

Chapter 1
General Provisions

Article 1.1
Objective

The objective of this Agreement is to create a new economic dynamism between the Parties by means of the following, taking into account the stage of development and economic needs of the Parties:

- (a) liberalizing and facilitating trade in goods and services between the Parties;
- (b) facilitating movement of natural persons between the Parties;
- (c) increasing investment opportunities and strengthening protection for investments and investment activities in the Parties;
- (d) enhancing protection of intellectual property;
- (e) promoting cooperation and coordination for the effective enforcement of competition laws in each Party;
- (f) establishing a framework for further reinforcing, broadening and deepening bilateral cooperation in all fields relevant to trade and investment and improvement of the business environment; and
- (g) creating effective procedures for the implementation and operation of this Agreement and for the prevention and resolution of disputes.

Article 1.2
General Definitions

For the purposes of this Agreement, unless otherwise specified:

- (a) the term "Agreement on Customs Valuation" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;
- (b) the term "Area" means:
 - (i) for Japan, the territory of Japan, and the exclusive economic zone and the continental shelf with respect to which Japan exercises sovereign rights or jurisdiction in accordance with international law; and
 - (ii) for Mongolia, the territory of Mongolia;

Note: Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the UNCLOS.
- (c) the term "commercial presence" means any type of business or professional establishment, including through:
 - (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 Area of a Party for the purposes of supplying a service;
- (d) the term "customs authority" means the authority that, according to the legislation of each Party or a non-Party, is responsible for the administration and enforcement of customs laws and regulations:
 - (i) for Japan, the Ministry of Finance, or its successor; and
 - (ii) for Mongolia, the Customs General Administration, or its successor;
- (e) the term "days" means calendar days, including weekends and holidays;

- (f) the term "enterprise" means any juridical person or any other entity duly constituted or organized under the applicable laws and regulations, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organization or company;
- (g) the term "enterprise of a Party" means an enterprise constituted or organized under the applicable laws and regulations of that Party;
- (h) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;
- (i) 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;
- (j) the term "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;
- (k) the term "investment" means every kind of asset owned or controlled, directly or indirectly, 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) claims to money and to any performance under contract having a financial value;

(vi) intellectual property;

Note: Intellectual property means that set out in Article 12.2.

(vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits, including, but not limited to, those for the supply of financial services, the supply of telecommunications services, the production of nuclear energy and the exploration and exploitation of natural resources; and

(viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

Note: An investment includes the amount yielded by an investment, 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 an investment.

(l) the term "investor of a Party" means:

(i) a natural person who is a national of a Party under the law of the Party; or

(ii) an enterprise of that Party,

that seeks to make, is making or has made investments in the Area of the other Party;

(m) the term "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether private or government owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

- (n) a juridical person is:
 - (i) "owned" by persons if more than 50 percent of the equity interest in it is beneficially owned by the persons; and
 - (ii) "controlled" by persons if the persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (o) the term "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3;
- (p) the term "Parties" means Japan and Mongolia and the term "Party" means either Japan or Mongolia;
- (q) the term "person" means a natural person or an enterprise/juridical person, as the case may be;
- (r) the term "service supplier" means any person that supplies or seeks to supply a service;

Note: Where the service is not supplied or sought to be 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 commercial presence be accorded the treatment provided for service suppliers under Chapter 7. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the Area of a Party where the service is supplied or sought to be supplied.

- (s) the term "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;

- (t) the term "state enterprise" means a juridical person owned or controlled by a Party;
- (u) the term "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;
- (v) the term "UNCLOS" means the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982; and
- (w) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

Article 1.3 Transparency

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations and judicial decisions of general application as well as international agreements to which the Party is a party, with respect to any matter covered by this Agreement.

2. Each Party shall make easily available to the public the names and addresses of the competent authorities responsible for the laws and regulations referred to in paragraph 1.

3. Each Party shall, upon request of 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, in the English language to the extent possible.

4. When introducing or changing its laws or regulations that significantly affect the implementation and operation of this Agreement, each Party shall endeavor to provide, except in emergency situations and to the extent covered by its domestic laws, a reasonable interval between the time when such laws or regulations are published or made publicly available and the time when they enter into force.

Article 1.4
Public Comment Procedures

Each Party shall, in accordance with its laws and regulations and to the extent practicable, maintain public comment procedures with respect to any matter covered by this Agreement.

