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AGREEMENT ON TRADE IN SERVICES UNDER THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC COOPERATION AMONG THE GOVERNMENTS OF THE MEMBER COUNTRIES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE REPUBLIC OF KOREA

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The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand[1] and the Socialist Republic of Viet Nam, Member Countries of the Association of Southeast Asian Nations, and the Republic of Korea,

RECALLING the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea (Framework Agreement) signed in Kuala Lumpur, Malaysia on the 13th day of December 2005;

FURTHER RECALLING Articles 1.3 and 2.2 of the Framework Agreement, which reflect their commitment to establish the ASEAN-Korea Free Trade Area covering trade in services;

NOTING the objectives of the Framework Agreement to enhance economic cooperation and deepen economic integration among them through progressive liberalisation of trade in services consistent with Article V of the General Agreement on Trade in Services (GATS);

REAFFIRMING their commitment to liberalise trade in services among the ASEAN Member Countries and the Republic of Korea with substantial sectoral coverage, taking into account the sensitive sectors of the Parties, and with special and differential treatment to ASEAN Member Countries and additional flexibility for the new ASEAN Member Countries of the Kingdom of Cambodia, the Lao Peoplc's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;

STRIVING TO enhance cooperation in services among them in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties; and

RECOGNISING the right of the Parties to regulate, and to introduce new regulations, on the supply of services within their respective territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations within the Parties, the particular need of the Parties to exercise this right,

HAVE AGREED as follows:

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[1] For the purpose of this Agreement, the Kingdom of Thailand is included in the reference of this term only after the relevant signature on her behalf has been appended.

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CHAPTER I
DEFINITIONS AND SCOPE

Article 1
Definitions

For the purposes of this Agreement:

(a) **AEM** means the Economic Ministers of the ASEAN Member Countries;

(b) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

(c) **ASEAN** means the Association of Southeast Asian Nations comprising Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam;

(d) **ASEAN–Korea FTA** means the ASEAN-Korea Free Trade Area established by the Framework Agreement and other relevant agreements stipulated in paragraph 1 of Article 1.4 of the Framework Agreement;

(e) **ASEAN Member Countries** means Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam collectively;

(f) **ASEAN Member Country** means Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand or the Socialist Republic of Viet Nam individually;

(g) **commercial presence** means any type of business or professional establishment, including through:

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(i) the constitution, acquisition or maintenance of a juridical person; or
(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

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

(i) **direct taxes** comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

(j) **Framework Agreement** means the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea;

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

(l) **Implementing Committee** means the Implementing Committee established under Article 5.3 of the Framework Agreement;

(m) **juridical person** means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(n) **juridical person of another Party** means a juridical person which is either:

(i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

1. natural persons of that Party; or

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2. juridical persons of that other Party identified under subparagraph (i)

(o) a juridical person is:

(i) **owned** by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

(ii) **controlled** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) **affiliated** with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(p) **Korea** means the Republic of Korea;

(q) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(r) **measures by Parties** means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(s) **measures by Parties affecting trade in services** include measures in respect of:

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

(t) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorised or

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established formally or in effect by that Party as the sole supplier of that service;

(u) **natural person of another Party** means a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party:

(i) is a national of that other Party; or

(ii) has the right of permanent residence[2] in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to this Agreement provided that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the same responsibilities that other Party bears with respect to its nationals;

(v) **new ASEAN Member Countries** means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;

(w) **Parties** means the ASEAN Member Countries and Korea collectively;

(x) **Party** means an ASEAN Member Country or Korea;

(y) **person** means either a natural person or a juridical person;

(z) **sector** of a service means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(aa) **selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport

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[2] The Parties may make reservations with respect to permanent residence in their Schedule under this Agreement, provided that those reservations do not prejudice the Parties' rights and obligations in the GATS.

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(b) The provisions of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licencing requirements do not constitute unnecessary barriers to trade in services, the Implementing Committee shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

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

5. (a) In sectors in which a Party has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Party shall not apply licencing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

(ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

(b) In determining whether a Party is in conformity with the obligation under paragraph 5(a), account shall be taken of

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existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Party shall respond promptly to all requests by any other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Party shall also establish one or more enquiry points to provide specific information to other Parties, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of this Agreement. Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Parties. Enquiry points need not be depositories of laws and regulations.

5. Any Party may notify to the Implementing Committee any measure, taken by any other Party, which it considers affects the operation of this Agreement.

Article 5
Disclosure of Confidential Information

Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 6
Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

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governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

4. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the other Parties into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits[4] accruing to the other Parties under the terms of a specific commitment.

