

CHAPTER 7

CROSS-BORDER TRADE IN SERVICES

ARTICLE 7.1: SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
- (d) the presence in its territory of a service supplier of the other Party; and
- (e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. Articles 7.4, 7.7, and 7.8 shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment⁹.

3. This Chapter shall not apply to:

- (a) financial services as defined in Article 8.20 (Definitions), except that paragraph 2 shall apply where the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 8.20 (Definitions) in a Party's territory;
- (b) government procurement;
- (c) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance; or
- (d) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system services; and
 - (iv) specialty air services.

The Parties note the multilateral negotiations pursuant to the review of the GATS Annex on Air Transport Services. Upon the conclusion of such multilateral negotiations, the

⁹ For greater certainty, the scope of application of Articles 7.4, 7.7, and 7.8 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited to the scope specified in this Article, subject to any applicable non-conforming measures and exceptions.

Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

4. This Chapter shall not impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and shall not confer any right on that national with respect to that access or employment.

5. This Chapter shall not apply to services supplied in the exercise of governmental authority in a Party's territory. A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

ARTICLE 7.2: NATIONAL TREATMENT

1. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

ARTICLE 7.3: MOST-FAVOURED-NATION TREATMENT

Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-Party.

ARTICLE 7.4: MARKET ACCESS

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test¹⁰; or
 - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

¹⁰ Subparagraph (a)(iii) does not cover measures of a Party that limit inputs for the supply of services.

- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

ARTICLE 7.5: LOCAL PRESENCE

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

ARTICLE 7.6: NON-CONFORMING MEASURES

1. Articles 7.2 through 7.5 shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in its Schedule to Annex I;
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or
 - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 7.2, 7.3, 7.4 or 7.5.

2. Articles 7.2 through 7.5 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

ARTICLE 7.7: DOMESTIC REGULATION

1. Where a Party requires authorisation for the supply of a service, the Party's competent authorities shall, within a reasonable time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. On request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorisation requirements that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in its Schedule to Annex II.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure, as appropriate for individual sectors, that such measures are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and

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

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect between the Parties under this Agreement. The Parties shall coordinate on such negotiations, as appropriate.

4. Subject to its laws and regulations, a Party shall permit service suppliers of the other Party to use the enterprise names under which they trade in the territory of the other Party and otherwise ensure that the use of the enterprise names is not unduly restricted.

ARTICLE 7.8: TRANSPARENCY IN DEVELOPING AND APPLYING REGULATIONS

Further to Chapter 19 (Transparency):

- (a) each Party shall establish or maintain appropriate mechanisms for responding to enquiries from interested persons regarding its regulations relating to the subject matter of this Chapter; and
- (b) if a Party does not provide, in accordance with Article 19.1.2, advance notice of and opportunity for comment on regulations it proposes to adopt relating to the subject matter of this Chapter, it shall, on request of the other Party, address in writing the reasons for not doing so.

ARTICLE 7.9: RECOGNITION

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 5, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-Party, nothing in Article 7.3 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party.

3. On request of the other Party, a Party shall promptly provide information, including appropriate descriptions, concerning any recognition agreement or arrangement that the Party has concluded. For recognition arrangements entered into by relevant bodies in its territory, a Party shall encourage those bodies to provide the same information.

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

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

6. Annex 7-A shall apply to measures adopted or maintained by a Party relating to the licensing or certification of professional service suppliers as set out in that Annex.

ARTICLE 7.10: PAYMENTS AND TRANSFERS¹¹

1. Each Party shall permit all payments and transfers relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such payments and transfers relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing at the time of the payment or transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a payment or transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

ARTICLE 7.11: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or of the denying Party that has no substantive business operations in the territory of the other Party. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantive business operations in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent possible, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party on request of the other Party.

¹¹ For greater certainty, Annex 11-C (Transfers) shall apply to this Article.

ARTICLE 7.12: AUDIOVISUAL CO-PRODUCTION

Recognising that audiovisual, including film, animation and broadcasting program co-productions can significantly contribute to the development of the audiovisual industry and to the intensification of cultural and economic exchange between them, the Parties hereby agree on Annex 7-B.

