

Recalling Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services in Annex 1A and Annex 1B, respectively, to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994 (hereinafter referred to as "WTO Agreement");

Recognising the role of regional trade agreements as a catalyst in accelerating regional and global liberalisation in the framework of the multilateral trading system;

Reaffirming the rights and obligations of each Party under the WTO Agreement and multilateral, regional and bilateral agreements and arrangements; and

Determined to establish a legal framework for such comprehensive economic partnership among the Parties,

HAVE AGREED as follows:

Chapter 1 General Provisions

Article 1 General Definitions

For the purposes of this Agreement, the term:

- (a) "ASEAN Member States" 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;
- (b) "customs authority" means the competent authority that is responsible for the administration and enforcement of customs laws and regulations;
- (c) "days" means calendar days, including weekends and holidays;
- (d) "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;
- (e) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in GATT 1994 include its Notes and Supplementary Provisions;

- (f) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, and adopted and implemented by the Parties in their respective laws;
- (g) "newer ASEAN Member States" means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;
- (h) "Parties" means Japan and those ASEAN Member States for which this Agreement has entered into force collectively; and
- (i) "Party" means either of Japan or one (1) of ASEAN Member States for which this Agreement has entered into force.

Article 2 Principles

The Parties reaffirm the importance of realising the AJCEP through both this Agreement and other bilateral or regional agreements or arrangements, and are guided by the following principles:

- (a) the AJCEP shall involve Japan and all ASEAN Member States and includes a broad range of sectors focusing on liberalisation, facilitation and economic cooperation;
- (b) the integrity, solidarity and integration of ASEAN shall be maintained in the realisation of the AJCEP;
- (c) special and differential treatment is accorded to ASEAN Member States, especially the newer ASEAN Member States, in recognition of their different levels of economic development; additional flexibility is accorded to the newer ASEAN Member States;
- (d) recognition shall be given to the provisions of the ministerial declarations of the World Trade Organization on measures in favour of least-developed countries;
- (e) flexibility should also be given to address the sensitive sectors in Japan and each ASEAN Member State; and

- (f) technical assistance and capacity building are important elements of economic cooperation provided under this Agreement.

Article 3 Objectives

The objectives of this Agreement are to:

- (a) progressively liberalise and facilitate trade in goods and services among the Parties;
- (b) improve investment opportunities and ensure protection for investments and investment activities in the Parties; and
- (c) establish a framework for the enhancement of economic cooperation among the Parties with a view to supporting ASEAN economic integration, bridging the development gap among ASEAN Member States, and enhancing trade and investment among the Parties.

Article 4 Transparency

1. Each Party shall, in accordance with its laws and regulations, make publicly available its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, that pertain to or affect the implementation and operation of this Agreement.

2. Each Party shall make publicly available the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures and administrative rulings, referred to in paragraph 1.

3. Each Party shall, upon the request by another Party, respond to specific questions from, and provide information to, the latter, in the English language, with respect to matters referred to in paragraph 1.

Article 5 Confidentiality

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

2. Nothing in this Agreement shall be construed to require a Party to provide information relating to the affairs and accounts of customers of financial institutions.

3. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided as confidential by another Party pursuant to this Agreement.

Article 6 Taxation

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Articles 4 and 5 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 7 General Exceptions

For the purposes of Chapters 2 through 5, Article XX of GATT 1994 is incorporated into and forms part of this Agreement, *mutatis mutandis*.

Article 8 Security Exceptions

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:
 - (i) relating to fissionable materials or the materials from which they are derived;

- (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken so as to protect critical public infrastructure, including communications, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure;
 - (iv) taken in time of domestic emergency, or war or other emergency in 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.

Article 9 Non-governmental Bodies

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

Article 10 Relation to Other Agreements

1. Each Party reaffirms its rights and obligations vis-à-vis another Party under the WTO Agreement and/or other agreements to which these Parties are parties.
2. Nothing in this Agreement shall be construed to derogate from any obligation of a Party vis-à-vis another Party under agreements to which these Parties are parties, if such an obligation entitles the latter Party to treatment more favourable than that accorded by this Agreement.
3. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.

4. In the event of any inconsistency between this Agreement and any agreement other than the WTO Agreement to which more than one (1) Party are parties, these Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

5. A Party which is not a party to the WTO Agreement shall abide by the provisions of the said Agreement in accordance with its accession commitments to the World Trade Organization.

Article 11 Joint Committee

1. A Joint Committee shall be established under this Agreement.

2. The functions of the Joint Committee shall be to:

- (a) review the implementation and operation of this Agreement;
- (b) submit a report to the Parties on the implementation and operation of this Agreement;
- (c) consider and recommend to the Parties any amendments to this Agreement;
- (d) supervise and coordinate the work of all Sub-Committees established under this Agreement;
- (e) adopt:
 - (i) the Implementing Regulations referred to in Rule 11 of Annex 4; and
 - (ii) any necessary decisions; and
- (f) carry out other functions as may be agreed by the Parties.

3. The Joint Committee:

- (a) shall be composed of representatives of Japan and ASEAN Member States; and
- (b) may establish Sub-Committees and delegate its responsibilities thereto.

4. The Joint Committee shall meet at such venues and times as may be agreed by the Parties.

Article 12 Communications

Each Party shall designate a contact point to facilitate communications among the Parties on, except as otherwise provided for in Article 61, any matter relating to this Agreement. All official communications in this regard shall be done in the English language.

Chapter 2 Trade in Goods

Article 13 Definitions

For the purposes of this Chapter, the term:

- (a) "customs duties" means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, but does not include any:
 - (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of GATT 1994, in respect of the like domestic goods or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;
 - (ii) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; or
 - (iii) fee or any charge commensurate with the cost of services rendered;
- (b) "customs laws" means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;