

CHAPTER SIXTEEN
COMPETITION-RELATED MATTERS

第十六章 竞争相关事项

ARTICLE 16.1: COMPETITION LAW AND ANTICOMPETITIVE BUSINESS CONDUCT

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing anticompetitive business conduct. Each Party shall take appropriate action with respect to anticompetitive business conduct with the objective of promoting economic efficiency and consumer welfare.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws. The enforcement policy of each Party’s authorities responsible for the enforcement of such laws is to treat persons who are not persons of the Party no less favorably than persons of the Party in like circumstances, and each Party’s authorities intend to maintain this policy.
3. Each Party shall ensure that a respondent in an administrative hearing convened to determine whether conduct violates its competition laws or what administrative sanctions or remedies should be ordered for violation of such laws is afforded the opportunity to present evidence in its defense and to be heard in the hearing. In particular, each Party shall ensure that the respondent has a reasonable opportunity to cross-examine any witnesses or other persons who testify in the hearing and to review and rebut the evidence and any other collected information on which the determination may be based.
4. Each Party shall provide persons subject to the imposition of a sanction or remedy for violation of its competition laws with the opportunity to seek review of the sanction or remedy in a court of that Party.
5. Each Party shall provide its authorities responsible for the enforcement of its national competition laws with the authority to resolve their administrative or civil enforcement actions by mutual agreement with the subject of the enforcement action. A Party may provide for such agreements to be subject to judicial approval.
6. Each Party shall publish rules of procedure for administrative hearings convened to determine whether conduct violates its competition laws or what administrative sanctions or remedies should be ordered for violation of such laws. These rules shall include procedures for introducing evidence in such proceedings, which shall apply equally to all parties to the proceeding.
7. The Parties recognize the importance of cooperation and coordination between their respective authorities to promote effective competition law enforcement. Accordingly, the Parties shall cooperate in relation to their enforcement policies and in the enforcement of their respective competition laws, including through mutual assistance, notification, consultation, and exchange of information.

第16.1条：竞争法与反竞争行为

1. 各一方应维持或制定促进和保护其市场竞争过程的竞争法，禁止反竞争行为。各一方应就反竞争行为采取适当行动，以促进经济效率和消费者福利。
2. 各一方应维持负责执行其国家竞争法的权力或权力。各一方负责执行此类法律的权力执法政策是，对非一方之人的待遇不得低于一方之人在类似情况下的待遇，并且各一方的权力打算维持此政策。
3. 各一方应确保，在为确定行为是否违反其竞争法或应就违反此类法律订购何种行政制裁或补救措施而召集的行政听证中，被调查人有机会在辩护中提出证据并在听证中陈述意见。特别是，各一方应确保被调查人有机会交叉询问在听证中作证的证人或其他人员，并审查和反驳可能基于的证据和任何其他收集的信息。
4. 每一方应给予受其竞争法违反制裁或救济措施影响的个人寻求在该方法院审查该制裁或救济措施的机会。
5. 每一方应给予负责执行其国家竞争法的权力机构以权力，通过与执法行为主体相互协议的方式解决其行政或民事执法行为。一方可以规定此类协议需经司法批准。
6. 每一方应公布用于确定行为是否违反其竞争法或应针对违反此类法律而颁布何种行政制裁或救济措施的行政听证程序规则。这些规则应包括在此类诉讼程序中引入证据的程序，该程序应平等适用于诉讼的各方。
7. 各方承认其各自当局之间合作与协调对于促进有效的竞争法执法的重要性。因此，各方应在其实施政策方面以及在其实施各自竞争法方面进行合作，包括通过相互协助、通知、磋商和信息交换。

ARTICLE 16.2: DESIGNATED MONOPOLIES

1. Each Party shall ensure that any privately-owned monopoly that it designates after the date this Agreement enters into force and any government monopoly that it designates or has designated:

- (a) acts in a manner that is not inconsistent with the Party’s obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions, or impose quotas, fees, or other charges;
- (b) acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market,¹ including with regard to price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, except to comply with any terms of its designation² that are not inconsistent with subparagraph (c) or (d);³
- (c) provides non-discriminatory treatment to covered investments, to goods of the other Party, and to service suppliers of the other Party in its purchase or sale of the monopoly good or service in the relevant market; and
- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect covered investments.

2. Nothing in this Chapter shall be construed to prevent a Party from designating a monopoly or maintaining a designated monopoly.

3. This Article does not apply to government procurement.

ARTICLE 16.3: STATE ENTERPRISES

¹ For greater certainty, “purchase or sale of the monopoly good or service in the relevant market” in Article 16.2 refers to the sale of the designated monopoly good or service in the case of a designated monopoly supplier and to the purchase of the designated monopoly good or service in the case of a designated monopoly buyer.

² For greater certainty, nothing in this Chapter shall be construed to prevent a Party from amending the terms of a monopoly’s designation.

³ Subparagraph (b) shall not be construed to prevent a designated monopoly from supplying the monopoly good or service in accordance with specific rates approved, or other terms or conditions established, by a regulatory authority of a Party, provided that those rates or other terms or conditions are not inconsistent with subparagraph (c) or (d).

第十六条之二：指定垄断

1. 每一方应确保其在本协定生效之日起指定的任何私营垄断以及其指定的或已指定的任何政府垄断：

- (a) 在该垄断行使任何监管、行政或其他政府权力时，只要该垄断行使的权力与该缔约方根据本协定授予其与垄断商品或服务相关的权力不矛盾，其行为不应与该缔约方的义务相冲突，例如授予进出口许可证、批准商业交易或实施配额、费用或其他收费的权力；
- (b) 在相关市场中购买或销售垄断商品或服务时，完全根据商业考虑行事，¹ 包括关于价格、质量、可用性、市场性、运输以及购买或销售的其他条款和条件，但需遵守其指定² 的任何与分项款 (c) 或 (d) 不矛盾的条款；³
- (c) 在相关市场中购买或销售垄断商品或服务时，对受保护的投资或另一方的货物以及另一方的服务供应商提供非歧视待遇；以及
- (d) 不得利用其垄断地位，无论是直接还是间接地，包括通过其与母公司、子公司或其他共同所有企业的交易，在领土内非垄断市场中从事反竞争行为，从而对受保护的投资或产生不利影响。

2. 本章任何规定均不得解释为禁止一方指定垄断或维持指定的垄断。

3. 本条不适用于政府采购。

ARTICLE 16.3: 国有企业

¹ 为明确起见，本文第十六条之二中的“在相关市场中购买或销售垄断商品或服务”是指 16.2是指指定垄断供应商在指定垄断情况下销售指定的垄断商品或服务，以及指定垄断购买者在指定垄断情况下购买指定的垄断商品或服务。

² 为明确起见，本章任何规定均不得解释为禁止一方修改垄断指定的条款。

³ 第（二）款不得解释为禁止指定的垄断供应商供应垄断根据一方监管机构批准的特定费率，或根据一方监管机构建立的其他条款或条件提供的商品或服务，但前提是这些费率或其他条款或条件与分项款 (c) 或 (d) 不一致。

1. Each Party shall ensure that any state enterprise that it establishes or maintains:
- (a) acts in a manner that is not inconsistent with the Party’s obligations under this Agreement wherever such enterprise exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges; and
 - (b) accords non-discriminatory treatment in the sale of its goods or services to covered investments.
2. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a state enterprise.

ARTICLE 16.4: DIFFERENCES IN PRICING

Articles 16.2 and 16.3 shall not be construed to prevent a monopoly or state enterprise from charging different prices in different markets, or within the same market, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions.

ARTICLE 16.5: TRANSPARENCY

1. The Parties recognize the value of transparency in their competition enforcement policies.
2. On request of a Party, each Party shall make available to the other Party public information concerning its:
- (a) competition law enforcement activities;
 - (b) state enterprises and designated monopolies, public or private, at any level of government, provided that the request indicates the entities involved, specifies the particular goods or services and markets concerned, and includes some indicia that these entities may be engaging in practices that may hinder trade or investment between the Parties; and
 - (c) exemptions and immunities to its competition laws, provided that the request specifies the particular goods or services and markets of concern, and includes indicia that the exemption or immunity may hinder trade or investment between the Parties.
3. Each Party shall ensure that all final administrative decisions finding a violation of its competition laws are in writing and set out any relevant findings of fact and the reasoning and legal analysis on which the decision is based. Each Party shall further ensure that the

1. E每一方应确保其设立或维持的任何国有企业:
- (a) 在该企业行使该协定授予该一方任何监管、行政或其他政府权力（例如征收、发放许可证、批准商业交易或实施配额、费用或其他收费）的范围内, 其行为均不与该一方根据本协定承担的义务相抵触；以及 (b) 在向受保护投资销售其商品或服务时，给予非歧视待遇。
2. 本章的任何内容均不得解释为禁止一方建立或维持国有企业。

第十六条第四条：价格差异

第十六条第二项和第三项不得解释为禁止垄断或国有企业在不同市场或同一市场内收取不同价格，如果这些差异基于正常商业考虑，例如考虑供求条件。

第十六条第五条：透明度

1. 各方承认其竞争执法政策中的透明度价值。
2. 应一方请求，每一方应向另一方提供其以下方面的公共信息：
- (a) 竞争执法活动；(b) 国有企业和指定垄断企业，无论公营或私营，任何级别的政府，前提是请求表明所涉及的实体，指明所涉及的具体商品或服务以及市场，并包括一些迹象表明这些实体可能正在从事可能阻碍缔约方之间贸易或投资的行为；以及(c) 其竞争法的豁免和豁免权，前提是请求指明所涉及的具体商品或服务以及市场，并包括豁免或豁免权可能阻碍缔约方之间贸易或投资的迹象。
3. 各一方应确保所有最终行政决定认定存在违反其竞争法的行为均以书面形式作出，并载明相关事实认定以及决定所依据的理由和法律分析。各一方还应确保该

decisions and any orders implementing them are published or, where publication is not practicable, otherwise made available to the public in such a manner as to enable interested persons and the other Party to become acquainted with them. The version of the decisions or orders that the Party makes available to the public may omit business confidential information or other information that is protected by its law from public disclosure.

ARTICLE 16.6: CROSS-BORDER CONSUMER PROTECTION

1. The Parties recognize the importance of cooperation on matters related to their consumer protection laws in order to enhance the welfare of their consumers. Accordingly, the Parties shall cooperate, in appropriate cases of mutual concern, in the enforcement of their consumer protection laws.
2. The Parties shall endeavor to strengthen cooperation between the United States Federal Trade Commission, on the one hand, and the Ministry of Finance and Economy of Korea and the Korea Fair Trade Commission, on the other, in areas of mutual concern relating to their respective consumer protection laws, including by:
 - (a) consulting on consumer protection policies and exchanging information related to the enactment and administration of their consumer protection laws;
 - (b) strengthening cooperation in detecting and preventing fraudulent and deceptive commercial practices against consumers;
 - (c) consulting on ways to reduce consumer protection law violations that have significant cross-border dimensions; and
 - (d) supporting implementation of the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* (2003).
3. Nothing in this Article shall limit the discretion of an agency referred to in paragraph 2 to decide whether to take action in response to a request by a counterpart agency of the other Party, nor shall it preclude any of those agencies from taking action with respect to any particular matter.
4. Each Party shall endeavor to identify, in areas of mutual concern and consistent with its own important interests, obstacles to effective cooperation with the other Party in the enforcement of its consumer protection laws, and shall consider modifying its domestic legal framework to reduce such obstacles.

ARTICLE 16.7: CONSULTATIONS

1. To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, on request of the other Party, enter into consultations

决定及执行该决定的命令被公告或，如公告不切实际，以其他方式向公众提供，以便利利害关系人和其他缔约方能够了解。一方向公众提供的决定或命令的版本可以删去商业机密或其他受其法律保护不得公开披露的信息。

第16.6条：跨境消费者保护

1. 各方承认在与其消费者保护法相关的事务上进行合作的重要性，以增进其消费者的福利。为此，各方应在相互关心的适当情况下，合作执行其消费者保护法。
2. 各方应努力加强美国联邦贸易委员会与韩国财政经济部和韩国公平贸易委员会之间的合作，在与其各自消费者保护法相关的相互关心的领域内，包括通过：
 - (a) 就消费者保护政策进行磋商，并就其消费者保护法的制定和管理交换信息；
 - (b) 加强在检测和预防针对消费者的欺诈性商业行为方面的合作；
 - (c) 就减少具有重大跨境维度的消费者保护法违规行为的方法进行磋商；以及
 - (d) 支持实施《经合组织关于保护消费者免受跨境欺诈性商业行为损害的指南》（2003年）。
3. 本条文中任何内容均不得限制第2段所述机构决定是否对另一方对应机构的请求采取行动的自由裁量权，也不得阻止任何该等机构就任何特定事项采取行动。
4. 每一方应努力识别在相互关心的领域内，并与其自身重要利益一致的情况下，在执行其消费者保护法方面与另一方有效合作方面的障碍，并应考虑修改其国内法律框架以减少此类障碍。

ARTICLE 16.7: CONSULTATIONS

为促进一方与另一方之间的理解，或处理在本章项下出现的具体事项，每一方应根据另一方的请求进行磋商

regarding representations made by the other Party. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The Party to which a request for consultations has been addressed shall accord full and sympathetic consideration to the concerns raised by the other Party.