ARTICLE 7.13: DEFINITIONS

For the purposes of this Chapter:

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

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

cross-border trade in services or **cross-border supply of services** means the supply of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party;

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an enterprise as defined in Article 1.4 (Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise organised or constituted under the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;

professional services means services, the supply of which requires specialised post-secondary education, or equivalent training or experience or examination, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by tradespersons or vessel and aircraft crew members;

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

service supplier of a Party means a person of that Party that seeks to supply or supplies a service¹²; and

¹² For the purposes of Articles 7.2 and 7.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles II and XVII of GATS.

specialty air services means any non-transportation air services, such as aerial fire-fighting, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

ANNEX 7-A
PROFESSIONAL SERVICES

1. On request of the other Party, a Party shall provide information concerning standards and criteria for the licensing and certification of professional service suppliers, including information concerning the appropriate regulatory or other body to consult regarding these standards and criteria. These standards and criteria include requirements regarding education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection.

2. Each Party shall encourage the relevant bodies in its territory to develop mutually acceptable standards and criteria for licensing and certification, to provide recommendations to the Joint Committee on mutual recognition, and to develop procedures for the temporary licensing arrangements of professional service suppliers of the other Party with respect to the professional services sectors or sub-sectors listed below and any other sectors or sub-sectors that may be mutually agreed by the Parties:

- (a) engineering services;
- (b) architectural services;
- (c) veterinary services;
- (d) healthcare services provided by pharmacists and radiographers; and
- (e) accounting services.

3. The Parties hereby establish a Working Group on Professional Services, comprising representatives of each Party, to facilitate the activities set out in paragraphs 1 and 2. The Working Group shall meet within three years after the date of entry into force of this Agreement unless the Parties otherwise agree.

4. The Working Group should consider, for professional services generally and, as appropriate, for individual professional services:

- (a) procedures for fostering the development of mutual recognition arrangements between relevant professional bodies of the Parties;
- (b) the feasibility of developing model procedures for the licensing and certification of professional service suppliers;
- (c) measures maintained at the central or regional level of government that would prevent the development of a mutual recognition arrangement or prevent a service supplier of a Party from receiving the benefits of such an arrangement; and
- (d) other issues of mutual interest relating to the supply of professional services.

5. The Working Group shall consider, as appropriate, relevant bilateral, plurilateral, and multilateral agreements relating to professional services.

6. The Working Group shall report to the Joint Committee on its progress, including with respect to any recommendation for initiatives to promote mutual recognition of standards and criteria and temporary licensing, and on the further direction of its work, no later than three years after the date of entry into force of this Agreement.

7. On receipt of a recommendation referred to in paragraphs 2 and 6, the Joint Committee shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Joint Committee's review, each Party shall encourage its respective competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

8. The Joint Committee shall review the implementation of this Annex at least once every two years.

ANNEX 7-B

AUDIOVISUAL CO-PRODUCTION

ARTICLE 1: COMPETENT AUTHORITIES

1. Each Party shall designate a competent authority for the purpose of implementing this Annex. Either Party may change its appointed competent authority by giving notice to the other Party through diplomatic channels. The change in competent authority shall take effect 28 days after the notice has been received.
2. The competent authorities may examine the implementation of this Annex and consult with each other to resolve any difficulties arising out of its application.

ARTICLE 2: APPROVAL OF AUDIOVISUAL CO-PRODUCTIONS

1. Provisional approval from the competent authorities should be received before the commencement of the making of an audiovisual co-production work, subject to each Party's relevant domestic regulatory or policy arrangements. It is the responsibility of the co-producer or co-producers to provide any documentation required by the competent authorities to enable the competent authorities to complete their provisional approval processes.
2. In granting provisional approval to an audiovisual work as an audiovisual co-production, each competent authority may stipulate conditions of approval, framed in order to achieve the general aims and objects of this Annex.
3. Upon completion of production, it is the responsibility of the co-producers to submit to the competent authorities the completed audiovisual work and any documentation required by the competent authorities to enable the competent authorities to complete their approval process.
4. In granting provisional or final approval to audiovisual works under this Annex, the competent authorities, in consultation, shall apply the provisions of this Annex, and recognise the arrangements made in the Memorandum of Understanding on the Implementation of the Annex on Audiovisual Co-Production.
5. In the event that approval by both the competent authorities is not granted, the audiovisual work concerned shall not be considered to be approved for the purposes of this Annex.
6. An audiovisual work will be recognised as having completed the provisional or final approval process, as applicable, once the competent authority provides written notification to the co-producer that the approval has been granted and specifies the conditions upon which the approval is granted.
7. The approval of an audiovisual work as an audiovisual co-production by the competent authorities shall not bind the relevant authorities of either Party to permit the public exhibition of the resulting audiovisual co-production.

