

CHAPTER TWENTY-ONE
TRANSPARENCY

第二十一章 透明度

ARTICLE 21.1: PUBLICATION

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

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

第二十一条第一款：公布

1. 每一方应确保其普遍适用的法律、法规、程序和行政裁决，涉及本协定涵盖的任何事项，均迅速公布或以其他方式提供，以便相关个人和另一方能够了解这些内容。
2. 在可能的情况下，每一方应：
 - (a) 提前公布其拟采取的任何此类措施；以及 (b) 为相关个人和另一方提供对这些拟议措施发表意见的合理机会。
3. 对于其中央政府层级根据第2款(a)项公布的、涉及本协定涵盖的任何事项的拟议普遍适用法规¹，每一方：
 - (a) 应在国家发行的官方期刊上统一公布拟议法规，并鼓励通过其他渠道分发；
 - (b) 在大多数情况下，应在公众意见截止日期前至少40天公布拟议法规；(c) 应在公布时附上对拟议法规目的及理由的说明。
4. 对于其中央政府层级就本协定所涉任何事项通过的普遍适用法规，每一方应：
 - (a) 应在国家发行的官方期刊上统一发布法规，并鼓励通过其他渠道分发；
 - (b) 应在发布时包含对法规目的和依据的说明；以及(c) 应在官方期刊或政府官方网站的显著位置，回应意见征询期内收到的重要实质性意见，并说明对拟议法规所做的实质性修订。

¹ 就第3款和第4款而言，对韩国而言，“法规”指总统令、总理令和部级法令。

Internet site.

ARTICLE 21.2: PROVISION OF INFORMATION

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

ARTICLE 21.3: ADMINISTRATIVE PROCEEDINGS

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

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

ARTICLE 21.4: REVIEW AND APPEAL

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

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

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

互联网站点。

第21.2条：信息提供

应另一方的请求，一方应迅速提供信息并回答与任何实际或拟议措施有关的问题，只要请求方认为该措施可能影响本协议的实施，无论请求方之前是否已被告知该措施。

第21.3条：行政程序

为了以一致、公正和合理的方式管理与本协议所涵盖的任何事项相关的普遍适用措施，每一方应确保在其行政程序中，将第21.1条所述措施适用于具体案例中另一方的特定个人、货物或服务时，做到以下几点：

- (a) 在可能的情况下，根据该方的程序，当程序启动时，向直接受程序影响的另一方的个人提供合理通知，包括对程序性质的描述、启动程序的法律授权声明以及争议问题的概述；(b) 在时间、程序性质和公共利益允许的情况下，给予此类个人在最终行政行为作出前合理的机会陈述事实和论据以支持其立场；以及(c) 其程序符合其法律。

第21.4条：审查和上诉

1. 每一方应设立或维持司法、准司法或行政法庭或程序，以便迅速审查并在必要时纠正与本协定所涉事项相关的最终行政行为。此类法庭应公正且独立于负责行政执法的办公室或当局，且不得对事项结果具有任何实质性利益。