3. To facilitate discussion of the matter that is the subject of the consultations, each Party shall endeavor to provide relevant non-confidential information to the other Party.

ARTICLE 16.8: DISPUTE SETTLEMENT

Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under Article 16.1, 16.6, or 16.7.

ARTICLE 16.9: DEFINITIONS

For purposes of this Chapter:

consumer protection laws means:

- (a) in the case of Korea, Chapters III, IV.3, IX, and X of the *Framework Act on Consumer*, and the *Fair Labeling and Advertising Act* and its implementing regulations; and
- (b) in the case of the United States, laws and regulations prohibiting “unfair or deceptive acts or practices” within the meaning of Section 5 of the *Federal Trade Commission Act*;

a **delegation** includes a legislative grant, and a government order, directive, or other act, transferring to the monopoly or state enterprise, or authorizing the exercise by the monopoly or state enterprise of, governmental authority;

designate means, whether formally or in effect, to establish, designate, or authorize a monopoly or to expand the scope of a monopoly to cover an additional good or service;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by the central government of a Party;⁴

in accordance with commercial considerations means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

market means the geographical and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any

⁴ For greater certainty, ownership, or control through ownership interests, may be direct or indirect.

关于另一方所作的陈述。在其请求中，一方应指明（如适用），该事项如何影响双方之间的贸易或投资。

2. 接到磋商请求的一方应充分并同情地考虑另一方提出的关切。

3. 为促进磋商事项的讨论，每一方应努力向另一方提供相关的非机密信息。

第16.8条：争端解决

任何一方均不得根据本协议就第16.1条、16.6条或16.7条产生的任何事项诉诸争端解决。

第16.9条：定义

本章规定中：

消费者保护法是指：

- (a) 在韩国的情况下，消费者框架法的第三章、第四章第3节、第九章和第十章，以及公平标签和广告法及其实施条例；以及(b) 在美国的情况下，禁止“不公平或欺骗性行为”的法律和条例，其含义与联邦贸易委员会法第5节的规定相同；

授权包括立法授权，以及政府命令、指令或其它将垄断或国有企业，或授权垄断或国有企业行使政府权力的行为；

指定是指，无论正式或实际上，建立、指定或授权垄断，或扩大垄断的范围以涵盖额外的商品或服务；

政府垄断是指由一方中央政府所有，或通过所有权权益控制的垄断；⁴

根据商业考虑是指与相关业务或行业中的私营企业的正常商业惯例一致；

市场是指商品或服务的地域性市场；

垄断是指一个实体，包括联合体或政府机构，在任何

⁴ 为明确起见，通过所有权权益获得的拥有或控制，可以是直接或间接的。

relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant; and

non-discriminatory treatment means national treatment and most-favored-nation treatment, as set out in the relevant provisions of this Agreement, including the terms and conditions set out in the relevant Annexes thereto.

一方领土内的相关市场被指定为商品或服务的唯一提供者或唯一购买者，但不包括仅因该授予而获得独占知识产权的实体；并且

非歧视待遇意味着国民待遇和最惠国待遇，如本协定相关条款中规定，包括在该协定相关附件中规定的条款和条件。

ARTICLE 17.1: GENERAL PROVISIONS

1. The Parties reaffirm their rights and obligations under the GPA and their interest in further expanding bilateral trading opportunities in each Party’s government procurement market.
2. The Parties recognize their shared interest in promoting international liberalization of government procurement markets in the context of the rules-based international trading system. The Parties shall continue to cooperate in the review under Article XXIV:7 of the GPA and on procurement matters in APEC and other appropriate international fora.
3. Nothing in this Chapter shall be construed to derogate from either Party’s rights or obligations with respect to the other Party under the GPA.
4. The Parties confirm their desire and determination to apply the *APEC Non-Binding Principles on Government Procurement*, as appropriate, to all their government procurement that is outside the scope of the GPA and this Chapter.

ARTICLE 17.2: SCOPE AND COVERAGE

1. This Chapter applies to any measure regarding covered procurement.
2. For purposes of this Chapter, **covered procurement** means procurement for governmental purposes:
 - (a) of goods, services, or any combination thereof:
 - (i) as specified in a Party’s Schedule to Annex 17-A; and
 - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
 - (b) by any contractual means, including purchase; lease; rental or hire purchase, with or without an option to buy; build-operate-transfer contracts; and public works concession contracts;
 - (c) for which the value equals or exceeds the relevant threshold provided for in Annex 17-A;
 - (d) by a procuring entity; and
 - (e) that is not otherwise excluded from coverage under paragraph 3 or Annex 17-A.
3. This Chapter does not apply to:

第十七条第一款：一般规定

1. 各方重申其根据 GPA 享有的权利和应尽的义务，以及其在各方的政府采购市场中进一步扩大双边贸易机会的兴趣。
2. 各方承认其在基于规则的国际贸易体系下促进政府采购市场国际自由化的共同利益。各方应继续合作，审议 GPA 第 XXIV:7 条的规定，并在 APEC 及其他适当的国际场合就政府采购事项进行合作。
3. 本章任何规定均不得解释为损害任何一方根据 GPA 对另一方享有的权利或应尽的义务。。
4. 各方确认其应用 APEC 政府采购非约束性原则的意愿和决心，以适当的方式将其适用于 GPA 和本章规定范围之外的所有政府采购。

第十七条第2条：范围和覆盖

1. 本章适用于任何与受覆盖采购相关的措施。
2. 就本章而言，受覆盖采购是指为政府目的进行的采购：
 - (a) 商品、服务或其任何组合：(i) 如在一方附件17-A的清单中指定；以及(ii) 未经商业销售或转售的采购，或用于商业销售或转售的商品或服务的生产或供应；
 - (b) 通过任何合同方式，包括购买；租赁；租赁或分期付款，可购买或不购买；建设-运营-转让合同；以及公共工程特许经营合同；
 - (c) 其价值等于或超过附件17-A中规定的相关阈值；
 - (d) 由采购实体进行；以及
 - (e) 根据第3段或附件17-A的规定，不排除在覆盖范围之外。
3. 本章不适用于：

- (a) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;
- (b) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes and other securities; or
- (c) procurement conducted for the specific purpose of providing international assistance, including development aid.

4. For greater certainty relating to the procurement of digital products as defined in Article 15.9 (Definitions):

- (a) covered procurement includes the procurement of digital products; and
- (b) no provision of Chapter Fifteen (Electronic Commerce) shall be construed as imposing obligations on a Party with respect to the procurement of digital products.

5. The provisions of this Chapter do not affect the rights and obligations provided for in Chapters Two (National Treatment and Market Access for Goods), Eleven (Investment), Twelve (Cross-Border Trade in Services), and Thirteen (Financial Services).

ARTICLE 17.3: INCORPORATION OF GPA PROVISIONS

1. For all covered procurement, the Parties shall apply Appendices II through IV of the GPA, and the following articles of the GPA, *mutatis mutandis*:

Article I:3	Application to Non-listed Entities
Article II	Valuation of Contracts
Article III	National Treatment and Non-discrimination
Article IV:1	Rules of Origin
Article VI	Technical Specifications
Article VII	Tendering Procedures
Article VIII	Qualification of Suppliers
Article IX	Invitation to Participate Regarding Intended Procurement
Article X	Selection Procedures
Article XI:4	Time-Limits for Delivery
Article XII	Tender Documentation
Article XIII	Submission, Receipt and Opening of Tenders and Awarding of Contracts
Article XIV	Negotiation
Article XV	Limited Tendering
Article XVI:1	Offsets
Article XVIII	Information and Review as Regards Obligations of Entities
Article XIX:1 through 4	Information and Review as Regards Obligations of Parties

(a) 非合同协议或一方提供的任何形式的援助，包括合作协议、拨款、贷款、股权注入、担保和财政激励；(b) 财政代理或存款服务的采购或获取，受监管金融机构的清算和管理服务，或与公债的出售、赎回和发行相关的服务，包括贷款和政府债券、票据和其他证券；或(c) 为提供国际援助而进行的采购，包括发展援助。

4. 就第15.9条（定义）中定义的数字产品的采购而言，为明确起见：

(a) 受覆盖采购包括数字产品的采购；以及 (b) 第十五章（电子商务）的任何规定均不得解释为对一方在数字产品采购方面的义务。

5. 本章的规定不影响第二章（货物国民待遇和市场准入）、第十一章（投资）、第十二章（跨境服务贸易）和第十三章（金融服务）中规定的权利和义务。

第17.3条：GPA规定的纳入

1. 对于所有受覆盖采购，各方应适用GPA的附录II至IV，以及以下GPA条款，相应修改：

第I:3条 适用于非列名实体 第II条 合同估价 第III条 国民待遇和非歧视 第IV:1条 原产地规则 第VI条 技术规格 第VII条 招标程序 第VIII条 供应商资格 第IX条 关于拟采购的参与邀请 第X条 选择程序 第XI:4条 交货时限 第XII条 招标文件 第XIII条 投标提交、接收和开标及合同授予 第XIV条 谈判 第XV条 有限招标 第XVI:1条 抵消 第XVIII条 关于实体义务的信息和审查 第XIX:1至4条 关于缔约方义务的信息和审查

To that end, these GPA articles and appendices are incorporated into and made a part of this Chapter, *mutatis mutandis*.

2. For purposes of the incorporation of the GPA under paragraph 1, the term:
- (a) “Agreement” in the GPA means “Chapter,” except that “countries not Parties to this Agreement” means “non-Parties” and “Party to the Agreement” in GPA Article III:2(b) means “Party;”

(b) “Appendix I” in the GPA means “Annex 17-A;”

(c) “Annex 1” in the GPA means “Section A of Annex 17-A;”

(d) “Annex 4” in the GPA means “Section C of Annex 17-A;”

(e) “Annex 5” in the GPA means “Section D of Annex 17-A;”

(f) “any other Party” in GPA Article III:1(b) means “a non-Party;”

(g) “other Parties” in the GPA means “the other Party;”

(h) “products” in the GPA means “goods;” and

(i) “among suppliers of other Parties or” in GPA Article VIII shall not be incorporated.
3. The Parties recognize that on December 8, 2006, the WTO Committee on Government Procurement provisionally approved the text of the revised GPA. Further to Article 24.3 (Amendment of the WTO Agreement), at such time as the revised GPA enters into force for both Parties, the Parties shall promptly incorporate by reference the appropriate provisions of the revised GPA in place of the provisions in paragraph 1.
4. If the GPA is further amended or is superseded by another agreement, the Parties shall, consistent with Article 24.2 (Amendments), amend this Chapter, as appropriate, after consultations.

ARTICLE 17.4: GENERAL PRINCIPLES

Use of Electronic Means

1. When conducting covered procurement by electronic means, a procuring entity shall:
- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

为此，这些GPA条款和附件被纳入并成为本章的一部分，相应修改。

2. 为第1段所述的GPA纳入之目的，术语：
- (a) GPA中的“协定”意为“章节”，但“非本协定缔约方国家”意为“非缔约方”，GPA第III:2(b)条中的“协定缔约方”意为“一方”；(b) GPA中的“附录I”意为“附件17-A”；(c) GPA中的“附件1”意为“附件17-A第A部分”；(d) GPA中的“附件4”意为“附件 17-A 的 C 部分”；(e) GPA中的“附件5”意为“附件 17-A 的 D 部分”；(f) GPA第III:1(b)条中的“其他一方”意为“非缔约方”；(g) GPA中的“其他缔约方”意为“其他缔约方”；(h) GPA中的“产品”意为“货物”；以及(i) GPA第VIII条中的“其他缔约方供应商之间或”不得纳入。
3. 各方承认，2006年12月8日，世界贸易组织政府采购委员会临时批准了修订后的 GPA 的文本。根据第24.3条（世界贸易组织协定的修正案），当修订后的 GPA 对双方均生效时，各方应立即参照引用修订后的 GPA 的适当条款，以取代第1段中的条款。
4. 如果 GPA 进一步修正或被另一项协议取代，各方应就磋商结果，根据第24.2条（修正案）相应地修改本章。

ARTICLE 17.4: GENERAL PRINCIPLES

电子方式的使用

1. 在电子方式下开展受覆盖采购时，采购实体应：
- (a)确保采购使用通用且可与其他通用信息技术系统和软件互操作的信息技术系统和软件，包括用于信息认证和加密的系统和软件；以及

- (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Valuation

2. For greater certainty with regard to Article II of the GPA, in estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including premiums, fees, commissions, interest, and other revenue streams that may be provided for in the procurement.