ARTICLE 3: CO-PRODUCER STATUS

The competent authorities shall ensure that:

- (a) the Korean co-producer satisfies all the conditions relating to status which would be required to be fulfilled, if that co-producer were the only producer, in order for the production to be eligible as an Korean audiovisual work under Korean legislation;
- (b) the Australian co-producer satisfies all the conditions relating to status which would be required to be fulfilled, if that co-producer were the only producer, in order for the production to be eligible as a Australian audiovisual work under Australian legislation; and
- (c) none of the co-producers are linked by common management, ownership or control, save to the extent that it is inherent in the making of the audiovisual co-production itself.

ARTICLE 4: THIRD COUNTRY CO-PRODUCTIONS

1. Where either Party maintains with a third country an audiovisual co-production agreement, or arrangement of less-than-treaty status, the competent authorities may jointly approve an audiovisual work as an audiovisual co-production under this Annex that is to be made in conjunction with a co-producer from that third country.
2. Both the financial and creative contributions of a third country co-producer shall account for not less than the percentage required under each Party's relevant domestic regulatory or policy arrangements.
3. Any third country co-producer shall fulfil all conditions relating to status which would be required to be fulfilled to produce an audiovisual work under the terms of the co-production agreement, or arrangement of less-than-treaty status, in force between that co-producer's country and either Party.

ARTICLE 5: ENTITLEMENT TO BENEFITS

1. An audiovisual co-production shall be entitled to:
 - (a) the full enjoyment of all the benefits which are accorded to national audiovisual works of either Party; and
 - (b) any benefits which may be granted to national audiovisual works of either Party, subject to that Party's laws as in force from time to time.
2. Any subsidies, tax incentives, or other financial incentives which may be granted by either Party in relation to an audiovisual co-production shall accrue to the co-producer who is permitted to claim those benefits in accordance with the existing measures of that Party.
3. Such subsidies, tax incentives or other financial benefits shall not be assigned or disposed of except to or for the benefit of an enterprise or national of that Party, or in the case of a third country co-production under Article 4 (Third Country Co-Productions) of this Annex, any individual or enterprise that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article.
4. An audiovisual work made in accordance with an approval by the competent authorities under this Annex but completed after the termination of this Annex shall be treated as an audiovisual co-production and its co-producers shall accordingly be entitled to all the benefits of this Annex.

ARTICLE 6: IMPORT OF EQUIPMENT

Each Party shall provide, in accordance with its respective laws, regulations and procedures, temporary admission of cinematographic and technical equipment for the making of audiovisual co-productions free of import duties and taxes. The equipment may be exported by the importer free of duties and taxes, in accordance with the respective Party's laws, regulations and procedures.

ARTICLE 7: IMMIGRATION FACILITATION

Each Party shall permit nationals of the other Party, and in the case of a third country co-production under Article 4 (Third Country Co-Productions) of this Annex, any individual that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article, to travel to, enter and remain in its territory for the purpose of making or exploiting an audiovisual co-production, subject to the requirement that such individuals comply with the laws, regulations and procedures relating to entry into and temporary stay in its territory.

ARTICLE 8: CONTRIBUTIONS

1. Each co-producer shall have a financial contribution of not less than 20 per cent of the total financial contribution for an audiovisual co-production other than animation works intended for broadcast use. With respect to broadcast animation works, this contribution shall not be less than the percentage required under each Party's relevant domestic regulatory or policy arrangements.

2. The performing, technical and craft contribution (being the "creative" contribution) of each co-producer to an audiovisual co-production shall be in reasonable proportion to each co-producer's financial contribution.

ARTICLE 9: LOCATION FILMING

The competent authorities shall have the power to approve location filming in a country other than the countries of the participating co-producers.

ARTICLE 10: PARTICIPATION

1. Subject to the provisions of Article 10.2 to 10.5 of this Annex, individuals participating in the making of audiovisual co-productions shall be co-producers.

2. Performers who are citizens or permanent residents of countries other than the participating co-production countries may be engaged in the audiovisual co-production:

- (a) where the competent authorities are satisfied that there are exceptional circumstances;
- (b) where script or financing of the audiovisual co-production dictates their participation; or

- (c) in the case of approved location filming in a country other than that of the participating co-production countries, in minor roles where this is reasonably necessary.

