

CHAPTER TWENTY-ONE TRANSPARENCY

ARTICLE 21.1: PUBLICATION

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall:
 - (a) publish in advance any such measures that it proposes to adopt; and
 - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.
3. With respect to proposed regulations¹ of general application of its central level of government respecting any matter covered by this Agreement that are published in accordance with paragraph 2(a), each Party:
 - (a) shall publish the proposed regulations in a single official journal of national circulation and shall encourage their distribution through additional outlets;
 - (b) should in most cases publish the proposed regulations not less than 40 days before the date public comments are due; and
 - (c) shall include in the publication an explanation of the purpose of and rationale for the proposed regulations.
4. With respect to regulations of general application adopted by its central level of government respecting any matter covered by this Agreement, each Party:
 - (a) shall publish the regulations in a single official journal of national circulation and shall encourage their distribution through additional outlets;
 - (b) shall include in the publication an explanation of the purpose of and rationale for the regulations; and
 - (c) shall address significant, substantive comments received during the comment period and explain substantive revisions it made to the proposed regulations, in its official journal or in a prominent location on an official government

¹ For purposes of paragraphs 3 and 4, **regulation** means, for Korea, Presidential Decrees, Ordinances of the Prime Minister, and Ministerial Ordinances.

Internet site.

ARTICLE 21.2: PROVISION OF INFORMATION

On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might affect the operation of this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

ARTICLE 21.3: ADMINISTRATIVE PROCEEDINGS

With a view to administering in a consistent, impartial, and reasonable manner all measures of general application respecting any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying measures referred to in Article 21.1 to particular persons, goods, or services of the other Party in specific cases, that:

- (a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with the Party's procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
- (c) its procedures are in accordance with its law.

ARTICLE 21.4: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on the evidence and submissions of record or, where required by the Party's law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

ARTICLE 21.5: POLICY ON PRIVATE PURCHASES

Recognizing the benefits of liberalized and expanded bilateral trade and investment, each Party affirms that it is not its policy to discourage private persons in its territory from purchasing or using goods or services of the other Party through formal or informal means of influence or persuasion.

ARTICLE 21.6: ANTI-CORRUPTION

1. The Parties reaffirm their resolve to eliminate bribery and corruption in international trade and investment.

2. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offense under its law, in matters affecting international trade or investment, for:

- (a) a public official of the Party or a person who performs public functions for the Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;
- (b) any person subject to the jurisdiction of the Party intentionally to offer or grant, directly or indirectly, to a public official of the Party or a person who performs public functions for the Party any article of monetary value or other benefit, such as a favor, promise, or advantage, for himself or for another person, in exchange for any act or omission in the performance of his public functions;
- (c) any person subject to the jurisdiction of the Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business; and
- (d) any person subject to the jurisdiction of the Party to aid or abet, or to conspire in, the commission of any of the offenses described in subparagraphs (a) through (c).

3. Each Party shall adopt or maintain appropriate penalties and procedures to enforce

the criminal measures that it adopts or maintains in conformity with paragraph 2.

4. Each Party shall adopt or maintain appropriate measures to protect persons who, in good faith, report acts of bribery described in paragraph 2.

5. The Parties recognize the importance of regional and multilateral initiatives to eliminate bribery and corruption in international trade and investment. The Parties shall endeavor to work jointly to encourage and support appropriate initiatives in relevant international fora.

ARTICLE 21.7: DEFINITIONS

For purposes of this Chapter:

act or refrain from acting in relation to the performance of official duties includes any use of the official's position, whether or not within the official's authorized competence;

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 or quasi-judicial 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;

foreign official means any person holding a legislative, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected; any person exercising a public function for a foreign country at any level of government, including for a public agency or public enterprise; and any official or agent of a public international organization;

public function means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of a Party or in the service of a Party, such as procurement, at the central level of government; and

public official means any official or employee of a Party at the central level of government, whether appointed or elected.

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding the implementation of Article 21.1 (Publication) of the Free Trade Agreement between our two Governments signed this day:

Korea will amend relevant laws or regulations to provide for a public comment period of no less than 40 days and will revise Article 14.1 of the *Regulation on Administration of Legislative Affairs* to remove the requirement to conduct interagency consultations before the publication of proposed regulations for public comment.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments.

Sincerely,

[SGN/]
Hyun Chong Kim

June 30, 2007

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding the implementation of Article 21.1 (Publication) of the Free Trade Agreement between our two Governments signed this day:

Korea will amend relevant laws or regulations to provide for a public comment period of no less than 40 days and will revise Article 14.1 of the *Regulation on Administration of Legislative Affairs* to remove the requirement to conduct interagency consultations before the publication of proposed regulations for public comment.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an agreement between our two Governments.

Sincerely,

Susan C. Schwab