ARTICLE 17.5: CONDITIONS FOR PARTICIPATION

- 1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.
- 2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:
 - (a) shall evaluate the supplier’s financial capacity and commercial and technical abilities on the basis of that supplier’s business activities outside the territory of the Party of the procuring entity, as well as its business activities, if any, inside the territory of the Party of the procuring entity;
 - (b) shall not impose the condition that, in order for a supplier to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of that Party or that the supplier has prior work experience in the territory of that Party; and
 - (c) shall base its determination of whether a supplier has satisfied the conditions for participation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.
- 3. A procuring entity may exclude a supplier on grounds such as:
 - (a) bankruptcy;
 - (b) false declarations;
 - (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
 - (d) final judgments in respect of serious crimes or other serious offenses; and
 - (e) failure to pay taxes.

- (b)维护确保参与请求和标书完整性的机制，包括接收时间的建立和防止不当访问。

评估

2. 为了更清楚地界定 GPA 第二条，在估算采购价值以确定其是否为受覆盖采购时，采购实体应当包括该采购在整个持续时间内的估计最高总价值，无论授予一个或多个供应商，并应考虑所有形式的报酬，包括奖金、费用、佣金、利息以及其他可能在该采购中提供的收入来源。

第十七条第5条：参与条件

- 1. 采购实体应当将参与采购的条件限制为那些对于确保供应商具有法律和财务能力以及商业和技术能力以进行相关采购是必要的条件。
- 2. 在评估供应商是否满足参与条件时，采购实体：
 - (a) 应当根据该供应商在采购实体该方领土之外的业务活动以及其在该方领土之内的业务活动（如有）来评估该供应商的财务能力和商业和技术能力；(b) 不得强加这样的条件，即为了使供应商能够参与采购或获得合同，该供应商先前已被该方的一个采购实体授予一个或多个合同，或者该供应商在该方领土内具有先前的工作经验；以及(c) 应当仅根据采购实体在通知或招标文件中预先指定的条件来判定供应商是否已满足参与条件。

3. 采购实体可以基于以下理由排除供应商：

- (a) 破产；(b) 虚假声明；(c) 在先前合同或合同项下的任何实质性要求或义务的履行中存在重大或持续的缺陷；(d) 严重犯罪或其他严重违法行为的最终判决；以及 (e) 未支付税款。

ARTICLE 17.6: PUBLICATION OF NOTICES

Notice of Intended Procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in accordance with Article IX of the GPA, in the appropriate electronic medium, except in the circumstances described in Article XV of the GPA.

Notice of Planned Procurement

2. Each Party shall encourage its procuring entities to publish, as early as possible in each fiscal year, a notice regarding their future procurement plans. The notice should include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement and, to the extent possible, be published in an electronic medium listed in each Party’s Appendix II to the GPA.

ARTICLE 17.7: TECHNICAL SPECIFICATIONS

For greater certainty, a Party, including its procuring entities, may, in accordance with Article VI of the GPA, prepare, adopt, or apply technical specifications:

- (a) to promote the conservation of natural resources or protect the environment; or
 - (b) to require a supplier to comply with generally applicable laws regarding
 - (i) fundamental principles and rights at work; and
 - (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health,
- in the territory in which the good is produced or the service is performed.

ARTICLE 17.8: TIME-PERIODS

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

- (a) the nature and complexity of the procurement;
- (b) the extent of subcontracting anticipated; and
- (c) the time for transmitting tenders from foreign as well as domestic points where electronic means are not used.

第十七条第六条：公告的发布

意向采购通知

1. 对于每一项受覆盖采购，采购实体应根据GPA第九条的规定，在适当的电子媒介中发布意向采购通知，但GPA第十五条所述情形除外。

计划采购通知

2. 每一方应鼓励其采购实体在每一财政年度尽早发布有关其未来采购计划的公告。公告应包括采购事项和意向采购通知的预计发布日期，并尽可能在GPA中每一方附录II中列出的电子媒介中发布。

第十七条第七条：技术规格

为明确起见，一方，包括其采购实体，可根据GPA第六条的规定，制定、采纳或应用技术规格：

- (a) 促进自然资源保护或保护环境；或 (b) 要求供应商遵守普遍适用法律，涉及 (i) 工作基本原则和权利；以及 (ii) 可接受的工作条件，包括最低工资、工作时间和职业安全与健康，在货物生产或服务提供的领土内。

第十七条第7.8条：时间段

一般

1. 采购实体应根据其自身合理需求，为供应商提供足够的时间准备和提交参与请求和响应性标书，并考虑以下因素：

- (a) 采购的性质和复杂性； (b) 预计分包的程度；以及 (c) 从国外以及电子方式未使用的国内地点传输标书的时间。

Such time-periods, including any extension of the time-periods, shall be common for all interested or participating suppliers.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering set out in paragraph 3 to not less than 10 days where:

- (a) the procuring entity published a notice of planned procurement under Article IX:7 of the GPA at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
 - (i) a description of the procurement;
 - (ii) the approximate final dates for the submission of tenders or requests for participation;
 - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
 - (iv) the address from which documents relating to the procurement may be obtained; and
 - (v) as much of the information that is required under Article IX:6 of the GPA for the notice of intended procurement, as is available;
- (b) the procuring entity, for procurements of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or
- (c) a state of urgency duly substantiated by the procuring entity renders such time-period impracticable.

这些时间段，包括任何时间段的延长，应适用于所有感兴趣的或参与的供应商。

Deadlines

2. 采用选择性招标的采购实体应当确定参与请求提交的最终日期原则上不应早于意向采购通知公告日期的25天。若采购实体确实以紧急状态为由证明此期限不切实际，可将期限缩短至不少于10天。

3. 除第4段和第5段另有规定外，采购实体应当确定投标提交的最终日期不应早于以下日期：

- (a) 在公开招标的情况下，意向采购通知公告的日期；或 (b) 在选择性招标的情况下，实体通知供应商他们将受邀提交投标，无论其是否使用多用途清单。

4. 采购实体可在以下情况下将第3段规定的招标期限缩短至不少于10天：

- (a) 采购实体依据《政府采购协定》第九条第7款发布计划采购通知，至少提前40天且不超过12个月发布意向采购通知，并且计划采购通知包含：
 - (i) 采购描述； (ii) 提交标书或参与请求的大致最终日期； (iii) 声明有兴趣的供应商应向采购实体表达对采购的兴趣； (iv) 可获取采购相关文件的地址；以及 (v) 在《政府采购协定》第九条第6款规定意向采购通知所需的信息中，已提供的信息；
- (b) 对于具有重复性质的采购，采购实体在初始意向采购通知中表明后续通知将根据本段提供招标时间段；或
- (c) 采购实体正式证明的紧急状态使得该期限不可行。

5. A procuring entity may reduce the time-period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

- (a) the notice of intended procurement is published by electronic means;
- (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
- (c) the tenders can be received by electronic means by the procuring entity.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering set out in paragraph 3 to less than ten days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other time-period in this Article, where a procuring entity purchases commercial goods or services, it may reduce the time-period for tendering set out in paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. Where the entity also accepts tenders for commercial goods and services by electronic means, it may reduce the time period set out in paragraph 3 to not less than ten days.

ARTICLE 17.9: MODIFICATIONS AND RECTIFICATIONS TO COVERAGE

1. A Party shall notify the other Party of any proposed rectification of Annex 17-A, withdrawal of an entity from Annex 17-A, or other modification of Annex 17-A (referred to generally in this Article as “modification”). The Party proposing the modification (modifying Party) shall include in the notification:

- (a) for any proposed withdrawal of an entity from Annex 17-A in the exercise of its rights on the grounds that government control or influence over the entity’s covered procurement has been effectively eliminated, evidence that such government control or influence has been effectively eliminated; or
- (b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided under this Chapter.

2. Where the other Party objects to the proposed modification, it shall notify the modifying Party of its objection within 30 days of the notification of the proposed modification and include the reasons for its objection.

3. The Parties shall seek to resolve any objection through consultations. In such consultations, the Parties shall consider the proposed modification and, in the case of a notification under paragraph 1(b), any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter prior to such notification.

4. If a Party proposes a modification pursuant to paragraph 1(b), the modifying Party shall offer to the other Party appropriate compensatory adjustments, where such adjustments are necessary to maintain a level of coverage comparable to that which was existing prior to the

5. 采购实体可因以下每种情况，将第3段规定的招标期限缩短五天：

- (a) 意向采购通知通过电子方式发布；(b) 自意向采购通知发布之日起，所有招标文件均通过电子方式提供；以及(c) 采购实体可以通过电子方式接收标书。

6. 第5段与第4段结合使用，在任何情况下均不得将第3段规定的招标期限缩短至意向采购通知发布之日起不足十天。

7. 不论本文中是否有其他期限规定，若采购实体采购商业货物或服务，它可以缩短第3段规定的招标期限至不少于13天，前提是它必须同时通过电子方式发布意向采购通知和招标文件。如果该实体也通过电子方式接受商业货物或服务的标书，它可以缩短第3段规定的期限至不少于十天。

第十七条第九条：保函的修改和更正

1. 一方应通知另一方拟对附件17-A进行的任何拟更正、实体从附件17-A撤出或附件17-A的其他修改（在本条中统称为“修改”）。提出修改的一方（修改方）应在通知中包括：

- (a) 对于根据实体受覆盖采购已有效消除政府控制或影响的理由而拟从附件17-A撤出实体的任何情况，应提供该政府控制或影响已有效消除的证据；或 (b) 对于拟进行的任何其他修改，应提供关于该变更对在本章下提供的共同商定覆盖范围可能产生后果的信息。

2. 如果另一方反对拟进行的修改，应在拟更正通知之日起30天内通知修改方其反对意见，并说明其反对的理由。

3. 双方应通过磋商解决任何异议。在磋商中，双方应考虑拟议的修改，并在根据第1(b)款发出通知的情况下，考虑任何关于补偿性调整的索赔，以维持在此通知发出前本章节规定的权利和义务的平衡以及相当的共同商定的覆盖范围。

4. 如果一方根据第1(b)款提出修改，修改方向另一方提供适当的补偿性调整，如果需要这些调整以维持与修改前相当的覆盖水平，则应提供。

modification. Such modification shall become effective if the other Party does not notify the modifying Party of any objection to the proposed modification within 30 days of the notification. A Party need not provide compensatory adjustments where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence over the entity’s covered procurement.

5. The Joint Committee shall adopt any proposed modification only where the other Party:
- (a) does not object in writing to the proposed modification within 30 days of the notification provided under paragraph 1; or

(b) submits to the modifying Party a written notice withdrawing the objection.

ARTICLE 17.10: GOVERNMENT PROCUREMENT WORKING GROUP

1. The Parties shall establish a Working Group on Government Procurement comprising representatives of each Party.
2. The Working Group shall meet, as mutually agreed or upon request of a Party, to:
- (a) consider issues regarding government procurement that a Party refers to it, including issues related to information technology; and

(b) exchange information relating to the government procurement opportunities in each Party.

ARTICLE 17.11: DEFINITIONS

For purposes of this Chapter:

APEC means Asia Pacific Economic Cooperation;

build-operate-transfer contract and **public works concession contract** mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier’s execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

GPA means *WTO Agreement on Government Procurement*, done at Marrakesh, April 15, 1994; and

procuring entity means an entity covered under Section A of Annex 17-A.