3. Where the competent authorities have approved location filming in a country other than that of the participating co-production countries in accordance with Article 9, citizens or permanent residents of that country may be employed as crowd artists or to perform other services necessary for the location work to be undertaken.

4. The competent authorities may approve the participation of restricted numbers of technical personnel who are citizens or permanent residents of countries other than the participating co-production countries where the competent authorities are satisfied that the relevant technical expertise is not available in the co-producers' countries at the time the audiovisual co-production is made.

5. Unless otherwise approved by the competent authorities, screenwriters involved in the making of audiovisual co-productions shall be nationals of either Party.

ARTICLE 11: FOOTAGE

At least 90 per cent of the footage included in an audiovisual co-production shall, subject to any departure from this rule which is approved by the competent authorities, be specially shot or otherwise created for that audiovisual work.

ARTICLE 12: MAKING UP TO FIRST-RELEASE PRINT

The competent authorities shall ensure that audiovisual co-productions are made and processed up to the creation of the first-release print or digital equivalent in the territory of the Parties or, where there is a third country co-producer, that co-producer's country.

ARTICLE 13: ACKNOWLEDGMENTS AND CREDITS

The competent authorities shall ensure that each audiovisual co-production includes either a separate credit title indicating that the audiovisual work is either a "Korean-Australian co-production" or an "Australian-Korean co-production", or where relevant, a credit which reflects the participation of the Parties and the country of the third country co-producer.

ARTICLE 14: TAXATION

Notwithstanding any other provision of this Annex other than Article 6, for the purposes of taxation the laws in force in each Party shall apply subject to the provisions of any tax treaty between the Parties.

ARTICLE 15: BALANCE

1. An overriding aim of the Annex, as monitored by the competent authorities, shall be to ensure that an overall balance is achieved between the Parties with respect to:

- (a) the contribution to the production costs of all audiovisual co-productions;
- (b) the use of studios and laboratories;

- (c) the employment of all performing, craft and technical personnel, measured on a straight head count basis; and
- (d) the participation in each of the major performing, craft and technical categories and in particular, that of the writer, director and lead cast, over each period of three years commencing on the date that this Annex enters into force.

2. Either competent authority may withhold approval of an audiovisual work as an audiovisual co-production on the basis that the overriding aim of overall balance referred to in paragraph 1 would be prejudiced by such approval.

ARTICLE 16: INSTITUTIONAL MECHANISM

Each Party may request the establishment of an *ad hoc* Committee to discuss any matter related to the implementation of this Annex by delivering a written request to the competent authority of the other Party and the other Party shall give due consideration to the request. The *ad hoc* Committee shall comprise appropriate senior officials from appropriate ministries and agencies of each Party. The *ad hoc* Committee shall discuss the matter at a time and place agreed to by the Parties.

ARTICLE 17: DISPUTE SETTLEMENT

1. A Party may request consultations with the other Party regarding any matter arising under this Annex by delivering a written request to the competent authority of the other Party. Consultations shall commence promptly after a Party delivers a request for consultations to the competent authority of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

2. If the consultations under paragraph 1 fail to resolve the matter within 60 days after the date of receipt of a request for consultations, either Party may request good offices, conciliation, mediation or non-binding arbitration. The *ad hoc* Committee shall decide the processes for resolution of the matter.

3. Chapter 20 (Dispute Settlement) of the FTA between Korea and Australia shall not apply to any matter or dispute arising under this Annex.

ARTICLE 18: IMPLEMENTING ARRANGEMENTS

1. The Parties acknowledge the *Memorandum of Understanding Implementing the Annex on Audiovisual Co-Production* (“the Memorandum of Understanding”).

2. The Parties recognise that the responsibilities and arrangements established under the Memorandum of Understanding will apply in order to assist the implementation of this Annex.

ARTICLE 19: REVIEW

1. The Parties recognise the evolving nature of the audiovisual sector, in particular the role of technology.

2. The competent authorities shall review the operation of this Annex as required and make any proposals considered necessary for any modification thereof.