CHAPTER II
OBLIGATIONS AND DISCIPLINES

Article 3
Regional and Local Government

In fulfilling its obligations and commitments under this Agreement, each Party shall ensure their observance by regional and local governments and authorities in its territory as well as their observance by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities within its territory.

Article 4
Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall promptly and at least annually inform the Implementing Committee of the introduction of any new, or any changes to

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[4] The sole fact of requiring a visa for natural persons of certain Parties and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

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(iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of any other Party;

(ii) **traffic rights** means the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control;

(jj) **WTO** means the World Trade Organisation; and

(kk) **WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organisation, done at Marrakesh on the 15th day of April 1994 and the other agreements negotiated thereunder.

Article 2
Scope

1. This Agreement applies to measures by the Parties affecting trade in services.

2. This Agreement shall not apply to:

(a) a service supplied in the exercise of governmental authority within the territory of each respective Party;

(b) measures affecting air traffic rights, however granted; or to measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;
(ii) the selling and marketing of air transport services; and
(iii) computer reservation system services;

(c) cabotage in maritime transport services; and

(d) measures affecting natural persons seeking access to the employment market of a Party and measures regarding citizenship, residence or employment on a permanent basis.

3. Article 19, Article 20 and Article 23 of this Agreement shall not apply to laws, regulations or requirements governing the procurement by

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services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

(bb) **services** includes any service in any sector except services supplied in the exercise of governmental authority;

(cc) **a service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(dd) **service consumer** means any person that receives or uses a service;

(ee) **service of another Party** means a service which is supplied:

(i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

(ff) **service supplier** means any person that supplies a service;[3]

(gg) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;

(hh) **trade in services** is defined as the supply of a service:

(i) from the territory of a Party into the territory of any other Party;

(ii) in the territory of a Party to the service consumer of any other Party;

(iii) by a service supplier of a Party, through commercial presence in the territory of any other Party;

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[3] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

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international standards of relevant international organisations[5] applied by that Party.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

Article 7
Recognition

1. For the purposes of fulfillment of their respective standards or criteria for the authorisation, licencing or certification of services suppliers, each Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in another Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or the relevant competent bodies or may be accorded autonomously.

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

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

4. Each Party shall endeavour:

(a) within 12 months from the date on which this Agreement takes effect for it, to inform the Implementing Committee of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;

(b) to promptly inform the Implementing Committee as far in advance as possible of the opening of negotiations on an

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[5] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

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agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Party to indicate their interest in participating in the negotiations before they enter a substantive phase;

(c) to promptly inform the Implementing Committee when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article 8
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 19 and Article 20.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If any Party has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with paragraph 1 or 2, that Party may request the Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect,

(a) authorises or establishes a small number of service suppliers; and

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(b) substantially prevents competition among those suppliers in its territory.

5. If, after the date of entry into force of this Agreement, a Party grants monopoly rights regarding the supply of a service covered by its specific commitments, that Party shall notify the Implementing Committee no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 1(b) (other than the three-year restriction), 2, 3, 4, and 5 of Article 25 shall apply.

Article 9
Business Practices

1. Parties recognise that certain business practices of service suppliers, other than those falling under Article 8, may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party (the "Requesting Party"), enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed (the "Requested Party"), shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Requested Party shall also provide other information available to the Requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the Requesting Party.

Article 10
Safeguards

1. The Parties note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principles of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of the multilateral negotiations.

2. In the event that the implementation of this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1, the affected Party may request for consultations with the other Party for the purposes of discussing any measure with respect to the affected service sector. Any measure taken pursuant to this paragraph shall be mutually agreed by the Parties concerned. The Parties concerned shall take into account the

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circumstances of the particular case and give sympathetic consideration to the Party seeking to take a measure.

Article 11
Payments and Transfers

1. Except under the circumstances envisaged in Article 12, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of any Party who is a member of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 12 or at the request of the Fund.

Article 12
Restrictions to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may adopt or maintain restrictions on trade in services in accordance with Article XII of the GATS.

2. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the Implementing Committee.

Article 13
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order[6];

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[6] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

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(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) inconsistent with Article 20, provided that the difference in treatment is aimed at ensuring the equitable or effective [7] imposition or collection of direct taxes in respect of services or service suppliers of other Parties;

(e) with difference in treatment provided that it is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

Article 14
Security Exceptions

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[7] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or

(iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or

(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in paragraph (d) of Article 13 (General Exceptions) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

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1. Nothing in this Agreement shall be construed:

(a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

(i) action relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) action relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(iii) action taken so as to protect critical public infrastructures including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures;

(iv) action taken in time of war or other emergency in domestic or international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Implementing Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article 15
Subsidies

1. Except where provided in this Article, this Agreement shall not apply to subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers. If such subsidies or grants significantly affect trade in services committed under this Agreement, any Party may request for consultations with a view to an amicable resolution of this matter.

