has not been possible to secure such observance.

Article 1.5: Reference to Other Agreements

Where this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, those references include related footnotes, interpretative and explanatory notes, protocols, annexes, appendices, *et cetera* that are integral parts of the agreements or legal instruments.

Article 1.6: Cultural Cooperation

1. The Parties agree to promote cultural cooperation in order to increase mutual understanding and benefit from each other's competitive strengths in the development of content for the global market. In this regard, the Parties endeavour to promote cultural exchanges and carry out joint initiatives in various cultural spheres, such as audiovisual coproductions.

2. Recognising that audiovisual coproduction agreements can significantly contribute to the development of the audiovisual industry and to an intensification of cultural and economic exchange, the Parties agree to consider the negotiation of an audiovisual coproduction agreement. Such a future audiovisual coproduction agreement shall form an integral part of this Agreement.

3. The audiovisual coproduction agreement referred to in paragraph 2 would be negotiated between the competent authorities of the Parties, which are the Department of Canadian Heritage for Canada and the Ministry of Culture, Sports and Tourism and the Korea Communications Commission for Korea, or their respective successors.

4. Article 23.2 (Amendments) does not apply to the audiovisual coproduction agreement referred to in paragraph 2. Any amendments to that agreement shall be done by mutual consent of the competent authorities of the Parties.

5. The dispute settlement provisions of Chapters Eight (Investment) and Twenty-One (Dispute Settlement) do not apply to matters covered by this Article, including an agreement negotiated pursuant to paragraph 2.

Article 1.7: Bilateral Trade and Investment Promotion in the Automotive Sector

The Parties shall cooperate to promote bilateral trade and investment in the automotive sector, which allows the Parties to realise the benefits of global production and supply chains.

Section B – General Definitions

Article 1.8: Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

Commission means the Joint Commission established under Article 20.1 (Joint Commission);

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

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

- (b) an anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law and consistent with WTO obligations and the provisions of this Agreement;
- (c) a fee or other charge in connection with importation commensurate with the cost of services rendered; and
- (d) a premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions and tariff rate quotas;

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

days means calendar days, including weekends and holidays;

Dispute Settlement Understanding (DSU) means the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, contained in Annex 2 to the WTO Agreement;

enterprise means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, or other association;

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

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

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

GPA means the *Agreement on Government Procurement*, contained in Annex 4 to the WTO Agreement;

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

heading means any four-digit number, or the first four digits of a number, used in the nomenclature of the Harmonized System;

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

national means a natural person who is:

- (a) for Canada, a Canadian citizen or permanent resident under Canadian legislation; and
- (b) for Korea, a Korean national under Korean legislation;

New York Convention means the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;

originating means qualifying under the rules of origin set out in Chapter Three (Rules of Origin);

person means a natural person or an enterprise;

person of a Party means a national of a Party, or an enterprise of a Party;

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

sanitary or phytosanitary measure means any measure referred to in paragraph 1 of Annex A of the SPS Agreement;

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, contained in Annex 1A to the WTO Agreement;

state enterprise means, except as set out in Annex 15-A (Country-Specific Definitions of State Enterprise), an enterprise owned or controlled through ownership interests, by a Party;

subheading means any six-digit number, or the first six digits of a number, used in the nomenclature of the Harmonized System;

tariff classification means the classification of a good or material under a chapter, heading or subheading of the Harmonized System;

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

Universal Declaration of Human Rights means the *Universal Declaration of Human Rights*, adopted by the General Assembly of the United Nations on 10 December 1948;

WTO means the World Trade Organization; and

WTO Agreement means the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994, or any successor agreement to which both Parties are party.

Article 1.9: Country-Specific Definitions

For the purposes of this Agreement, unless otherwise specified:

national government means:

- (a) for Canada, the Government of Canada; and
- (b) for Korea, the Government of the Republic of Korea;

sub-national government means:

- (a) for Canada, provincial, territorial, or local governments; and
- (b) for Korea, as a unitary Republic, the term sub-national government does not apply;

province means:

- (a) for Canada, a province of Canada, and includes the Yukon and the Northwest Territories and Nunavut; and
- (b) for Korea, the term province does not apply; and

territory means:

- (a) for Canada,
 - (i) the land territory, air space, internal waters and territorial sea of Canada;

- (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982 (hereinafter referred to as “UNCLOS”); and
 - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS; and
- (b) for Korea, the land, maritime, and air space over which Korea exercises sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its domestic law.

Annex 1-A

Multilateral Environmental Agreements

- (a) The *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington on 3 March 1973, as amended on 22 June 1979.
- (b) The *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal on 16 September 1987, as amended 29 June 1990, as amended 25 November 1992, as amended 17 September 1997, as amended 3 December 1999.
- (c) The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, done at Basel on 22 March 1989.
- (d) The *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, done at Rotterdam on 10 September 1998.
- (e) The *Stockholm Convention on Persistent Organic Pollutants*, done at Stockholm on 22 May 2001.