ARTICLE 20: SCOPE AND INTERPRETATION OF THE ANNEX

1. To the extent of any inconsistency between this Annex and any other provision in the Agreement, this Annex shall prevail to the extent of the inconsistency.
2. Nothing in this Annex shall be used to construe any other provision in the Agreement. No provision elsewhere in the Agreement shall be used to construe any provision in this Annex.
3. For greater certainty, nothing in Section B of Chapter 1 (Initial Provisions and Definitions), Articles 7.2, 7.3, 7.4 and 7.13 of Chapter 7 (Cross-Border Trade in Services), Chapter 10 (Movement of Natural Persons), Chapter 11 (Investment), Chapter 19 (Transparency), Chapter 20 (Dispute Settlement), Chapter 21 (Institutional Provisions), and Chapter 22 (General Provisions and Exceptions) of this Agreement shall apply to this Annex.

ARTICLE 21: DURATION AND TERMINATION

1. Nothing in Article 23.4 (Termination) of this Agreement shall apply to this Annex.
2. This Annex shall remain in force initially for a period of up to three years from the date of entry into force of the Agreement. Either Party may terminate this Annex by providing written notice to terminate to the other Party 180 days before the end of that period. The Annex shall then terminate at the end of the three years.
3. If neither Party terminates this Annex under paragraph 2, it shall automatically remain in force for successive periods, each of three years, unless written notice to terminate is given by either Party at least 180 days before the end of any period of three years, in which case it shall terminate at the end of that period.
4. This Annex is separable, and its termination shall not affect the continued operation of the Agreement. Termination of this Annex shall be governed only by this Article.

ARTICLE 22: DEFINITIONS

For the purpose of this Annex:

audiovisual co-production means an audiovisual work including films, animations, broadcasting programmes and digital format productions made by one or more co-producers of one Party in cooperation with one or more co-producers of the other Party (or in the case of a third country co-production, with a third country co-producer) which is approved by the competent authorities of each Party, in consultation;

audiovisual work means any aggregate of images or of images and sounds, embodied in any material in accordance with each Party's laws and regulations;

benefits means all those financial and other incentives which may be offered to audiovisual co-productions by each Party from time to time under Article 5.1 of this Annex;

competent authority means the authority or authorities designated as such by each Party;

co-producer means one or more nationals or enterprises of a Party that are involved or seeking to be involved in the making of an audiovisual co-production, or in the case of a

third country co-production under Article 4 of this Annex, any individual that falls within the relevant scope of the audiovisual agreement or arrangement of less-than-treaty status referred to in that Article;

days means calendar days;

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

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

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

national means:

- (a) for Korea, a Korean national within the meaning of the *Nationality Act*; and
- (b) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* or a permanent resident as defined in accordance with the *Migration Regulations 1994*; and

protection and reproduction material means those materials derived from the original audiovisual work materials for the purpose of protecting the final version of the audiovisual work, and those materials used for making copies of the audiovisual work for the purpose of distribution and exhibition of the audiovisual work.

8 April 2014

Mr Yoon Sang-jick
Minister of Trade, Industry and Energy
Seoul, Republic of Korea

Dear Minister Yoon

In connection with the signing on this date of the Korea-Australia Free Trade Agreement (the “Agreement”), I have the honour to confirm the following understandings reached between the delegations of the Republic of Korea and Australia during the course of negotiations regarding Chapters 7 (Cross-Border Trade in Services) and 11 (Investment) of the Agreement:

During the negotiations, the Parties discussed certain measures related to resource recycling and to policies to encourage low-emission motor vehicle distribution. The Parties shared the understanding that these measures relating to:

- (a) the obligation to recycle products and packaging materials;
- (b) the submission of recycling performance plans and results;
- (c) the payment of applicable recycling levies;
- (d) the obligation to distribute a certain percentage of low-emission motor vehicles; and
- (e) the submission and approval of plans to distribute low-emission motor vehicles,

are not inconsistent with Article 11.9 (Performance Requirements).

During the negotiations, the Parties discussed regulations that prohibit an enterprise from concurrently holding two or more business licences to supply different services. The Parties shared the understanding that, for the purpose of the Agreement, such restrictions are not inconsistent with Article 7.4 (Market Access).

During the negotiations, the Parties discussed existing regulations applicable to the establishment, extension, or transfer of educational institutions within certain geographical areas under the *Seoul Metropolitan Area Readjustment Planning Act* (Law No. 11998, 6 August 2013). The Parties shared the understanding that such restrictions are not inconsistent with Article 7.4 (Market Access).

