

Chapter 1 General Provisions

Article 1 Objectives

The objectives of this Agreement are to:

- (a) liberalise and facilitate trade in goods and services between the Parties;
- (b) increase investment opportunities and strengthen protection for investments and investment activities in the Parties;
- (c) ensure protection of intellectual property and promote cooperation in the field thereof;
- (d) promote cooperation for the effective enforcement of competition laws in each Party;
- (e) improve business environment in each Party;
- (f) establish a framework to enhance closer cooperation in the fields agreed in this Agreement; and
- (g) create effective procedures for the implementation and application of this Agreement and for the resolution of disputes.

Article 2 Geographical Scope of Application

Unless otherwise specified, this Agreement shall apply to "the Area" of each Party, which consists of the territory of the Party, including its territorial sea, airspace above such territory; and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which the Party has sovereign rights or jurisdiction in accordance with its laws and regulations and international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982.

Note: Nothing in this Article shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982.

Article 3 General Definitions

For the purposes of this Agreement, unless otherwise specified:

- (a) the term "customs authority" means the authority that, according to the legislation of each Party or non-Parties, is responsible for the administration and enforcement of customs laws and regulations. In the case of Japan, the Ministry of Finance, and in the case of India, the Central Board of Excise and Customs in the Department of Revenue, Ministry of Finance;
- (b) the term "days" means calendar days, including weekends and holidays;
- (c) the term "enterprise" means any legal person or any other entity duly formed, constituted or organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organisation or company;
- (d) an enterprise is:
 - (i) "owned" by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and
 - (ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;

- (e) the term "enterprise of a Party" means an enterprise formed, constituted or organised under the law of a Party and carrying out substantial business activities in the Area of the Party;
- (f) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;
- (g) the term "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 the GATT 1994 include the interpretative notes;
- (h) the term "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System defined in paragraph (a) of Article 1 of the International Convention on the Harmonized Commodity Description and Coding System, and adopted and implemented by the Parties in their respective laws;
- (i) the term "investments" means every kind of asset owned or controlled by an investor, including:
 - (i) an enterprise and a branch of an enterprise;
 - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
 - (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
 - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
 - (v) rights to claim money and claim any performance under contract having a financial value;
 - (vi) intellectual property;

Note: Intellectual property means that set out in paragraph 2 of Article 102.

- (vii) goodwill;
- (viii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits; and
- (ix) any other movable or immovable property (including land), whether tangible or intangible, and any related property rights, such as leases, mortgages, liens and pledges;

Note 1: Investments also include amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

Note 2: Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit through the commitment of the capital, or the assumption of risk.

- (j) the term "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;
- (k) the term "investor of a Party" means a natural person or an enterprise of a Party, that seeks to make, is making, or has made, investments;
- (l) the term "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, association or cooperative;

Note: A cooperative is a legal entity constituted under the relevant applicable laws in India.

- (m) a juridical person is:
 - (i) "owned" by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by such persons;
 - (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; and
 - (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;
- (n) the term "juridical person of the other Party" means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of the other Party and engaged in substantive business operations in the Area of the other Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of the other Party; or
 - (B) juridical persons of the other Party identified under subparagraph (i);
- (o) the term "natural person of the other Party" means a natural person who under the law of the other Party:
 - (i) in respect of India, is a citizen of India; and
 - (ii) in respect of Japan, is a national of Japan;

- (p) the term "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3;
- (q) the term "Parties" means Japan and India and the term "Party" means either Japan or India;
- (r) the term "person" means a natural person or an enterprise/juridical person;
- (s) the term "service" includes any service in any sector except a service supplied in the exercise of governmental authority;
- (t) the term "service supplier" means any person that supplies a service; and

Note: 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 Chapter 6. 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 Area of a Party where the service is supplied.

- (u) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

Article 4 Transparency

1. Each Party shall publish, or otherwise make publicly available, its laws, regulations, administrative procedures, and administrative rulings and judicial decisions of general application, with respect to any matter covered by this Agreement.

2. Each Party shall make available to the public 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 the other Party, within a reasonable period of time, respond to specific questions from and provide information to the other Party with respect to matters referred to in paragraph 1.

Article 5 Administrative Procedures

1. Where administrative decisions which pertain to or affect the implementation and operation of this Agreement are taken by the competent authorities of a Party, the competent authorities shall, in accordance with the laws and regulations of the Party:

- (a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party, taking into account the established standard period of time referred to in paragraph 2; and
- (b) provide, within a reasonable period of time, information concerning the status of the application, at the request of the applicant.

2. The competent authorities of a Party shall, in accordance with the laws and regulations of the Party:

- (a) endeavour to establish standard periods of time between the receipt of applications by the competent authorities and the administrative decisions taken in response to the submitted applications; and
- (b) make publicly available such periods of time, if established.

3. The competent authorities of a Party shall, in accordance with the laws and regulations of the Party, prior to taking any final decision which imposes obligations on or restricts rights of a person, provide that person with:

- (a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure would be based, and the facts which may be a cause of taking such measure; and
- (b) a reasonable opportunity to present facts and arguments in support of a position of such person,

provided that time, the nature of the measure, and the public interest permit.

Article 6 Review and Appeal

1. Each Party shall maintain judicial tribunals or procedures for the purpose of the prompt review and, where warranted, correction of actions taken by its Government relating to matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement of such actions.

2. Each Party shall ensure that the parties in any such tribunals or procedures 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.

3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that such decision is implemented by the relevant authorities with respect to the action at issue which is taken by its Government.

Article 7
Measures against Corruption

Each Party shall, in accordance with its laws and regulations, take appropriate measures to prevent and combat corruption of its public officials regarding matters covered by this Agreement.

Article 8
Environmental Protection

1. Each Party, acknowledging the importance of environmental protection and sustainable development and recognising the right of each Party to establish its own domestic environmental policies and priorities, shall ensure that its laws and regulations provide for adequate levels of environmental protection and shall strive to continue to improve those laws and regulations.
2. Each Party shall take appropriate governmental action such as monitoring compliance with, and investigating suspected violations of, its environmental laws and regulations.
3. Each Party shall endeavour to:
 - (a) take necessary measures to enhance public awareness of environmental policy and related matters by way of, such as, promoting education in the field thereof; and
 - (b) encourage trade and dissemination of environmentally sound goods and services.
4. The Parties reaffirm their rights and obligations under any international agreements concerning the environment, to which both Parties are parties.

Article 9
Confidential Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

2. Information provided in confidence pursuant to this Agreement shall be used only for the purposes specified by the Party providing the information.

3. Notwithstanding paragraph 1, the confidential information provided pursuant to this Agreement may be transmitted to a third party subject to prior consent of the Party providing the information.

4. Unless otherwise provided for in this Agreement, nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede the enforcement of its laws and regulations, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 10 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 either 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, 6 and 9 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 11 Exceptions

1. For the purposes of this Agreement except Chapters 6 and 9, Articles XX and XXI of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 6 and 8, Articles XIV and XIV *bis* of the GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.

3. Nothing in this Agreement shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests to protect critical public infrastructure, including communications, power and water infrastructure, from deliberate attempts to disable or degrade such infrastructure.

Note: Nothing in this paragraph shall be construed so as to derogate from the rights and obligations of the Parties under the WTO Agreement.

4. Nothing in this Agreement shall be construed to require a Party to accord the benefits of this Agreement to the other Party, or to the goods or service suppliers of the other Party or investors that are enterprises of the other Party, where the Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party, or goods or service suppliers of a non-Party or investors that are enterprises of a non-Party, that would be violated or circumvented if the benefits of this Agreement were accorded to such goods or service suppliers or such enterprises of the other Party or to their investments.

5. For the purposes of Chapters 6 and 8, a Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of the other Party and to its investments, or to a service supplier of the other Party that is a juridical person of the other Party in the situation where the enterprise or the juridical person is owned or controlled by an investor or persons of a non-Party, and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefit of this Agreement were accorded to the service supplier or the enterprise or to its investments.

6. For the purposes of Chapter 6, subject to prior notification to and consultation with the other Party, a Party may also deny the benefits of the Chapter to a service supplier of the other Party, where the denying Party establishes that:

- (a) the service supplier is a juridical person that is owned or controlled by persons of a non-Party and has no substantial business activities in the Area of the other Party;
- (b) the service is supplied from or in the Area of a non-Party;
- (c) in the case of the supply of a maritime transport service, the service is supplied:
 - (i) by a vessel registered under the laws of a non-Party; and
 - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party; or
- (d) the service supplier is not:
 - (i) in respect of a natural person, a natural person of the other Party as defined under this Agreement; or
 - (ii) in respect of a juridical person, a juridical person of the other Party as defined under this Agreement.

7. For the purposes of Chapter 8, subject to prior notification to and consultation with the other Party, a Party may also deny the benefits of the Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that:

- (a) the enterprise has no substantial business activities in the Area of the other Party; and
- (b) the enterprise is owned or controlled by an investor of a non-Party or of the denying Party.

Article 12
Relation to Other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.
2. In the event of any inconsistency between this Agreement and the WTO Agreement or any other agreements, to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

Article 13
Implementing Agreement

The Governments of the Parties shall, where necessary, conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to in this Agreement as "the Implementing Agreement").

Article 14
Joint Committee

1. A Joint Committee shall be established under this Agreement.
2. The functions of the Joint Committee shall be:
 - (a) reviewing and monitoring the implementation and operation of this Agreement;
 - (b) considering and recommending to the Parties any amendments to this Agreement;
 - (c) supervising and coordinating the work of all Sub-Committees established under this Agreement;
 - (d) adopting:
 - (i) the Implementing Procedures referred to in Section 11 of Annex 3; and

- (ii) any necessary decisions; and
 - (e) carrying out other functions as the Parties may agree.
- 3. The Joint Committee:
 - (a) shall be composed of representatives of the Governments of the Parties; and
 - (b) may establish, and delegate its responsibilities to, Sub-Committees.
- 4. The Joint Committee shall establish its rules and procedures.
- 5. The Joint Committee shall meet:
 - (a) once a year at the request of either Party or at such times as may be agreed by the Parties; and
 - (b) at such venues as may be agreed by the Parties.

Article 15 Communications

- 1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.
- 2. Unless otherwise provided for in this Agreement, any formal communication and notification between the Parties under this Agreement shall be made through the contact points referred to in paragraph 1.