2. Pursuant to this Agreement, the Parties shall:

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(a) on request, provide information on subsidies related to trade in services committed under this Agreement to any requesting Party; and

(b) review the treatment of subsidies when relevant disciplines are developed by the WTO.

Article 16
WTO Disciplines

Subject to any future agreements as may be agreed pursuant to reviews of this Agreement by the Parties under Article 26, the Parties hereby agree and reaffirm their commitments to abide by the provisions of the WTO Agreement as are relevant and applicable to trade in services.

Article 17
Cooperation

The Parties shall strengthen cooperation efforts in services sectors, including sectors mutually agreed upon by the Parties.

Article 18
Increasing Participation of new ASEAN Member Countries

The increasing participation of new ASEAN Member Countries on trade in services shall be facilitated through negotiated specific commitments, relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;

(b) the improvement of their access to distribution channels and information networks;

(c) the liberalisation of market access in sectors and modes of supply of export interest to them; and

(d) flexibility for new ASEAN Member Countries for opening fewer sectors, liberalising fewer types of transactions and progressively extending market access in line with their respective development situation.

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CHAPTER III
SPECIFIC COMMITMENTS

Article 19
Market Access

1. With respect to market access through the modes of supply identified in Article 1(hh), a Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[8]

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[9]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

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[8] If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(hh)(i) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(hh)(iii), it is thereby committed to allow related transfers of capital into its territory.

[9] Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

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(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 20
National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[10]

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

Article 21
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 19 or Article 20, including those regarding qualifications, standards or licencing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 22
Schedules of Specific Commitments

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[10] Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 19, Article 20 and Article 21. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate the time-frame for implementation of such commitments; and

(e) the date of entry into force of such commitments.

2. Measures inconsistent with Article 19 shall be inscribed in the column relating to Article 19, and measures inconsistent with Article 20 shall be inscribed in the column relating to Article 20.

3. The Schedules shall be annexed to this Agreement and shall form an integral part thereof.

Article 23
Application and Extension of Commitments

1. Korea shall make a single schedule of specific commitments under Article 22 and shall apply this Schedule to all ASEAN Member Countries.

2. Each ASEAN Member Country shall make its individual schedule of specific commitments under Article 22 and shall apply this Schedule to Korea and the rest of the ASEAN Member Countries.

Article 24
Progressive Liberalisation

The Parties shall, at the reviews pursuant to Article 26, enter into successive rounds of negotiations to negotiate further packages of specific commitments under this Agreement so as to progressively liberalise trade in services between the Parties.

Article 25
Modification of Schedules

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1. A Party may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment has entered into force, provided that:

(a) it notifies the Parties as well as the Implementing Committee of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and

(b) it enters into negotiations with any affected Party to agree to the necessary compensatory adjustment.

2. In achieving a compensatory adjustment, Parties shall ensure that the general level of mutually advantageous commitment is not less favourable to trade than provided for in the Schedules prior to such negotiations.

3. Any compensatory adjustment pursuant to this Article shall be accorded on a non-discriminatory basis to all Parties.

4. If the Parties concerned are unable to reach an agreement on the compensatory adjustment, the matter shall be resolved by arbitration [11]. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article 23, such a modification or withdrawal may be implemented solely with respect to the modifying Party.

CHAPTER IV
FINAL PROVISIONS

Article 26
Review

The AEM and the Minister for Trade of Korea or their designated representatives shall meet within a year of the date of entry into force of this

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[11] The Implementing Committee shall establish procedures for arbitration in due course.

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Agreement and then biennially or otherwise as appropriate to review this Agreement for the purpose of considering further measures to liberalise trade in services as well as develop disciplines and negotiate agreements on matters referred to in Article 16 or any other relevant matters as may be agreed.

Article 27
Miscellaneous Provisions

1. This Agreement shall include the Annexes and the contents therein which shall form an integral part of this Agreement; and all future legal instruments agreed pursuant to this Agreement.

2. The Annex on Financial Services shall form an integral part of this Agreement.

3. The GATS Annex on Telecommunications shall be incorporated into this Agreement, *mutatis mutandis*.

4. Except as otherwise provided in this Agreement, this Agreement or any action taken under it shall not affect or nullify the rights and obligations of a Party under the existing agreements to which it is a party.

5. ASEAN Member Countries may enter into individual bilateral arrangements with Korea concerning co-production of broadcasting programs pursuant to this Agreement, and such bilateral arrangements shall apply to the said Parties only.

Article 28
Amendments

This Agreement may be amended by agreement in writing by the Parties, and such amendments shall enter into force on such date or dates as may be agreed by the Parties.