During the negotiations, the Parties discussed a measure that allows local higher education institutions to jointly operate curricula only with higher education institutions organised under Korean law, or with foreign higher education institutions that have obtained accreditation from a foreign government or authorised foreign accreditation bodies. The Parties shared the understanding that such a measure is not inconsistent with Article 7.2 (National Treatment) and Article 11.3 (National Treatment).

During the negotiations, the Parties discussed a measure that may establish requirements regarding the types and quantities of raw materials for producing liquor under the *Liquors Act* (Law No. 11873, 7 June 2013) and its subordinate regulations. The Parties shared the

understanding that such measure is not inconsistent with Article 11.9 (Performance Requirements), provided that it is applied in a manner consistent with the WTO Agreement on Trade-Related Investment Measures.

During the negotiations, the Parties discussed regulations that control a rail transportation company's ability to stop supplying its service, including closure or liquidation of the company. The Parties shared the understanding that such restrictions are not inconsistent with Article 7.4 (Market Access).

During the negotiations, the Parties discussed regulations on zoning and land use. The Parties shared the understanding that measures concerning zoning and land use are not inconsistent with Article 7.4 (Market Access).

I have the honour to propose that this letter and your letter in reply confirming that your Government shares these understandings shall constitute an integral part of the Agreement.

Yours sincerely

Andrew Robb

8 April 2014

The Hon Andrew Robb AO, MP
Minister for Trade and Investment
Parliament House
CANBERRA ACT 2600

Dear Minister Robb

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

In connection with the signing on this date of the Korea-Australia Free Trade Agreement (the “Agreement”), I have the honour to confirm the following understandings reached between the delegations of the Republic of Korea and Australia during the course of negotiations regarding Chapters 7 (Cross-Border Trade in Services) and 11 (Investment) of the Agreement:

During the negotiations, the Parties discussed certain measures related to resource recycling and to policies to encourage low-emission motor vehicle distribution. The Parties shared the understanding that these measures relating to:

- (a) the obligation to recycle products and packaging materials;
- (b) the submission of recycling performance plans and results;
- (c) the payment of applicable recycling levies;
- (d) the obligation to distribute a certain percentage of low-emission motor vehicles; and
- (e) the submission and approval of plans to distribute low-emission motor vehicles,

are not inconsistent with Article 11.9 (Performance Requirements).

During the negotiations, the Parties discussed regulations that prohibit an enterprise from concurrently holding two or more business licences to supply different services. The Parties shared the understanding that, for the purpose of the Agreement, such restrictions are not inconsistent with Article 7.4 (Market Access).

During the negotiations, the Parties discussed existing regulations applicable to the establishment, extension, or transfer of educational institutions within certain geographical areas under the *Seoul Metropolitan Area Readjustment Planning Act* (Law No. 11998, 6 August 2013). The Parties shared the understanding that such restrictions are not inconsistent with Article 7.4 (Market Access).

During the negotiations, the Parties discussed a measure that allows local higher education institutions to jointly operate curricula only with higher education institutions organised under Korean law, or with foreign higher education institutions that have obtained accreditation from a foreign government or authorised foreign accreditation bodies. The Parties shared the understanding

that such a measure is not inconsistent with Article 7.2 (National Treatment) and Article 11.3 (National Treatment).

During the negotiations, the Parties discussed a measure that may establish requirements regarding the types and quantities of raw materials for producing liquor under the *Liquors Act* (Law No. 11873, 7 June 2013) and its subordinate regulations. The Parties shared the understanding that such measure is not inconsistent with Article 11.9 (Performance Requirements), provided that it is applied in a manner consistent with the WTO Agreement on Trade-Related Investment Measures.

During the negotiations, the Parties discussed regulations that control a rail transportation company's ability to stop supplying its service, including closure or liquidation of the company. The Parties shared the understanding that such restrictions are not inconsistent with Article 7.4 (Market Access).

During the negotiations, the Parties discussed regulations on zoning and land use. The Parties shared the understanding that measures concerning zoning and land use are not inconsistent with Article 7.4 (Market Access).

I have the honour to propose that this letter and your letter in reply confirming that your Government shares these understandings shall constitute an integral part of the Agreement.

