**PROTOCOL**
**BETWEEN**
**THE GOVERNMENT OF**
**THE UNITED STATES OF AMERICA**
**AND**
**THE GOVERNMENT OF**
**THE REPUBLIC OF KOREA**
**AMENDING THE FREE TRADE AGREEMENT BETWEEN**
**THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KOREA**

The Government of the United States of America (United States) and the Government of the Republic of Korea (Korea), the Parties to the *Free Trade Agreement between the United States of America and the Republic of Korea* (Agreement), acting in accordance with Article 24.2 (Amendments) of the Agreement, have agreed as follows:

1. Paragraph 3 of the General Notes of the Tariff Schedule of the United States is amended as follows:

(a) by striking "R and S" and replacing it with "R, S, and AA";

(b) by striking "and" after the semicolon in subparagraph (a), and by striking "." at the end of subparagraph (b) and replacing it with "; and"; and

(c) by inserting the following subparagraph after subparagraph (b):

"(c) duties on originating goods provided for in the items in staging category AA shall remain at base rates during years one through 29, and such goods shall be duty-free, effective January 1 of year 30.".

2. The Tariff Schedule of the United States to Annex 2-B, as it pertains to tariff items 87042100, 87042250, 87042300, 87043100, 87043200, and 87049000, in the "Staging Category" column, is amended by striking "G" and replacing it with "AA".

3. Chapter Ten (Trade Remedies) is amended as follows:

(a) in Article 10.7, by striking paragraph number "1." and replacing it with "2.", striking paragraph number "2." and replacing it with "3.", striking paragraph number "3." and replacing it with "4.", striking paragraph number "4." and replacing it with "5.", and inserting the following paragraph before renumbered paragraph 2:

"1. The Parties recognize the right to apply trade remedy measures consistent with Article VI of the GATT 1994, the AD Agreement, and the SCM Agreement, and the importance of promoting transparency in antidumping and countervailing duty proceedings and of ensuring the opportunity of all interested parties to participate meaningfully in such proceedings.";

(b) in Article 10.7, by inserting the following paragraphs after renumbered paragraph 5:

"*Transparency and Due Process*

6. In any segment of a proceeding in which an investigating authority of a Party determines to conduct an in-person verification of information provided

by a responding party and pertinent to the calculation of an antidumping duty margin or the level of a countervailable subsidy, the investigating authority shall promptly notify the responding party of its intent to do so, and normally shall:

(a) provide the responding party advance notice of the dates on which the investigating authority intends to conduct any such in-person verification of information;

(b) prior to any such in-person verification, provide the responding party a document that sets forth the topics the responding party should be prepared to address during the verification and describes the types of supporting documentation the responding party should make available for review;

(c) after the verification is completed prepare a written report describing the methods and procedures that it followed in carrying out the verification and the results of the verification; and

(d) make the report available, consistent with the Party's law, to all interested parties in sufficient time for the interested parties to defend their interests in the segment of a proceeding.

7. An investigating authority of a Party shall, consistent with the Party's law, disclose, *inter alia*, for each interested party for whom the investigating authority has determined an individual rate of duty, the calculations used to determine the rate of dumping or countervailable subsidization and, if different, the calculations used to determine the rate of duty to be applied to imports of the interested party. The disclosure and explanation shall be in sufficient detail so as to permit the interested party to reproduce the calculations without undue difficulty. Such disclosure shall include, whether in electronic format (such as a computer program or spreadsheet) or in any other medium, a detailed explanation of the information the investigating authority used, the sources of that information, and any adjustments it made to the information when used in the calculations. The investigating authority shall provide interested parties adequate opportunity to respond to the disclosure."; and

(c) in footnote 1 and renumbered paragraph 3 of Article 10.7 and in Article 10.8.2(b), by striking the references to "paragraphs 3 and 4" and replacing those references with references to " paragraphs 4 through 7".