Article 29
Dispute Settlement

Unless otherwise provided in this Agreement, any dispute concerning the interpretation, implementation or application of this Agreement shall be resolved through the procedures and mechanism as set out in the Agreement on Dispute Settlement Mechanism under the Framework Agreement.

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Article 30
Denial of Benefits

A Party may deny the benefits of this Agreement:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(i) by a vessel registered under the laws of a non-Party, and

(ii) by a person of a non-Party which operates and/or uses the vessel in whole or in part;

(c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party.

Article 31
Entry into Force

1. This Agreement shall enter into force on the first day of the second month following the latter date on which at least one ASEAN Member Country and Korea have notified all the other Parties in writing of the completion of their internal procedures.

2. A Party shall, upon the completion of its internal procedures for the entry into force of this Agreement, notify all the other Parties in writing.

3. Where a Party is unable to complete its internal procedures for the entry into force of this Agreement by the date as set out in paragraph 1, this Agreement shall come into force for that Party 30 days after the date on which the Party has notified all the other Parties in writing of the completion of its internal procedures. The Party concerned, however, shall be bound by the same terms and conditions of this Agreement, including any further commitments that may have been undertaken by the other Parties under this Agreement by the time of such notification, as if it had notified all the other Parties in writing of the completion of its internal procedures before the date of entry into force of this Agreement.

Article 32
Depositary

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For the ASEAN Member Countries, this Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof, to each ASEAN Member Country.

IN WITNESS WHEREOF, the undersigned being duly authorised thereto, have signed the Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation among Governments of the Member Countries of the Association of the Southeast Asian Nations[12] and the Republic of Korea.

DONE in Singapore, this 21st day of November 2007, in duplicate copies in the English language.

For the Government of Brunei Darussalam:

LIM JOCK SENG
Second Minister of Foreign Affairs and Trade

For the Royal Government of Cambodia:

CHAM PRASIDH
Senior Minister and Minister of Commerce

[12] The Parties agree that the Kingdom of Thailand may sign this Agreement at a later date upon the completion of her parliamentary procedure.

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For the Government of the Republic of Indonesia:

MARI ELKA PANGESTU
Minister of Trade

For the Government of the Lao People's Democratic Republic:

NAM VIYAKETH
Minister of Industry and Commerce

For the Government of Malaysia:

RAFIDAH AZIZ
Minister of International Trade and Industry

For the Government of the Union of Myanmar:

U SOE THA
Minister for National Planning and Economic Development

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For the Government of the Republic of the Philippines:

PETER B. FAVILA
Secretary of Trade and Industry

For the Government of the Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Government of the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade

For the Government of the Republic of Korea:

KIM JONG-HOON
Minister for Trade

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ANNEX ON FINANCIAL SERVICES

1. **Scope and Definition**

(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in Article 1(hh) of this Agreement.

(b) For the purposes of Article 1(bb) of this Agreement, "services supplied in the exercise of governmental authority" means the following:

(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

(c) For the purposes of Article 1(bb) of this Agreement, if a Party allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

(d) Article 1(cc) of this Agreement shall not apply to services covered by this Annex.

2. **Prudential Measures, Exchange Rate and Financial Stability**

(a) Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier; to ensure the integrity and stability of the financial system; or to ensure the stability of the exchange

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rate[1], including to prevent speculative capital flows, subject to the following:

(i) where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement;

(ii) for measures to ensure the stability of the exchange rate including to prevent speculative capital flows, such measures shall be no more than necessary, and phased out within one year or when conditions no longer justify their institution or maintenance; and

(iii) for measures to ensure the stability of the exchange rate including to prevent speculative capital flows, such measures shall be applied on a Most-Favoured-Nation basis.

(b) Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. **Recognition**

(a) A Party may recognise prudential measures of any other country in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Party that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate,

[1] The measures to ensure the stability of the exchange rate including to prevent speculative capital flows shall not be adopted or maintained for the purpose of protecting a particular sector.

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procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that such circumstances exist.

(c) Where a Party is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article 7 shall not apply.

4. **Dispute Settlement**

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. **Definitions**

For the purposes of this Annex:

(a) **A financial service** is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(i) Direct insurance (including co-insurance):

(A) life
(B) non-life

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(v) Acceptance of deposits and other repayable funds from the public;

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(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

(viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) Guarantees and commitments;

(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);
(B) foreign exchange;
(C) derivative products including, but not limited to, futures and options;
(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
(E) transferable securities;
(F) other negotiable instruments and financial assets, including bullion.

(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) Money broking;

(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

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(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) **A financial service supplier** means any natural or juridical person of a Party wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) **Public entity** means:

(i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

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