I have the further honour to confirm that my Government shares these understandings and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Yours sincerely

Yoon Sang-jick

8 April 2014

The Hon Andrew Robb AO, MP
Minister for Trade and Investment
Parliament House
CANBERRA ACT 2600

Dear Minister Robb

In connection with the signing on this date of the Korea-Australia Free Trade Agreement (the “Agreement”), I have the honour to confirm the following understanding reached between the delegations of the Republic of Korea and Australia during the course of negotiations regarding Chapters 7 (Cross-Border Trade in Services) and 11 (Investment) of the Agreement:

Notwithstanding Article 7.1 (Scope) or Article 11.1 (Scope), for Korea, the cross-border trade in gambling and betting services¹ is not subject to Chapter 7 (Cross-Border Trade in Services) and investment in gambling and betting services is not subject to Chapter 11 (Investment).

For greater certainty, Korea retains the right to adopt or maintain any measure in relation to gambling and betting services, in accordance with its respective laws or regulations.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

Yours sincerely

Yoon Sang-jick

¹ For greater certainty, “gambling and betting services” includes such services supplied through electronic transmission and services that use *sa-haeng-seong-ge-im-mul*. “*Sa-haeng-seong-ge-im-mul*”, as defined in Article 2 of Korea’s *Game Industry Promotion Act*, includes, *inter alia*, gaming instruments which result in financial loss or gain through betting or by chance.

8 April 2014

Mr Yoon Sang-jick
Minister of Trade, Industry and Energy
Seoul, Republic of Korea

Dear Minister Yoon

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

In connection with the signing on this date of the Korea-Australia Free Trade Agreement (the “Agreement”), I have the honour to confirm the following understanding reached between the delegations of the Republic of Korea and Australia during the course of negotiations regarding Chapters 7 (Cross-Border Trade in Services) and 11 (Investment) of the Agreement:

Notwithstanding Article 7.1 (Scope) or Article 11.1 (Scope), for Korea, the cross-border trade in gambling and betting services¹ is not subject to Chapter 7 (Cross-Border Trade in Services) and investment in gambling and betting services is not subject to Chapter 11 (Investment).

For greater certainty, Korea retains the right to adopt or maintain any measure in relation to gambling and betting services, in accordance with its respective laws or regulations.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

I have the further honour to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Yours sincerely

Andrew Robb

¹ For greater certainty, “gambling and betting services” includes such services supplied through electronic transmission and services that use *sa-haeng-seong-ge-im-mul*. “*Sa-haeng-seong-ge-im-mul*”, as defined in Article 2 of Korea’s *Game Industry Promotion Act*, includes, *inter alia*, gaming instruments which result in financial loss or gain through betting or by chance.

8 April 2014

The Hon Andrew Robb AO, MP
Minister for Trade and Investment
Parliament House
CANBERRA ACT 2600

Dear Minister Robb

In connection with the signing on this date of the Korea-Australia Free Trade Agreement (the “Agreement”), I have the honour to confirm the following understanding reached between the delegations of the Republic of Korea and Australia during the course of negotiations regarding each Party’s Annex I entry on telecommunications services in the Agreement:

If a Party conditions the granting of a licence to supply public telecommunications services to a person of the Party in which a person of the other Party holds an equity interest on a finding that the supply of such services would serve the public interest, the Party shall ensure that it:

- (a) bases any such finding and the procedures for making such a finding on objective and transparent criteria;
- (b) employs a presumption in favour of finding that granting a licence to a person of the Party in which a person of the other Party holds an equity interest would serve the public interest; and
- (c) develops any such procedures through a rulemaking consistent with Article 9.21 (Transparency).

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

Yours sincerely

Yoon Sang-jick

8 April 2014

Mr Yoon Sang-jick
Minister of Trade, Industry and Energy
Seoul, Republic of Korea

Dear Minister Yoon

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

In connection with the signing on this date of the Korea-Australia Free Trade Agreement, I have the honour to confirm the following understanding reached between the delegations of the Republic of Korea and Australia during the course of negotiations regarding each Party's Annex I entry on telecommunications services in the Agreement:

If a Party conditions the granting of a licence to supply public telecommunications services to a person of the Party in which a person of the other Party holds an equity interest on a finding that the supply of such services would serve the public interest, the Party shall ensure that it:

- (a) bases any such finding and the procedures for making such a finding on objective and transparent criteria;
- (b) employs a presumption in favour of finding that granting a licence to a person of the Party in which a person of the other Party holds an equity interest would serve the public interest; and
- (c) develops any such procedures through a rulemaking consistent with Article 9.21 (Transparency).

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

I have the further honour to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Yours sincerely

Andrew Robb