该修改将在另一方在通知之日起30天内未通知修改方反对拟议修改的情况下生效。如果双方同意拟议的修改覆盖了某采购实体，而一方已有效消除其对实体受覆盖采购的控制或影响，则一方无需提供补偿性调整。

5. 联合委员会只有在其他缔约方：
- (a) 在收到第1段规定的通知后30天内，未以书面形式反对拟议的修改；或

(b) 向修改方提交书面通知撤回反对意见。

第17.10条：政府采购工作组

1. 各缔约方应设立一个由各缔约方代表组成的政府采购工作组。
2. Th工作组应根据各方同意或一方的要求召开会议，以：
- (a) 审议一方提交给它的有关政府采购的问题，包括与信息技术相关的问题；以及

(b) 交流各缔约方政府采购机会方面的信息。

第十七条第十一条：定义

本章规定如下：

APEC指亚太经合组织；

建设-运营-转让合同和公共工程特许合同指主要目的是提供物理基础设施、工厂、建筑物、设施或其他政府所有作品的建设或修复的任何合同安排，在该合同安排下，作为供应商执行合同安排的对价，采购实体授予供应商在特定时间内临时所有权或控制及运营的权利，并要求供应商在合同期间支付使用这些作品的对价；

商业货物或服务指通常在商业市场上向非政府购买者销售或提供的货物或服务，以及非政府购买者通常为非政府目的购买的货物或服务；

GPA指马拉喀什于1994年4月15日签署的世界贸易组织政府采购协定；和

采购实体是指根据附件17-A第A部分所涵盖的实体。

Section A: Central Level Government Entities

This Chapter applies to the entities of the central level of government listed in each Party’s Schedule to this Section where the value of the procurement is estimated, in accordance with Article II of the GPA and Article 17.4.2, to equal or exceed:

- (a) for procurement of goods and services: 100,000 U.S. dollars with respect to the United States and 100 million Korean won with respect to Korea, to be adjusted, as necessary, based on consultations between the Parties; and
- (b) for procurement of construction services: 5,000,000 Special Drawing Rights (SDRs) (7.4 billion Korean won or 7,407,000 U.S. dollars), to be converted into each Party’s national currency in accordance with the *Modalities for Notifying Threshold Figures in National Currencies*, Annex 3 to the *Decisions on Procedural Matters under the Agreement on Government Procurement (1994)* (GPA/1).

Schedule of Korea

1. Board of Audit and Inspection
2. Office of the Prime Minister
3. Office for Government Policy Coordination
4. Ministry of Gender Equality and Family
5. Ministry of Finance and Economy
6. Ministry of Planning and Budget
7. Financial Supervisory Commission
8. Ministry of Unification
9. Ministry of Government Administration and Home Affairs
10. Civil Service Commission
11. Ministry of Science and Technology
12. Government Information Agency
13. Ministry of Government Legislation
14. Ministry of Patriots and Veterans Affairs
15. Ministry of Foreign Affairs and Trade
16. Ministry of Justice
17. Ministry of National Defense (Note 2)
18. Ministry of Education and Human Resources Development
19. Ministry of Culture and Tourism
20. Cultural Heritage Administration
21. Ministry of Agriculture and Forestry
22. Ministry of Commerce, Industry and Energy
23. Ministry of Health and Welfare
24. Korea Food and Drug Administration
25. Ministry of Labor

A部分：中央级政府机构

本章适用于各缔约方根据本节清单列出的中央级政府实体，其中采购的价值根据 GPA第II条和第17.4.2条估计，等于或超过：

- (a) 采购货物和服务：针对美国100,000美元，针对韩国1亿韩元，必要时根据双方磋商进行调整；以及 (b) 采购建筑服务：5,000,000特别提款权（SDR）（74亿韩元或7,407,000美元），应根据《协定关于政府采购（1994）》下程序事项的决定附件3《以本国货币通报门槛金额的程序》的规定，转换为每一方的本国货币（GPA/1）。

韩国清单

1. 审计监察委员会
2. 总理办公室
3. 政府政策协调办公室
4. 性别平等和家庭部
5. 财政和经济部
6. 规划和预算部
7. 金融监督委员会
8. 统一部
9. 政府行政和家庭事务部
10. 公务员委员会
11. 科学技术部
12. 政府信息 Agency
13. 政府立法部
14. 爱国者和退伍军人事务部
15. 外交和贸易部
16. 司法部
17. 国防部（注2）
18. 教育和人力资源发展部
19. 文化和旅游部
20. 文化遗产管理局
21. 农业和林业部
22. 商业、工业和能源部
23. 卫生和福利部
24. 韩国食品药品管理局
25. 劳动部

- 26. Ministry of Construction and Transportation
- 27. Ministry of Maritime Affairs and Fisheries
- 28. Ministry of Information and Communications
- 29. Ministry of Environment
- 30. Public Procurement Service (Note 3)
- 31. National Tax Service
- 32. Customs Service
- 33. National Statistical Office
- 34. Korea Meteorological Administration
- 35. National Police Agency (Note 4)
- 36. Supreme Prosecutors' Office
- 37. Military Manpower Administration
- 38. Rural Development Administration
- 39. Forest Service
- 40. Korean Intellectual Property Office
- 41. Small and Medium Business Administration
- 42. Korea Coast Guard (Note 4)
- 43. National Emergency Management Agency
- 44. Defense Acquisition Program Administration (Note 2)
- 45. National Youth Commission
- 46. National Human Rights Commission of Korea
- 47. Korean Broadcasting Commission
- 48. Korea Independent Commission Against Corruption
- 49. Presidential Commission on Small and Medium Enterprises
- 50. Fair Trade Commission
- 51. The Ombudsman of Korea

Notes to Korean Schedule

- 1. The above central government entities include their subordinate linear organizations, special local administrative organs, and attached organs as prescribed in Korea’s *Government Organization Act*.
- 2. Ministry of National Defense and Defense Acquisition Program Administration: Subject to the decision of the Korean Government under the provisions of Article XXIII:1 of the GPA, for the purchases of the Ministry of National Defense and the Defense Acquisition Program Administration, this Chapter will generally apply to the following FSC categories only, and for services and construction services listed in Section C and Section D, it will apply only to those areas which are not related to national security and defense.

FSC 2510	Vehicular cab, body, and frame structural components
FSC 2520	Vehicular power transmission components
FSC 2540	Vehicular furniture and accessories
FSC 2590	Miscellaneous vehicular components
FSC 2610	Tires and tubes, pneumatic, nonaircraft
FSC 2910	Engine fuel system components, nonaircraft
FSC 2920	Engine electrical system components, nonaircraft
FSC 2930	Engine cooling system components, nonaircraft

- 26. 建设交通部 27. 海洋事务与渔业部 28. 信息与通信部 29. 环境部 30. 公共采购服务（注3） 31. 国家税务局 32. 海关服务 33. 国家统计局 34. 韩国气象厅 35. 国家警察厅（注4） 36. 最高检察官办公室 37. 军事人力管理局 38. 农村发展管理局 39. 林业服务 40. 韩国知识产权局 41. 中小企业管理局 42. 韩国海岸警卫队（注4） 43. 国家应急管理 Agency 44. 国防采购计划管理局（注2） 45. 国家青年委员会 46. 韩国国家人权委员会 47. 韩国广播委员会 48. 韩国反腐败独立委员会 49. 总统中小企业委员会 50. 公平贸易委员会 51. 韩国监察长

韩国清单注释

- 1. 上述中央政府实体包括韩国政府组织法规定的其下属线性组织、特别地方行政机构及附属机构。
- 2. 国防部和国防采购计划管理局：根据GPA第XXIII条：1款韩国政府的规定，对于国防部和国防采购计划管理局的采购，本章将仅适用于以下FSC类别，并且对于清单C和清单D中列出的服务和建筑服务，将仅适用于与国家安全和国防无关的领域。

FSC 2510 车辆驾驶室、车身和框架结构组件 FSC 2520 车辆动力传输组件 FSC 2540 车辆家具和附件 FSC 2590 各种车辆组件 FSC 2610 轮胎和管子，气动的，非航空 FSC 2910 发动机燃油系统组件，非航空 FSC 2920 发动机电气系统组件，非航空 FSC 2930 发动机冷却系统组件，非航空

FSC 2940	Engine air and oil filters, strainers and cleaners, nonaircraft
FSC 2990	Miscellaneous engine accessories, nonaircraft
FSC 3020	Gears, pulleys, sprockets and transmission chain
FSC 3416	Lathes
FSC 3417	Milling machines
FSC 3510	Laundry and dry cleaning equipment
FSC 4110	Refrigeration equipment
FSC 4230	Decontaminating and impregnating equipment
FSC 4520	Space heating equipment and domestic water heaters
FSC 4940	Miscellaneous maintenance and repair shop specialized equipment
FSC 5120	Hand tools, nonedged, nonpowered
FSC 5410	Prefabricated and portable buildings
FSC 5530	Plywood and veneer
FSC 5660	Fencing, fences and gates
FSC 5945	Relays and solenoids
FSC 5965	Headsets, handsets, microphones and speakers
FSC 5985	Antennae, waveguide, and related equipment
FSC 5995	Cable, cord, and wire assemblies: communication equipment
FSC 6220	Electric vehicular lights and fixtures
FSC 6505	Drugs and biologicals
FSC 6840	Pest control agents disinfectants
FSC 6850	Miscellaneous chemical, specialties
FSC 7310	Food cooking, baking, and serving equipment
FSC 7320	Kitchen equipment and appliances
FSC 7330	Kitchen hand tools and utensils
FSC 7350	Table ware
FSC 7360	Sets, kits, outfits, and modules food preparation and serving
FSC 7530	Stationery and record forms
FSC 7920	Brooms, brushes, mops, and sponges
FSC 7930	Cleaning and polishing compounds and preparations
FSC 8110	Drums and cans
FSC 9150	Oils and greases: cutting, lubricating, and hydraulic
FSC 9310	Paper and paperboard

3. Public Procurement Service: This Chapter covers only those procurements carried out by the Public Procurement Service for the entities listed in this Section.
4. National Police Agency and Korea Coast Guard: This Chapter does not cover procurements for the purpose of maintaining public order, as provided in Article XXIII of the GPA.
5. This Chapter does not cover the procurement of agricultural, fishery and livestock products in accordance with the *Foodgrain Management Law*, the *Law Concerning Marketing and Price Stabilization of Agricultural and Fishery Products*, and the *Livestock Law*.

Schedule of the United States

1. Advisory Commission on Intergovernmental Relations
2. Africa Development Foundation

FSC 2940 发动机空气和机油滤清器，非航空 FSC 2990 各种发动机附件，非航空 FSC 3020 齿轮、皮带轮、链轮和传动链 FSC 3416 车床 FSC 3417 铣床 FSC 3510 洗衣和干洗设备 FSC 4110 制冷设备 FSC 4230 消毒和浸渍设备 FSC 4520 空间供暖设备和家用热水器 FSC 4940 各种维护和维修店专用设备 FSC 5120 非刃具非动力手动工具 FSC 5410 预制和便携式建筑 FSC 5530 胶合板和饰面 FSC 5660 围栏、围栏和门 FSC 5945 继电器和电磁阀 FSC 5965 耳机、手柄、麦克风和扬声器 FSC 5985 天线、波导和相关设备 FSC 5995 电缆、绳索和线束：通信设备 FSC 6220 电动汽车灯光和灯具 FSC 6505 药品和生物制品 FSC 6840 害虫控制剂消毒剂 FSC 6850 各种化学品、特种化学品 FSC 7310 食品烹饪、烘焙和用餐设备 FSC 7320 厨房设备和器具 FSC 7330 厨房手动工具和用具 FSC 7350 餐具 FSC 7360 套件、套件、套装和模块食品制备和用餐 FSC 7530 文具和记录表格 FSC 7920 扫帚、刷子、拖把和海绵 FSC 7930 清洁和抛光化合物和制剂 FSC 8110 桶和罐 FSC 9150 油脂：切割、润滑和液压 FSC 9310 纸和纸板

3. 公共采购服务：本章仅涵盖公共采购服务为本章所述实体进行的采购。
4. 国家警察厅和韩国海岸警卫队：本章不涵盖根据 GPA 第 XXIII 条规定为维护公共秩序而进行的采购。
5. 本章不涵盖根据《粮食管理法》、《关于农产品和渔业产品营销和价格稳定法的法律》以及《畜牧业法》进行的农产品、渔业产品和畜牧业产品的采购。