4. Chapter Eleven (Investment) is amended as follows:

(a) in Article 11.3, by inserting the following footnote after "National Treatment" in the title of the article:

"[1] For greater certainty, whether treatment is accorded in "like circumstances" under Article 11.3 or Article 11.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.";

(b) by renumbering footnotes 1 through 17 as 2 through 18;

(c) in Article 11.4, by inserting the following paragraph after paragraph 2:

"3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section B.";

(d) in Article 11.5, by striking paragraph number "4." and replacing it with "5.", striking paragraph number "5." and replacing it with "6.", striking paragraph number "6." and replacing it with "7.", and inserting the following paragraph after paragraph 3:

"4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.";

(e) in renumbered Article 11.5.6, by striking the references to "paragraph 4" and replacing those references with references to "paragraph 5";

(f) in renumbered Article 11.5.7, by striking the reference to "Paragraph 4" and replacing it with a reference to "Paragraph 5";

(g) in Article 11.6.1(d), by striking the reference to "11.5.3" and replacing it with a reference to "11.5.4";

(h) in Article 11.7.1(e), by striking the reference to "11.5.4 and 11.5.5" and replacing it with a reference to "11.5.5 and 11.5.6";

(i) in Article 11.18, by inserting the following paragraph after paragraph 3:

"4. (a) An investor of a Party may not initiate or continue a claim under this Section if a claim involving the same measure or measures alleged to constitute a breach under Article 11.16 and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the respondent and a non-Party by:

(i) a person of a non-Party that owns or controls, directly or indirectly, the investor of a Party; or

(ii) a person of a non-Party that is owned or controlled, directly or indirectly, by the investor of a Party.

(b) Notwithstanding subparagraph (a), the claim may proceed if the respondent agrees that the claim may proceed, or if the investor of a Party and the person of a non-Party agree to consolidate the claims under the respective agreements before a tribunal constituted under this Section.";

(j) in Article 11.20, by striking paragraph number "9." and replacing it with "10.", striking paragraph number "10." and replacing it with "11.", striking paragraph number "11." and replacing it with "12.", striking paragraph number "12." and replacing it with "13," and inserting the following paragraph after paragraph 8:

"9. For greater certainty, if an investor of a Party submits a claim under Section B, including a claim alleging that a Party breached Article 11.5, the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.";

(k) in renumbered Article 11.20.12(b), by striking the reference to "paragraph 12" and replacing it with a reference to "paragraph 13";

(l) in the chapeau of Article 11.20.6, by inserting the following after "Article 11.26": "or that a claim is manifestly without legal merit";

(m) in Article 11.20.6(c), by inserting the following after "In deciding an objection under this paragraph": "that a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 11.26";

(n) in Article 11.28, in the definition of an "investor of a non-Party", by inserting the following footnote after "make":

"[19] For greater certainty, the Parties understand that, for purposes of the definitions of "investor of a non-Party" and "investor of a Party," an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channeling resources or capital in order to set up a business, or applying for a permit or license.";

(o) by making consequential adjustments to the numbering of the footnotes so that former footnotes 18, 19, 20, 21, and 22 are renumbered as footnotes 20, 21, 22, 23, and 24, respectively; and

(p) by inserting the following annex after Annex 11-G:

"Annex 11-H
Joint Committee

Consistent with Article 22.2, the Joint Committee shall, as appropriate, initiate discussions regarding the operation of this Chapter, and consider any potential improvements, to ensure that this Chapter continues to meet the objectives of the Parties, including providing meaningful procedures for resolving investment disputes and effective mechanisms to eliminate frivolous claims and to deter the filing of frivolous claims.".

Each Party shall notify the other Party of the completion of its legal requirements and procedures required for the entry into force of this Protocol. This Protocol shall enter into force on the date on which the Parties exchange written notifications that they have completed their respective applicable legal requirements and procedures. This Protocol shall terminate on the date that the Agreement terminates.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at the City of New York, this 24th day of September 2018, in duplicate in the English and Korean languages.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA