ANNEX 10B

EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of related actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest[1] in a covered investment.

2. Article 10.13 (Expropriation) addresses two situations:

   (a) the first situation is direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

   (b) the second situation is where an action or a series of related actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in subparagraph 2(b) requires a case-by-case, fact-based inquiry that considers, among other factors:

   (a) the economic impact of the government action, although the fact that an action or a series of related actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;

   (b) whether the government action breaches the government's prior binding written commitment to the investor, whether by contract, licence, or other legal document; and

   (c) the character of the government action, including its objective and context.[2]

4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, public morals, the environment, and real estate price stabilisation, do not constitute expropriation of the type referred to in subparagraph 2(b).

[1] For the purposes of this Annex, "property interest" refers to such property interest as may be recognised under the laws and regulations of that Party.

[2] For Korea, a relevant consideration could include whether the investor bears a disproportionate burden, such as a special sacrifice that exceeds what the investor or investment should be expected to endure for the public interest. This footnote does not prejudice the determination of the character of the government action of any other Party.