美国清单

1. 政府间关系咨询委员会
2. 非洲发展基金会

- 3. Alaska Natural Gas Transportation System
- 4. American Battle Monuments Commission
- 5. Appalachian Regional Commission
- 6. Broadcasting Board of Governors
- 7. Commission of Fine Arts
- 8. Commission on Civil Rights
- 9. Commodity Futures Trading Commission
- 10. Consumer Product Safety Commission
- 11. Corporation for National and Community Service
- 12. Delaware River Basin Commission
- 13. Department of Agriculture (Note 2)
- 14. Department of Commerce (Note 3)
- 15. Department of Defense (Note 4)
- 16. Department of Education
- 17. Department of Energy (Note 5)
- 18. Department of Health and Human Services
- 19. Department of Homeland Security (Note 6)
- 20. Department of Housing and Urban Development
- 21. Department of the Interior, including the Bureau of Reclamation
- 22. Department of Justice
- 23. Department of Labor
- 24. Department of State
- 25. Department of Transportation (Note 7)
- 26. Department of the Treasury
- 27. Department of Veterans Affairs
- 28. Environmental Protection Agency
- 29. Equal Employment Opportunity Commission
- 30. Executive Office of the President
- 31. Export-Import Bank of the United States
- 32. Farm Credit Administration
- 33. Federal Communications Commission
- 34. Federal Crop Insurance Corporation
- 35. Federal Deposit Insurance Corporation
- 36. Federal Election Commission
- 37. Federal Home Loan Mortgage Corporation
- 38. Federal Housing Finance Board
- 39. Federal Maritime Commission
- 40. Federal Mediation and Conciliation Service
- 41. Federal Mine Safety and Health Review Commission
- 42. Federal Prison Industries, Inc.
- 43. Federal Reserve System
- 44. Federal Retirement Thrift Investment Board
- 45. Federal Trade Commission
- 46. General Services Administration (Note 8)
- 47. Government National Mortgage Association
- 48. Holocaust Memorial Council
- 49. Inter-American Foundation
- 50. Merit Systems Protection Board

- 3. 阿拉斯加天然气运输系统 4. 美国阵亡将士纪念碑委员会 5. 阿巴拉契亚区域委员会 6. 广播电视委员会 7. 美术委员会 8. 公民权利委员会 9. 商品期货交易委员会 10. 消费品安全委员会 11. 国家与社区服务公司 12. 特拉华河盆地委员会 13. 农业部门 (Note 2)
- 14. 商业部门 (Note 3) 15. 国防部 (Note 4) 16. 教育部门 17. 能源部 (Note 5) 18. 卫生与公众服务部门 19. 国土安全部 (Note 6)
- 20. 住房和城市发展部门 21. 内政部门，包括垦务局 22. 司法部门
- 23. 劳工部门 24. 国务院 25. 交通部 (Note 7) 26. 财政部 27. 退伍军人事务部门 28. 环境保护局 29. 平等就业机会委员会 30. 总统行政办公室 31. 美国进出口银行 32. 农场信贷管理局 33. 联邦通信委员会 34. 联邦农作物保险公司 35. 联邦存款保险公司 36. 联邦选举委员会 37. 联邦住房贷款抵押公司 38. 联邦住房金融委员会 39. 联邦海事委员会 40. 联邦调解与调停服务 41. 联邦矿山安全和健康审查委员会 42. 联邦监狱工业公司 43. 联邦储备系统 44. 联邦退休储蓄投资委员会 45. 联邦贸易委员会 46. 通用服务管理局 (Note 8)
- 47. 政府国家抵押协会 48. 大屠杀纪念委员会 49. 泛美基金会 50. 功绩制度保护委员会

- 51. National Aeronautics and Space Administration (NASA)
- 52. National Archives and Records Administration
- 53. National Capital Planning Commission
- 54. National Commission on Libraries and Information Science
- 55. National Council on Disability
- 56. National Credit Union Administration
- 57. National Foundation on the Arts and the Humanities
- 58. National Labor Relations Board
- 59. National Mediation Board
- 60. National Science Foundation
- 61. National Transportation Safety Board
- 62. Nuclear Regulatory Commission
- 63. Occupational Safety and Health Review Commission
- 64. Office of Government Ethics
- 65. Office of the Nuclear Waste Negotiator
- 66. Office of Personnel Management
- 67. Office of Special Counsel
- 68. Office of Thrift Supervision
- 69. Overseas Private Investment Corporation
- 70. Peace Corps
- 71. Railroad Retirement Board
- 72. Securities and Exchange Commission
- 73. Selective Service System
- 74. Small Business Administration
- 75. Smithsonian Institution
- 76. Social Security Administration
- 77. Susquehanna River Basin Commission
- 78. United States Agency for International Development
- 79. United States International Trade Commission

Notes to United States Schedule

- 1. Unless otherwise specified herein, this Chapter applies to all agencies subordinate to the entities listed in this Section.
- 2. Department of Agriculture: This Chapter does not cover the procurement of any agricultural good made in furtherance of an agricultural support program or a human feeding program.
- 3. Department of Commerce: This Chapter does not cover the procurement of any good or service related to the shipbuilding activities of the National Oceanic and Atmospheric Administration (NOAA).
- 4. Department of Defense:
 - (a) This Chapter does not cover the procurement of any good described in any Federal Supply Code classification listed below (for complete listing of U.S. Federal Supply Classification, see <http://www.fedbizopps.gov/classCodes1.html>:

- 51. 国家航空航天局（NASA） 52. 国家档案和记录管理局
- 53. 国家首都规划委员会 54. 国家图书馆与信息科学委员会
- 55. 国家残疾人委员会 56. 国家信用合作社管理局 57. 国家艺术与人文基金会 58. 国家劳工关系委员会 59. 国家调解委员会
- 60. 国家科学基金会 61. 国家运输安全委员会 62. 核监管委员会 63. 职业安全与健康审查委员会 64. 政府道德办公室 65. 核废料谈判办公室 66. 人事管理办公室 67. 特别律师办公室
- 68. 储蓄监督办公室 69. 海外私人投资公司 70. 和平队 71. 铁路退休委员会 72. 证券交易委员会 73. 征兵系统 74. 小企业管理局 75. 史密森尼学会 76. 社会保障局 77. 苏珊娜河盆地委员会 78. 美国国际开发署 79. 美国国际贸易委员会

美国清单的注释

- 1. 除非本章节另有规定，本章节适用于本节所列实体下属的所有机构。
- 2. 农业部门：本章节不涵盖为农业支持计划或人类喂养计划而采购的任何农产品。
- 3. 商业部门：本章节不涵盖与国家海洋和大气管理局（NOAA）造船活动相关的任何商品或服务采购。
- 4. 国防部：
 - (a) 本章不涵盖下列联邦供应代码分类中描述的任何货物（有关美国联邦供应分类的完整列表，请参阅 <http://www.fedbizopps.gov/classCodes1.html>：

FSC 19	Ships, Small Craft, Pontoons, and Floating Docks (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
FSC 20	Ship and Marine Equipment (the part of this classification defined as naval vessels or major components of the hull or superstructure thereof)
FSC 2310	Passenger Motor Vehicles (only buses)
FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 83	Textiles, Leather, Furs, Apparel, Shoes, Tents, and Flags (all elements other than pins, needles, sewing kits, flagstuffs, flagpoles, and flagstaff trucks)
FSC 84	Clothing, Individual Equipment, and Insignia (all elements other than sub-class 8460 - luggage)
FSC 89	Subsistence (all elements other than sub-class 8975 - tobacco products)

- (b) This Chapter does not cover the procurement of any specialty metal or any good containing one or more specialty metals. **Specialty metal** means:
- (i) steel for which the maximum alloy content exceeds one or more of the following levels: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent;

(ii) steel that contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(iii) a metal alloy consisting of a nickel, iron-nickel, or cobalt base alloy that contains a total of other alloying metals (except iron) in excess of 10 percent;

(iv) titanium or a titanium alloy; or

(v) zirconium or a zirconium base alloy.

- (c) The Chapter generally does not cover the procurement of any good described in any of the following FSC classifications, due to the application of Article XXIII:1 of the GPA:

FSC 10	Weapons
FSC 11	Nuclear Ordnance
FSC 12	Fire Control Equipment
FSC 13	Ammunitions and Explosives
FSC 14	Guided Missiles
FSC 15	Aircraft and Airframe Structural Components
FSC 16	Aircraft Components and Accessories
FSC 17	Aircraft Launching, Landing, and Ground Handling Equipment

FSC 19 船舶、小型船舶、浮筒和浮码头（本分类中定义为海军舰艇或船体或上层建筑的主要组件的部分） FSC 20 船舶和海洋设备（本分类中定义为海军舰艇或船体或上层建筑的主要组件的部分） FSC 2310 客运机动车辆（仅公共汽车） FSC 51 手工具 FSC 52 测量工具 FSC 83 纺织品、皮革、毛皮、服装、鞋类、帐篷和旗帜（除别针、针、缝纫套件、旗杆、旗杆和旗车外的所有元素） FSC 84 服装、个人装备和徽章（除8460子类 - 行李外的所有元素） FSC 89 口粮（除8975子类 - 烟草产品外的所有元素）

- (b) 本章不涵盖任何特种金属或含有一种或多种特种金属的货物采购。特种金属是指：

(i) 最大合金含量超过下列任一水平的钢：锰，1.65%；硅，0.60%；或铜，0.60%； (ii) 含有下列任一元素超过0.25%的钢：铝、铬、钴、钽、钼、镍、钛、钨或钒； (iii) 由镍、铁镍或钴基合金组成的金属合金，其中其他合金元素（除铁外）的总含量超过10%； (iv) 钛或钛合金；或(v) 锆或锆基合金。

- (c) 由于《政府采购协定》第XXIII条：1款的规定，本章通常不涵盖下列FSC分类中描述的任何货物：

FSC 10 武器 FSC 11 核武器 FSC 12 火控设备 FSC 13 弹药和爆炸物 FSC 14 制导导弹 FSC 15 飞机和机架结构组件 FSC 16 飞机部件和附件 FSC 17 飞机发射、着陆和地面处理设备

FSC 18	Space Vehicles
FSC 19	Ships, Small Craft, Pontoons, and Floating Docks
FSC 20	Ship and Marine Equipment
FSC 2350	Combat, Assault & Tactical Vehicles, Tracked
FSC 28	Engines, Turbines, and Components
FSC 31	Bearings
FSC 58	Communications, Detection, and Coherent Radiation
FSC 59	Electrical and Electronic Equipment Components
FSC 60	Fiber Optics Materials, Components, Assemblies, and Accessories
FSC 8140	Ammunition & Nuclear Ordnance Boxes, Packages & Special Containers
FSC 95	Metal Bars, Sheets, and Shapes

FSC 18 载人航天器 FSC 19 船舶、小型船舶、浮筒和浮码头 FSC 20 船舶和海洋设备 FSC 2350 战斗、突击和战术车辆、履带式 FSC 28 发动机、涡轮机和组件 FSC 31 轴承 FSC 58 通信、探测和相干辐射 FSC 59 电气和电子设备组件 FSC 60 光纤材料、组件、组装和附件 FSC 8140 弹药和核武器箱、包装和特殊容器 FSC 95 金属棒、板材和形状

5. Department of Energy: Due to the application of Article XXIII:1 of the GPA, this Chapter does not cover the procurement of:

- (a) any good or service made to support the safeguarding of nuclear materials or technology, where the Department of Energy conducts the procurement under the authority of the *Atomic Energy Act*; or
- (b) any oil purchase related to the Strategic Petroleum Reserve.

6. Department of Homeland Security:

- (a) This Chapter does not cover procurement by the Transportation Security Administration.
- (b) The essential security considerations applicable to the Department of Defense are equally applicable to the U.S. Coast Guard.

7. Department of Transportation: This Chapter does not cover procurement by the Federal Aviation Administration.

8. General Services Administration: This Chapter does not cover the procurement of any good described in any of the following FSC classifications:

FSC 51	Hand Tools
FSC 52	Measuring Tools
FSC 7340	Cutlery and Flatware

Section B: Goods

This Chapter applies to the procurement of any good by the entities listed in Section A, unless otherwise specified in this Chapter.

Section C: Services

5. 能源部：由于《政府采购协定》第XXIII条：1款的应用，本章不涵盖以下采购：

- (a) 任何为支持核材料或技术的保护而生产的商品或服务，其中能源部根据《原子能法》的授权进行采购；或 (b) 与战略石油储备相关的任何石油采购。

6. 国土安全部：

- (a) 本章不涵盖运输安全管理局的采购。(b) 适用于国防部的关键安全考虑同样适用于美国海岸警卫队。

7. 交通部：本章不涵盖联邦航空管理局的采购。

8. 通用服务管理局：本章不涵盖以下FSC分类中描述的任何商品采购：

FSC 51 手工具 FSC 52 测量工具
FSC 7340 刀具和餐具

Section B: 货物

本章适用于A部分所列实体采购任何货物，除非本章另有规定。

Section C: 服务

This Chapter applies to the procurement of all services covered under each Party’s Annex 4 of Appendix I of the GPA.