Article 1.5
Administrative Procedures

1. Upon receiving an application submitted by a person who seeks an administrative decision which pertains to or affects the implementation and operation of this Agreement, the competent authorities of a Party 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 in accordance with the laws and regulations of the Party, taking into account the established standard period of time referred to in paragraph 3; and
- (b) provide, within a reasonable period of time, information concerning the status of the application, upon request of the applicant.

2. The competent authorities of a Party shall, in accordance with the laws and regulations of the Party, establish criteria for reviewing the application referred to in paragraph 1. The competent authorities shall make such criteria:

- (a) as specific as possible; and
- (b) publicly available except when it would extraordinarily raise administrative difficulties for the Party.

3. For the purposes of reviewing the applications referred to in paragraph 1, the competent authorities of a Party shall, in accordance with the laws and regulations of the Party:

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

4. The competent authorities of a Party shall endeavor to, in accordance with the laws and regulations of the Party, prior to any final decision which imposes obligations on or restricts legal 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 will 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 position of such person,

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

Article 1.6 Review and Appeal

1. Each Party shall maintain courts or procedures for the purpose of prompt review and, where warranted, correction of administrative actions regarding matters covered by this Agreement. Such courts 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 courts 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 administrative action at issue.

Article 1.7
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 1.8
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 in accordance with this Agreement.

2. 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 legitimate commercial interests of particular enterprises, public or private.

Article 1.9
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 1.3 and 1.8 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 1.10 Exceptions

1. For the purposes of this Agreement except Chapters 7, 8 and 12, 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 7, 8, 9 and 10, Articles XIV and XIV *bis* of the GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.

3. The Parties may consult with each other on issues related to the situation where:

- (a) the export earnings of a Party the economy of which depend on exports of a small number of primary commodities may be seriously reduced by a decline in the sales or the world prices of such commodities; or
- (b) promoting the establishment of a particular industry of a Party may be required with a view to raising the general standard of living of its people.

Note: For the purposes of this Article, it is understood that subparagraph (b) of Article XX of the GATT 1994 and subparagraph (b) of Article XIV of the GATS include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of the GATT 1994 applies to measures related to the conservation of living and non-living exhaustible natural resources.

Article 1.11 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 party.

2. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.

3. In the event of any inconsistency between this Agreement and any agreement other than the WTO Agreement to which both Parties are party, 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 1.12 Implementing Agreement

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

Article 1.13 Joint Committee

1. The Parties hereby establish a Joint Committee under this Agreement.

2. The functions of the Joint Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Agreement and, when necessary, making appropriate recommendations to the Parties;
- (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 Operational Procedures for Trade in Goods and the Operational Procedures for Rules of Origin referred to in Article 2.20 and Article 3.26, respectively; 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;
 - (b) may establish other Sub-Committees than those provided for in Article 1.14; and
 - (c) may delegate its responsibilities to Sub-Committees.
4. The Joint Committee shall establish its rules and procedures.
5. The Joint Committee shall hold the first meeting on the date of entry into force of this Agreement, and thereafter, meet at such times and venues or by means, as may be agreed by the Parties.

Article 1.14
Sub-Committees

1. The following Sub-Committees shall be established on the date of entry into force of this Agreement:
- (a) Sub-Committee on Trade in Goods, as provided for in Article 2.19;
 - (b) Sub-Committee on Rules of Origin, as provided for in Article 3.25;
 - (c) Sub-Committee on Customs Procedures and Trade Facilitation, as provided for in Article 4.8;
 - (d) Sub-Committee on Sanitary and Phytosanitary Measures, as provided for in Article 5.6;
 - (e) Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures, as provided for in Article 6.9;

- (f) Sub-Committee on Trade in Services, as provided for in Article 7.16;
- (g) Sub-Committee on Movement of Natural Persons, as provided for in Article 8.6;
- (h) Sub-Committee on Electronic Commerce, as provided for in Article 9.13;
- (i) Sub-Committee on Investment, as provided for in Article 10.18;
- (j) Sub-Committee on Intellectual Property, as provided for in Article 12.18;
- (k) Sub-Committee on Government Procurement, as provided for in Article 13.5;
- (l) Sub-Committee on Improvement of the Business Environment, as provided for in Article 14.2; and
- (m) Sub-Committee on Cooperation, as provided for in Article 15.4.

2. The Sub-Committees shall carry out the functions specified in the corresponding Articles referred to in paragraph 1.

Article 1.15 Communications

Each Party shall designate a contact point to facilitate communications between the Parties on any matter related to this Agreement.