2. 每一方应确保在此类法庭或程序中，程序各方被赋予以下权利：

- (a) 合理机会以支持或辩护各自的立场；以及 (b) 基于证据和记录提交的决定，或在政党法律要求的情况下，由行政机关编制的记录。

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

ARTICLE 21.5: POLICY ON PRIVATE PURCHASES

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

ARTICLE 21.6: ANTI-CORRUPTION

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

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

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

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

3. 每一方应确保，在其法律规定的上诉或进一步审查的前提下，该决定应由办公室或当局执行，并应管理有关行政行为的实践。

第21.5条：私人采购政策

认识到自由化和扩大的双边贸易和投资的益处，每一方申明，其政策并非通过正式或非正式的影响或说服手段，阻止其领土内的私人购买或使用另一方的商品或服务。

第21.6条：反腐败

1. 双方重申其消除国际贸易和投资中贿赂和腐败的决心。

2. 每一方应采取或维持必要的立法或其他措施，以规定在其法律下，在影响国际贸易或投资的事项中，以下行为构成刑事犯罪：

- (a) 政党的公职人员或为政党履行公共职能的人员，故意直接或间接为自己或他人索取或接受任何有价值的物品或其他利益，如好处、承诺或优势，以换取其在履行公共职能中的作为或不作为；(b) 受政党管辖的任何个人，故意直接或间接向政党的公职人员或为政党履行公共职能的人员提供或授予任何有价值的物品或其他利益，如好处、承诺或优势，以换取其在履行公共职能中的作为或不作为；(c) 受政党管辖的任何个人，故意直接或间接向外国官员提供、承诺或给予任何不当的金钱或其他优势，以使该官员在履行官方职责时作为或不作为，以便在国际商务中获得或保留业务或其他不当优势；以及(d) 受政党管辖的任何个人，协助或教唆，或共谋实施子段落(a)至(c)所述的任何罪行。

3. 每一方应采取或维持适当的处罚和程序以执行

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

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

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

ARTICLE 21.7: DEFINITIONS

For purposes of this Chapter:

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

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice;

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

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

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

t其根据本段采取或维持的刑事措施 2.

4. 每一方应采取或维持适当措施， 以保护善意举报第2款所述贿赂行为的个人。

5. 双方认识到区域和多边倡议对于消除国际贸易和投资中的贿赂和腐败的重要性。双方应努力共同合作， 鼓励和支持相关国际论坛中的适当倡议。

第21.7条： 定义

就本章而言：

作为或不作为与履行官方职责相关， 包括公职职位任何使用， 无论是否在其授权权限内；

普遍适用的行政裁定指适用于所有通常在其范围内的人和事实情况并确立行为规范的行政裁定或解释， 但不包括：

- (a) 在行政或准司法程序中作出的、 适用于另一政党特定人、 货物或服务具体案例的裁定或裁决； 或
- (b) 对特定行为或做法作出裁决的裁定；

外国官员指在外国任何政府级别担任立法、 行政或司法职务的人员， 无论任命或选举产生； 在外国任何政府级别行使公共职能的人员， 包括为公共机构或公共企业工作的人员； 以及公共国际组织的任何官员或代理人；

公共职能指自然人以政党名义或为政党服务（如中央政府层级的采购）所从事的任何临时或永久、 有偿或荣誉性活动；

公职人员指政党在中央政府层级的任何官员或雇员， 无论是任命或选举产生。

[TRANSLATION]

June 30, 2007

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

Dear Ambassador Schwab:

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

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

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

Sincerely,

[SGN/]
Hyun Chong Kim

[翻译]

2007年6月30日

尊敬的苏珊·C·施瓦布 美国贸易
代表 华盛顿特区

尊敬的施瓦布大使：

我谨确认大韓民國與美利堅合眾國代表團在就雙方政府今日簽署的自由貿易協定第21.1條（公佈）實施問題進行談判期間達成的以下諒解：

韩国将修订相关法律或法规，规定不少于40天的公众评论期，并修改《立法事務管理條例》第14.1條，取消在公布拟议法规供公众评论前进行跨機構協商的要求。

我谨提议，本函及贵方复函确认贵国政府同意此谅解，将构成我们两国政府之间的协议。

此致，

[SGN/]金铉宗

June 30, 2007

2007年6月30日

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

Dear Minister Kim:

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

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

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

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

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

Sincerely,

Susan C. Schwab

尊敬的玄杵顯閣下 貿易部長
首爾, 大韓民國

尊敬的金部長：

我榮幸地確認收到您今日的來函，內容如下：

我榮幸地確認大韓民國與美利堅合眾國代表團在談判過程中就雙方政府今日簽署的《自由貿易協定》第21.1條（公佈）實施問題達成的以下諒解：

韩国將修訂相關法律或法規，規定不少於40天的公眾評論期，並將修改《立法事務管理條例》第14.1條，取消在公佈擬議法規徵求公眾意見前進行跨機構協商的要求。

我榮幸地提議，本函及貴方回函確認貴國政府同意此諒解，將構成我們兩國政府之間的協議。

我谨进一步确认，我国政府认同这一理解，并同意您的来函及本复函将构成我们两国政府之间的协议。

此致，

蘇珊·C·施瓦布