Section D: Construction Services

This Chapter applies to the procurement of all construction services under CPC 51 procured by the entities listed in Section A, unless otherwise specified in this Chapter.

Section E: General Notes

Unless otherwise specified herein, the following General Notes in each Party’s Schedule apply without exception to this Chapter, including to all sections of this Annex.

Schedule of Korea

- 1. This Chapter does not apply to procurement in furtherance of human feeding programs.
- 2. This Chapter does not apply to:
 - (a) the single tendering procurement and set-asides for small- and medium-sized businesses -according to the *Act Relating to Contracts to which the State is a Party* and its Presidential Decree; or
 - (b) set asides for small-and medium-sized businesses according to the *Act on Private Participation in Infrastructure*.

Schedule of the United States

- 1. This Chapter does not apply to any set-aside on behalf of small or minority-owned businesses. A set-aside may include any form of preference, such as the exclusive right to provide a good or service, or any price preference.
- 2. This Chapter does not apply to the governmental provision of goods and services to persons or governmental authorities not specifically covered under this Annex.
- 3. Where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.

本章适用于GPA附录I中各方附件4所涵盖的所有服务。

Section D: 建筑服务

本章适用于根据CPC 51采购的、由A部分列出的实体提供的所有建筑服务，除非本章另有规定。

Section E: 一般说明

除非本条另有规定，否则每一方清单中的一般说明适用于本章，包括本附件的所有部分，且不例外。

韩国清单

- 1. 本章不适用于促进人类喂养计划的采购。
- 2. 本章不适用于：**(a)** 根据《国家参与合同法》及其总统令，为中小企业提供的单一招标采购和预留；**(b)** 根据《基础设施私人参与法》为中小企业提供的预留。

美国的清单

- 1. 本章不适用于代表小型或少数族裔企业进行的预留。预留可以包括任何形式的优先权，例如提供商品或服务的专有权，或任何价格优先权。
- 2. 本章不适用于向未在本附件中特别涵盖的个人或政府机构提供商品和服务。
- 3. 当一个实体待授予的合同不属于本章管辖范围时，本章不应被解释为涵盖该合同中任何商品或服务组成部分。

ARTICLE 18.1: GENERAL PROVISIONS

1. Each Party shall, at a minimum, give effect to this Chapter.

International Agreements

2. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement.

3. Each Party shall ratify or accede to the following agreements by the date this Agreement enters into force:

- (a) the *Patent Cooperation Treaty* (1970), as amended in 1979;
- (b) the *Paris Convention for the Protection of Industrial Property* (1967) (the Paris Convention);
- (c) the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (the Berne Convention);
- (d) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974);
- (e) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989);
- (f) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980;
- (g) the *International Convention for the Protection of New Varieties of Plants* (1991);
- (h) the *Trademark Law Treaty* (1994);¹
- (i) the *World Intellectual Property Organization (WIPO) Copyright Treaty* (1996); and
- (j) the *WIPO Performances and Phonograms Treaty* (1996).

¹ A Party may satisfy the obligation in Article 18.1.3(h) by ratifying or acceding to the *Singapore Treaty on the Law of Trademarks* (2006), provided that treaty has entered into force.

第十八条第1.1条：一般规定

1. 每一方应当至少使本章得以实施。

国际协定

2. 根据第十八条第1.2条（与其他协定的关系），各方重申其根据与贸易有关的知识产权协定（以下简称“知识产权协定”）相互享有的现有权利和义务。

3. 每一方应当在本协定生效之日起，批准或加入下列协定：

- (a) 专利合作条约（1970年），1979年修正；(b) 保护工业产权巴黎公约（1967年）（巴黎公约）；(c) 保护文学和艺术作品伯尔尼公约（1971年）（伯尔尼公约）；(d) 关于卫星传输节目载波信号分布的国际公约（1974年）；(e) 关于马德里协定国际商标注册的议定书（1989年）；(f) 关于国际承认微生物保藏以供专利程序之用的布达佩斯条约（1977年），1980年修正；(g) 保护植物新品种国际公约（1991年）；(h) 商标法条约（1994年）；¹ (i) 世界知识产权组织（WIPO）版权条约（1996年）；以及(j) 世界知识产权组织表演和录音条约（1996年）。

¹ 一方可以通过批准或加入《新加坡商标法条约（2006年）》，以履行第十八条第1.1条第3项第（h）款规定的义务，前提是该条约已经生效。

4. Each Party shall make all reasonable efforts to ratify or accede to the following agreements:

- (a) the *Patent Law Treaty* (2000);
- (b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999); and
- (c) the *Singapore Treaty on the Law of Trademarks* (2006).

More Extensive Protection and Enforcement

5. A Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

National Treatment

6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals² of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection³ and enjoyment of such intellectual property rights and any benefits derived from such rights. With respect to secondary uses of phonograms by means of analog communications, analog free over-the-air radio broadcasting, and analog free over-the-air television broadcasting, however, a Party may limit the rights of performers and producers of phonograms of the other Party to the rights its persons are accorded in the territory of the other Party.

7. A Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

² For purposes of paragraphs 6 and 7 and Articles 18.2.14(a), and 18.6.1, a “national” of a Party shall include, in respect of the relevant right, any person (as defined in Article 1.4 (Definitions)), of that Party that would meet the criteria for eligibility for protection of that right provided for in the agreements listed in paragraph 3 and the TRIPS Agreement.

³ For purposes of paragraph 6, “protection” includes: (1) matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter; and (2) the prohibition on circumvention of effective technological measures set out in Article 18.4.7 and the rights and obligations concerning rights management information set out in Article 18.4.8.

4. 每一方应当尽一切合理努力批准或加入下列协定：

- (a) 专利法条约（2000年）； (b) 海牙协定（关于工业品外观设计国际注册）（1999年）； 以及 (c) 新加坡商标法条约（2006年）。

更广泛的保护和执法

5. 一方可以在其法律下为知识产权提供更广泛的保护，并执行其权利，前提是这种更广泛的保护不违反本章。

国民待遇

6. 对于本章涵盖的所有知识产权类别，每一方应给予另一方国民不低于其给予本国国民的保护和享受此类知识产权权利及由此产生的任何利益的待遇。然而，对于通过模拟通信、免费用地面无线电广播和免费用地面电视广播对音像制品的二次使用，一方可以限制另一方表演者和音像制品制作者的权利，使其在本方领土内享有的权利相同。

7. 一方可以就其司法和行政程序背离第6段，包括要求另一方国民指定其在领土内的送达地址，或指派其在领土内的代理人，前提是该背离是：

- (a) 必要的，以确保遵守与本章不一致的法律法规； 以及

² 为了第6段和第7段以及第18.2.14(a)条和第18.6.1条的目的，一方“国民”应包括，在相关权利方面，任何符合在第3段中列出的协定和与贸易有关的知识产权协定中规定的该权利保护资格标准的人（如第1.4条“定义”中定义）， 该人属于该方。

³ 为了第6段的目的，“保护”包括：(1) 影响知识产权的可用性、获取、范围、维持和执法以及影响本章专门涵盖的知识产权使用的问题； 以及(2) 第18.4.7条中规定的规避有效技术措施的规定， 以及第18.4.8条中规定的与权利管理信息相关的权利和义务。

(b) not applied in a manner that would constitute a disguised restriction on trade.

8. Paragraph 6 does not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

Application of Agreement to Existing Subject Matter and Prior Acts

9. Except as it provides otherwise, including in Article 18.4.5, this Chapter gives rise to obligations in respect of all subject matter existing at the date this Agreement enters into force that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

10. Except as otherwise provided in this Chapter, including in Article 18.4.5, a Party shall not be required to restore protection to subject matter that on the date this Agreement enters into force has fallen into the public domain in the territory of the Party where the protection is claimed.

11. This Chapter does not give rise to obligations in respect of acts that occurred before the date this Agreement enters into force.

Transparency

12. Further to Article 21.1 (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published,⁴ or where publication is not practicable made publicly available, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

ARTICLE 18.2: TRADEMARKS INCLUDING GEOGRAPHICAL INDICATIONS

1. Neither Party may require, as a condition of registration, that signs be visually perceptible, nor may either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or scent.

2. Each Party shall provide that trademarks shall include certification marks. Each Party shall also provide that geographical indications are eligible for protection as trademarks.⁵

⁴ For greater certainty, a Party may satisfy the requirement in paragraph 12 to publish a law, regulation, or procedure by making it available to the public on the Internet.

⁵ For purposes of this Chapter, **geographical indications** means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign (such as words, including geographical and personal names, as well as letters, numerals, figurative elements,

(b) 不得以构成伪装贸易限制的方式实施。

8. 第6段不适用于任何一方均为缔约方的世界知识产权组织主持下缔结的多边协议中提供的、旨在获取或维持知识产权的程序。

协定对现有主题事项和先前行为的适用

9. 除本章节另有规定外，包括第18.4.5条，本章节针对本协定生效之日存在的、在该日受保护且在主张保护的该方领土上受保护的主题事项，或符合本章节保护标准的主题事项，或随后符合该标准的主题事项，产生义务。

10. 除本章节另有规定外，包括第18.4.5条，任何一方不应被要求恢复在本协定生效之日已进入其主张保护的领土公共领域的主题事项的保护。

11. 本章节不针对在本协定生效之前发生的行为产生义务。

透明度

12. 根据第21.1条（公告）的规定，并旨在使知识产权的保护和执法透明化，每一方应确保所有关于知识产权保护或执法的法律、法规和程序均以书面形式发布，⁴或者，如果公告不切实际，则以公开方式提供，以一方本国语言书写，以便政府和权利持有人能够了解这些内容。

第十八条之二：商标包括地理标志

1. 任何一方均不得将标志需具有视觉可感知性作为注册的条件，也不得仅以构成该标志的声音或气味为由拒绝注册商标。

2. 每一方应当规定商标应当包括认证标志。每一方还应当规定地理标志有资格作为商标受到保护。⁵

⁴ 为进一步明确，一方可通过在互联网上向公众提供法律、法规或程序来满足第12段中发布法律、法规或程序的要求。

⁵ 在本章的范围内，地理标志是指将货物识别为来源于一方领土或该领土内的某个地区或地方的标志，其中货物的特定质量、声誉或其他特征基本上可归因于其地理来源。任何标志（例如文字，包括地理名称和个人名称，以及字母、数字、图形元素，

3. Each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good or service (common name), including, *inter alia*, requirements concerning the relative size, placement or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good or service.

4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs, including geographical indications, at least for goods or services that are identical or similar to those goods or services in respect of which the owner’s trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed.

5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

6. Neither Party may require, as a condition for determining that a mark is a well-known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Additionally, neither Party may deny remedies or relief with respect to well-known marks solely because of the lack of:

- (a) a registration;
- (b) inclusion on a list of well-known marks; or
- (c) prior recognition of the mark as well-known.

7. Article 6bis of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark,⁶ whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

8. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark or geographical indication that is identical or similar to a well-known trademark, for related goods or services, if the use of that

and colors, including single colors) or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication. “Originating” in this Chapter does not have the meaning ascribed to that term in Article 1.4 (Definitions).

⁶ For purposes of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

3. 每一方应当确保其要求在通用语言中使用术语习惯的作为商品或服务的通用名称（通用名称）的措施，包括但不限于关于商标相对于通用名称的相对大小、位置或使用样式的要求，不会损害与该商品或服务相关的商标的使用或有效性。

4. 每一方应当规定，注册商标的所有者应当享有专有权，以防止所有未经所有者同意的第三方在贸易过程中使用与所有者商标相同或相似的标志，包括地理标志，至少对于与所有者注册商标所指定的商品或服务相同或相似的商品或服务，如果这种使用会导致混淆的可能性。在使用相同标志（包括地理标志）于相同商品或服务的情况下，应当推定存在混淆的可能性。

5. 每一方可以规定商标所授予的权利的有限例外，例如描述性词语的合理使用，但前提是这些例外应当考虑到商标所有者和第三方的合法利益。

6. 任何一方都不得要求，作为认定一个标志为驰名商标的条件，该标志已在其领土内或其他管辖区域内注册。此外，任何一方都不得仅因缺乏以下内容而拒绝就驰名商标提供补救措施或救济：

- (a) 注册； (b) 包含在驰名商标名单中；或 (c) 事先承认该商标为驰名商标

7. 《巴黎公约》第六十九条bis的规定，在相应修改的情况下，应适用于与由驰名商标所识别的货物或服务不相同或相似的货物或服务⁶，无论是否注册，只要在该商标与这些货物或服务相关联的使用中，会表明这些货物或服务与该商标所有者之间存在关联，并且该商标所有者的利益可能因这种使用而受到损害。

8. 每一方应当提供适当的措施，拒绝或取消注册，并禁止使用与驰名商标相同或相似的商标或地理标志，用于相关的商品或服务，如果使用该商标或地理标志可能导致混淆，或导致错误，或欺骗或将商标或地理标志与驰名商标的所有者联系起来，或构成对驰名商标声誉的不公平利用。

以及颜色（包括单一颜色）或标志组合，无论以何种形式，均有资格成为地理标志。“原产地”在本章节中不具有第1.4条（定义）中赋予该术语的含义。

⁶ 在确定商标是否驰名时，任何一方均不得要求该商标的声誉超出通常与相关商品或服务打交道的公众范围。

trademark or geographical indication is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark or geographical indication with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.

9. Each Party shall provide a system for the registration of trademarks, which shall include:

- (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;
- (b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;
- (c) an opportunity for interested parties to oppose a trademark application and to seek cancellation of a trademark after it has been registered; and
- (d) a requirement that decisions in opposition and cancellation proceedings be reasoned and in writing. Written decisions may be provided electronically.

10. Each Party shall provide a:

- (a) system for the electronic application for, and electronic processing, registering, and maintenance of, trademarks; and
- (b) publicly available electronic database, including an online database, of trademark applications and registrations.

11. Each Party shall provide that:

- (a) each registration and publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their names, grouped according to the classes of the classification established by the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979), as revised and amended (Nice Classification); and
- (b) goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

商标或地理标志的使用可能导致混淆，或导致错误，或欺骗或将商标或地理标志与驰名商标的所有者联系起来，或构成对驰名商标声誉的不公平利用。

9. 每一方应当提供商标注册系统，该系统应当包括：

- (a) 要求向申请人提供书面的商标注册驳回理由的传播；(b) 为申请人提供回应商标主管机关传播的机会，以对初步驳回提出异议，并对最终注册驳回提出司法上诉；(c) 为利害关系人提供对商标申请提出异议的机会，并在商标注册后寻求商标撤销；以及(d) 要求异议和撤销程序中的决定具有理由且为书面形式。书面决定可以电子方式提供。

10. 每一方应当提供：

- (a) 用于商标电子申请、电子处理、注册和维护的系统；以及(b) 公开的电子数据库，包括在线数据库，其中包含商标申请和注册。

11. 每一方应当规定：

- (a) 每个涉及商标申请或注册，并且表明商品或服务应当通过其名称来表明商品或服务，按照由《关于为商标注册目的而使用的商品和服务国际分类的尼斯协定》（1979年）修订和修正的尼斯分类（Nice Classification）所确定的分类的类别进行分组；以及
- (b) 商品或服务不被视为彼此相似仅基于在任何注册或公告中，它们出现在尼斯分类的同一类。相反，每一方应当规定，商品或服务不得仅基于在任何注册或公告中，它们出现在尼斯分类的不同类，而被视为不相似。

12. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years.

13. Neither Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes.

14. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a system of protection of trademarks or otherwise, it shall, with respect to such applications and petitions (as relevant to the means chosen by the Party):

- (a) accept those applications and petitions without requiring intercession by a Party on behalf of its nationals;
 - (b) process those applications and petitions with a minimum of formalities;
 - (c) ensure that its regulations governing filing of those applications and petitions are readily available to the public and set out clearly the procedures for these actions;
 - (d) make available contact information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications and petitions and the processing of those applications and petitions in general; and to allow applicants, petitioners, or their representatives to ascertain the status of, and to obtain procedural guidance concerning, specific applications and petitions; and
 - (e) ensure that applications and petitions for geographical indications are published for opposition, and provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel a registration resulting from an application or a petition.
15. (a) Each Party shall provide that each of the following shall be grounds for refusing protection or recognition of, and for opposition and cancellation of, a geographical indication:
- (i) the geographical indication is likely to cause confusion with a trademark that is the subject of a good faith pending application or registration in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory;
 - (ii) the geographical indication is likely to cause confusion with a trademark, the rights to which have been acquired in the Party's

12. 每一方应当规定， 商标的初始注册和每次注册续展的期限不得少于十年。

13. 任何一方均不得要求商标许可的登记以确立许可的有效性， 主张任何商标权利， 或用于其他目的。

14. 如果一方通过商标保护制度或其他方式提供申请保护或请求地理标志承认的手段， 则应就此类申请和请求（与一方选择的手段相关）：

(a) 接受那些申请和请求， 无需一方代表其国民进行干预； (b) 以最少的程序处理那些申请和请求； (c) 确保其关于那些申请和请求的申请程序规定易于公众获取， 并明确说明这些行动的程序； (d) 提供足够的联系方式， 以使公众能够获得有关申请和请求的申请程序和一般处理的指导， 并允许申请人、 请求人或其代表确定特定申请和请求的状态， 并获得有关这些特定申请和请求的程序指导； 以及 (e) 确保地理标志的申请和请求被公布以供异议， 并提供针对作为申请或请求主题的地理标志的异议程序。 每一方还应当提供程序以撤销由申请或请求产生的注册。 15. (a) 每一方应当规定以下各项是拒绝保护或承认地理标志以及反对和撤销地理标志的理由： (i) 地理标志可能与其领土内以善意提出的申请或注册为标的的商标相混淆， 且该商标的优先权日期早于该领土内地理标志的保护或承认日期； (ii) 地理标志可能与其领土内通过善意使用获得的商标相混淆， 且该商标的优先权日期早于该领土内地理标志的保护或承认日期； 以及

territory through use in good faith, that has a priority date that predates the protection or recognition of the geographical indication in that territory; and

(iii) the geographical indication is likely to cause confusion with a trademark that has become well known in the Party’s territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory.

(b) For purposes of subparagraph (a), the date of protection of the geographical indication in a Party’s territory shall be:

(i) in the case of protection or recognition provided as a result of an application or petition, the date of the application or petition; and

(ii) in the case of protection or recognition provided through other means, the date of protection or recognition under the Party’s laws.

ARTICLE 18.3: DOMAIN NAMES ON THE INTERNET

1. In order to address the problem of trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy.

2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information concerning domain-name registrants.

ARTICLE 18.4: COPYRIGHT AND RELATED RIGHTS

1. Each Party shall provide⁷ that authors, performers, and producers of phonograms⁸ have the right to authorize or prohibit⁹ all reproductions of their works, performances,¹⁰

⁷ The Parties reaffirm that it is a matter for each Party’s law to prescribe that works and phonograms shall not be protected by copyright unless they have been fixed in some material form.

⁸ “Authors,” “performers,” and “producers of phonograms” in this Chapter refer also to any successors in title.

⁹ With respect to copyrights and related rights, the “right to authorize or prohibit” for purposes of this Chapter refers to exclusive rights.

¹⁰ With respect to copyright and related rights, a **performance** for purposes of this Chapter means a performance fixed in a phonogram unless otherwise specified.

该领土内地理标志的保护或承认日期；以及

(iii) 该地理标志很可能与在另一方领土内已成为驰名的商标混淆，且该商标的优先权日期早于该领土内地理标志的保护或承认日期。

(b) 为第 (a) 款的目的，地理标志在另一方领土内的保护日期应为：

(i) 在因申请或请求而提供保护或承认的情况下，应为申请或请求的日期；以及 (ii) 在通过其他方式提供保护或承认的情况下，应为该另一方法律规定的保护或承认日期。

第十八条第三条：互联网上的域名

1. 为解决商标网络盗版问题，每一方应要求其国家代码顶级域名（ccTLD）的管理机构根据统一域名争议解决政策所确立的原则，提供适当的争议解决程序。

2. 每一方应要求其 ccTLD 的管理机构向公众提供有关域名注册人的联系方式的可靠且准确的数据库的在线公共访问。

第十八条第四条：版权和相关权利

1. 每一方应当提供⁷，以确保作者、表演者和音像制品制作者⁸ 有权授权或禁止⁹ 其作品、表演¹⁰

⁷ 双方重申，各方的法律可以规定，除非作品和音像制品以某种物质形式固定，否则不受版权保护。⁸ 本章中的“作者”、“表演者”和“音像制品制作者”也指任何权利继受者。⁹ 关于版权和相关权利，“授权或禁止的权利”在本章中是指专有权利。¹⁰ 关于版权和相关权利，本章中的“表演”是指固定在音像制品中的表演，除非另有规定。

and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form).¹¹

2. Each Party shall provide to authors, performers, and producers of phonograms the right to authorize or prohibit the making available to the public of the original and copies¹² of their works, performances, and phonograms through sale or other transfer of ownership.

3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required.

4. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

- (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author’s death; and
- (b) on a basis other than the life of a natural person, the term shall be:
 - (i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram; or
 - (ii) failing such authorized publication within 25 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

5. Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to the subject matter, rights, and obligations in this Article and Articles 18.5 and 18.6.

¹¹ Each Party shall confine limitations or exceptions to the rights described in paragraph 1 to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.

¹² As used in paragraph 2, “copies” and “original and copies”, being subject to the right of distribution in this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects.

和音像制品的任何形式或方式的复制，永久或临时（包括电子形式的临时存储）。¹¹

2. 每一方应当向作者、表演者和音像制品制作者提供权利，以授权或禁止向公众提供其作品、表演和音像制品的原件 and 副本¹²，通过所有权转让或其他方式。

3. 为了确保作者的权利与表演者和音像制品制作者的权利之间不建立等级制度，每一方应当规定，在需要同时获得体现在音像制品中的作品的作者和拥有该音像制品权利的表演者或制作者的授权的情况下，作者的授权需求因表演者或制作者的授权也需要而继续存在。同样，每一方应当规定，在需要同时获得体现在音像制品中的作品的作者和拥有该音像制品权利的表演者或制作者的授权的情况下，表演者或制作者的授权需求因作者的授权也需要而继续存在。

4. 每一方应当规定，作品的保护期（包括摄影作品）、表演或音录的期限应当如何计算：

- (a) 以自然人的寿命为基础，期限不得少于作者的寿命，并且在作者去世后70年；以及 (b) 以非自然人寿命为基础，期限应当为：(i) 自作品、表演或音录首次获授权公告的日历年结束时起不少于70年；或 (ii) 如果在作品、表演或音录创作后25年内未获授权公告，则自作品、表演或音录创作日历年结束时起不少于70年。

5. 每一方应当将伯尔尼公约第18条和与贸易有关的知识产权协定第14.6条，相应修改，适用于本条及第18.5条和第18.6条中的主题事项、权利和义务。

¹¹ 每一方应当将限制或例外仅限于第1段所述的权利，仅限于某些特殊情况这些情况不应与作品的正常利用相冲突，并且不应不合理地损害权利持有人的合法利益。为明确起见，每一方可以采用或维持第1段所述权利的限制或例外，以合理使用为目的，只要任何此类限制或例外如前句所述受到限制。

¹² 如第2段所述，“副本”和“原件及副本”，根据本段所涉及的发行权，仅指可作为有形物品流通的固定复制件。

6. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

- (a) may freely and separately transfer that right by contract; and
 - (b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise that right in that person’s own name and enjoy fully the benefits derived from that right.
7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who:
- (i) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or
 - (ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that:
 - (A) are promoted, advertised, or marketed by that person, or by another person acting in concert with, and with the knowledge of, that person, for the purpose of circumvention of any effective technological measure;
 - (B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or
 - (C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to the remedies set out in Article 18.10.13.¹³
Each Party shall provide for criminal procedures and penalties to be applied

¹³ In addition, each Party shall provide that any person who, unknowingly and without reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter shall be liable and subject at least to the remedies set out in subparagraphs (a), (c), and (d) of Article 18.10.13.

6. 每一方应当规定，对于版权和相关权利，任何在作品、表演或音录中获取或持有任何经济权利的人：

- (a) 可以通过合同自由地单独转让该权利；以及 (b) 基于合同，包括创作作品、表演和音像制品的雇佣合同，能够以该个人的名义行使其权利并充分享受由此产生的利益。
7. (a) 为了提供充分的法律保护和有效的法律救济，以防止作者、表演者和音像制品制作者在使用其权利时规避有效的技术措施，这些措施限制对其作品、表演和音像制品的未经授权的行为，每一方应规定，任何个人： (i) 知道或合理地知道未经授权规避了控制对受保护作品、表演、音像制品或其他主题事项访问的有效技术措施；或 (ii) 制造、进口、分销、向公众提供、提供或以其他方式交易设备、产品或组件，或向公众提供或提供服务，这些设备、产品或组件： (A) 由该个人或与该个人共同行动且知情的其他人推广、宣传或营销，目的是规避任何有效的技术措施； (B) 仅具有有限商业意义的目的或除规避任何有效的技术措施外其他用途；或 (C) 主要设计、生产或表演，目的是使能或促进规避任何有效的技术措施，

¹³ 应承担法律责任并受第十八条第10.13条规定的补救措施约束。每一方应提供刑事程序和处罚措施予以适用

¹³ 此外，每一方应当规定，任何不知情且无合理理由知道、未经授权规避控制对受保护作品、表演、音录或其他主题事项访问的有效技术措施的人，应当承担法律责任，并至少受到第十八条第1.0.13条分项款(a)、(c)和(d)中规定的补救措施的限制。

when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. Such criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 18.10.27 as applicable to infringements, *mutatis mutandis*.

- (b) In implementing subparagraph (a), neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a).
- (c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate cause of action, independent of any infringement that might occur under the Party’s law on copyright and related rights.
- (d) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to the following activities, which shall be applied to relevant measures in accordance with subparagraph (e):¹⁴
 - (i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;
 - (ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;
 - (iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a

¹⁴ Either Party may request consultations with the other Party to consider how to address, under subparagraph (d), activities of a similar nature that a Party identifies after the date this Agreement enters into force.

当任何非非营利图书馆、档案馆、教育机构或公共非商业广播实体的人被发现故意以获取商业利益或私人经济利益为目的从事上述任何活动时，应适用。此类刑事程序和处罚措施应包括适用于侵权行为的第十八条第10.27条分项条款（a）、（b）和（e）中列出的补救措施和权力，相应修改。

- (b) 在实施第 (a) 款时，任何一方均无义务要求消费电子产品、电信产品或计算产品的设计，或其部件和组件的设计与选择，必须提供对任何特定技术措施的响应，只要该产品不违反实施第 (a) 款的措施即可。
- (c) 各方应规定，违反实施本段的措施构成独立的诉讼理由，独立于任何可能根据其版权和相关权利法律发生的侵权行为。
- (d) 各方应将例外和限制仅限于实施第 (a) 款的措施，具体包括以下活动，这些活动应根据第 (e) 款适用于相关措施：¹⁴
 - (i) 针对合法获取的计算机程序副本的非侵权逆向工程活动，该活动出于善意，针对该计算机程序中未向从事该活动的人员提供的特定要素，且仅出于实现独立创建的计算机程序与其他程序的互操作性的目的；
 - (ii) 非侵权善意活动，由合格的研究人员实施，该人员已合法获得作品的复制件、未固定表演或显示，并已善意努力为该等活动获取授权，在为仅限于识别和分析信息加密和解密技术缺陷及漏洞的研究目的所必需的范围内；
 - (iii) 在技术、产品、服务或设备中包含组件或部件，其唯一目的是防止未成年人访问不适当的在线内容，且该技术、产品、服务或设备本身不在实施分项款(a)(ii)的措施中禁止；

¹⁴ 任何一方可请求与另一方磋商，考虑如何在分项款(d)下处理一方在协定生效日期后识别的、性质相似的该等活动。

	technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii);	该技术、产品、服务或设备本身不在实施分项款(a)(ii)的措施中禁止；
(iv)	noninfringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;	(iv) 非侵权善意活动，经计算机、计算机系统或计算机网络的所有者授权，专门用于测试、调查或纠正该计算机、计算机系统或计算机网络安全；
(v)	noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;	(v) 非侵权活动，专门用于识别和禁用执行未披露的收集或传播个人身份信息的能力，以反映自然人在线活动的方式，且这种方式对任何人均无其他影响，从而使其能够访问任何作品；
(vi)	lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;	(vi) 政府雇员、代理人或承包商为执法、情报、基本安全或相似政府目的而实施的合法授权活动；
(vii)	access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and	(vii) 非营利图书馆、档案馆或教育机构访问其无法获取的作品、表演或音像制品，专门用于作出获取决策；以及
(viii)	noninfringing uses of a work, performance, or phonogram in a particular class of works, performances, or phonograms when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence, provided that any limitation or exception adopted in reliance on this clause shall have effect for a renewable period of not more than three years from the date the proceeding concludes.	(viii) 在特定作品类别、表演或音像制品中，对作品、表演或音像制品的非侵权使用，当在立法或行政程序中通过充分证据证明对那些非侵权使用存在实际或可能的负面影响时，本条款所依赖的任何限制或例外应自程序结束之日起不超过三年的可续期；
(e)	The exceptions and limitations to measures implementing subparagraph (a) for the activities set forth in subparagraph (d) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:	(e) 对实施第 (d) 款所述活动的第 (a) 款分项款措施所规定的例外和限制，只能按照以下方式应用，并且只能在不损害法律保护充分性或规避有效技术措施的法律救济有效性的范围内应用：
(i)	Measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraph (d).	(i) 实施分项款 (a)(i) 的措施可能对分项款 (d) 中规定的每一项活动适用例外和限制。
(ii)	Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i), (ii), (iii), (iv), and (vi).	(ii) 实施分项款 (a)(ii) 的措施，在应用于控制对作品、表演或音录的访问的有效技术措施时，可能对分项款 (d)(i)、(ii)、(iii)、(iv) 和 (vi) 中规定的一项活动适用例外和限制。

(iii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i) and (vi).

(f) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.

8. In order to provide adequate and effective legal remedies to protect rights management information:

(a) Each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to the remedies set out in Article 18.10.13. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. These criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 18.10.27 as applicable to infringements, *mutatis mutandis*.

(b) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes.

(iii) 实施分项款 (a)(ii) 的措施，在应用于保护任何版权或任何与版权相关的权利的有效技术措施时，可能对分项款 (d)(i) 和 (vi) 中规定的一项活动适用例外和限制。

(f) 有效技术措施是指任何技术、设备或组件，其在正常运行过程中控制对受保护作品、表演、音像制品或其他受保护主题事项的访问，或保护任何版权或任何与版权相关的权利。

8. 为了提供充分有效的法律救济以保护权利管理信息：

(a) 每一方应规定，任何未经授权，并且知道或（在民事救济方面）有合理理由知道其将导致、使能够、便利或掩盖任何版权或相关权利的侵权行为的人，

(i) 故意移除或更改任何权利管理信息； (ii) 分发或进口用于分发权利管理信息，知道该权利管理信息已被未经授权地移除或更改；或 (iii) 分发、进口用于分发、广播、传播或向公众提供作品、表演或音像制品的副本，知道权利管理信息已被未经授权地移除或更改，

应承担法律责任并受第十八条第10.13条规定的补救措施约束。每一方应规定，当任何非营利图书馆、档案馆、教育机构或公共非商业广播实体的人被发现故意并出于商业利益或私人经济利益的目的从事上述活动时，应适用刑事程序和处罚。这些刑事程序和处罚应包括将第十八条第10.27条分项款(a)、(b)和(e)中规定的补救措施和权力适用于侵权行为，相应修改。

(b) 每一方应将例外和限制限于实施第 (a) 款各项措施政府雇员、代理人或承包商为执法、情报、基本安全或相似政府目的而进行的合法授权活动。

- (c) **Rights management information** means:
- (i) information that identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;
 - (ii) information about the terms and conditions of the use of the work, performance, or phonogram; or
 - (iii) any numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public.

- (d) For greater certainty, nothing in this paragraph shall be construed to obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.

9. Each Party shall provide appropriate laws, orders, regulations, government-issued guidelines, or administrative or executive decrees providing that its central government agencies not use infringing computer software and other materials protected by copyright or related rights and only use computer software and other materials protected by copyright or related rights as authorized by the relevant license. These measures shall provide for the regulation of the acquisition and management of software and other materials for government use that are protected by copyright or related rights.

10. (a) With respect to this Article and Articles 18.5 and 18.6, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.
- (b) Notwithstanding subparagraph (a) and Article 18.6.3(b), neither Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal.¹⁵

¹⁵ For purposes of subparagraph (b) and for greater certainty, retransmission within a Party’s territory over a closed, defined, subscriber network that is not accessible from outside the Party’s territory does not constitute retransmission on the Internet.

- (c) 权利管理信息是指:
- (i) 识别作品、表演或音录的信息；作品的作者、表演的表演者或音录的制作者；或作品、表演或音录中任何权利的所有者； (ii) 关于作品、表演或音录使用条款和条件的信息；或 (iii) 代表此类信息的任何数字或代码,

当其中任何一项附加到作品、表演或音录的复制件上，或在与向公众传播或提供作品、表演或音录相关时出现时。

- (d) 为进一步明确，本段中的任何内容均不得解释为要求一方要求作品、表演或音录中任何权利的所有者将权利管理信息附加到作品、表演或音录的复制件上，或导致权利管理信息在与向公众传播作品、表演或音录相关时出现。

9. 每一方应提供适当的法律、命令、监管、政府发布的指南或行政或执行法令，规定其中央政府机构不得使用侵权的计算机软件和其他受版权或相关权利保护的材料，并且只能使用经相关许可证授权的受版权或相关权利保护的计算机软件和其他材料。这些措施应规定对政府使用的受版权或相关权利保护的软件和其他材料的获取和管理的监管。

10. (a) 关于本条及第18.5条和第18.6条，每一方应将限制或例外仅限于不与作品的正常利用、表演或音录相冲突的某些特殊情况，并且不不合理地损害权利持有人的合法利益。
- (b) 尽管有分项款(a)和第18.6.3(b)条，任何一方均不得允许在互联网上未经信号内容权利持有人或信号权利持有人的授权而重新传输电视信号（无论是地面、有线电视还是卫星电视），以及如果有的话，未经信号授权。¹⁵

¹⁵ 就分项款(b)而言，并为进一步明确起见，在一方领土内通过一个封闭的、定义明确的、不可从该方领土以外访问的订户网络进行的重新传输不构成互联网上的重新传输。

ARTICLE 18.5: COPYRIGHT

Without prejudice to Articles 11(1)(ii), 11*bis*(1)(i) and (ii), 11*ter*(1)(ii), 14(1)(ii), and 14*bis* of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

ARTICLE 18.6: RELATED RIGHTS

1. With respect to the rights accorded under this Chapter to performers and producers of phonograms, each Party shall:
- (a) accord those rights to the performers and producers of phonograms who are nationals of the other Party; and

(b) accord those rights with respect to performances and phonograms that are first published or first fixed¹⁶ in the territory of the other Party.¹⁷
2. Each Party shall provide to performers the right to authorize or prohibit:
- (a) the broadcasting and communication to the public of their unfixed performances, except where the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.
3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting and any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.
- (b) Notwithstanding subparagraph (a) and Article 18.4.10, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, shall be a matter of each Party’s law.

¹⁶ For purposes of Article 18.6, “fixation” includes the finalization of the master tape or its equivalent.

¹⁷ With respect to the protection of phonograms, a Party may apply the criterion of fixation instead of the criterion of publication.

第十八条第五款：版权

在不损害伯尔尼公约第**11(1)(ii)**条、第**11bis(1)(i)**条和**(ii)**条、第**11ter(1)(ii)**条、第**14(1)(ii)**条和**14bis**条的规定的的前提下，每一方应当向作者提供对其作品以有线或无线方式向公众传播的专有权利，包括以公众可以从中选择地点和时间获取这些作品的方式向公众提供其作品。

第十八条第六款：相关权利

1. 关于本章授予表演者和音像制品制作者的权利，每一缔约方应当：
- (a) 将这些权利授予其他缔约方的国民表演者和音像制品制作者；以及 (b) 就在其他缔约方领土首次出版或首次固定的表演和音像制品，授予这些权利。¹⁶

¹⁷
2. 每一缔约方应当向表演者提供授权或禁止的权利，t:
- (a) 未经固定的表演的广播和向公众传播，除非该表演已经是一次广播表演；以及 (b) 未经固定的表演的固定。

3. (a) 每一缔约方应当向表演者和音像制品制作者提供授权或禁止通过有线或无线方式广播其表演或音像制品，包括以公众可以从中选择地点和时间的方式向公众提供这些表演和音像制品。(b) 不论第十八条第六款(a)项和第十八条第十八款第10项，将本款权利适用于模拟传输和免费空中广播，以及为该活动适用本款权利的例外或限制，应当是每一缔约方法律的事项。

第十六章 竞 “固定”包括母带的最终确定或其等效物。
争相关事项

+七 关于音像制品的保护，一方可以适用固定标准，而不是公告标准。