

Chapter 1
General Provisions

Article 1
Establishment of a Free Trade Area

The Parties, consistent with Article XXIV of the GATT 1994 and Article V of the GATS, hereby establish a free trade area.

Article 2
Relation to Other Agreements

1. The Parties reaffirm their rights and obligations with respect to each other under the WTO Agreement or any other agreement to which both Parties are parties.

2. In the event of any inconsistency between this Agreement and the WTO Agreement or any other agreement 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.

3. The provisions of the Agreement between the Republic of Peru and Japan for the Promotion, Protection and Liberalisation of Investment, signed at Lima on November 21, 2008 (hereinafter referred to as "BIT"), except its Articles 24 (Joint Committee) and 25 (Sub-committee on Improvement of Investment Environment), as may be amended, are incorporated into and made part of this Agreement, *mutatis mutandis*.

Note: In the event of any inconsistency between this Agreement and the BIT, unless otherwise provided for in this Agreement, the provisions of paragraph 2 shall be applied.

Article 3
Regional and Local Government

In fulfilling its obligations and commitments under this Agreement, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies in the exercise of powers delegated to them by central, regional and local governments or authorities within its Area. For greater certainty, neither Party shall be discharged from its obligations under this Agreement, in the event of a non-compliance with the provisions of this Agreement, by any of its governmental levels or non-governmental bodies in the exercise of such powers delegated to them.

Article 4
General Definitions

For the purposes of this Agreement, unless otherwise specified:

- (a) the term "Area" means:
 - (i) with respect to Japan:
 - (A) the territory of Japan; and
 - (B) 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) with respect to Peru: the mainland territory, the islands, the maritime zones, and the air space above them, over which Peru exercises sovereignty or sovereign rights and jurisdiction, in accordance with relevant provisions of the Constitution of Peru and international law;

Note 1: Nothing in this definition shall affect the rights and obligations of the Parties under international law.

Note 2: For greater certainty, the definition of and references to "Area" contained in this Agreement apply exclusively for the purposes of determining the geographical scope of application of this Agreement.

- (b) the term "Commission" means the Commission established under Article 14;
- (c) 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, or its successor, and in the case of Peru, National Superintendence of Tax Administration (Superintendencia Nacional de Administración Tributaria (SUNAT)), or its successor;
- (d) the term "days" means calendar days including weekends and holidays;
- (e) the term "enterprise" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;
- (f) 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;
- (g) the term "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;
- (h) the term "good" means any merchandise, product, article or material;

- (i) 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;
- (j) the term "measure" includes any law, regulation, rule, procedure, requirement, provision, practice, decision or administrative action issued or taken by a Party;
- (k) the term "national" means a natural person who:
 - (i) for Japan, is a national of Japan under its laws; and
 - (ii) for Peru, is a national of Peru or has a permanent residency in Peru under its laws;
- (l) the term "originating good" means a good that qualifies as originating under the provisions of Chapter 3;
- (m) the term "person" means a natural person or an enterprise; and
- (n) the term "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

Article 5 Transparency

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

2. Each Party shall, upon 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, in English.

3. Nothing in this Article shall prejudice as to whether a measure adopted by a Party is consistent or not with this Agreement.

4. When introducing or changing its laws, regulations, administrative procedures or administrative rulings that significantly affect the implementation and operation of this Agreement, each Party shall, to the extent possible, and in accordance with its laws and regulations, endeavor to provide, except in emergency situations, a reasonable interval between the time when such laws, regulations, administrative procedures or administrative rulings as introduced or changed are published or made publicly available and the time when they enter into force.

Note: For greater certainty, "administrative rulings of general application" means an administrative decision or interpretation that applies to all persons and fact situations that fall within the scope of application of such administrative decision or interpretation and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative proceeding that applies to a particular person, good, or service in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

Article 6 Public Comment Procedures

Each Party shall, to the extent possible and in accordance with its laws and regulations, endeavor to provide an opportunity for comments from the public on any regulation of general application that affects any matter covered by this Agreement.

Article 7
Confidential Information

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

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

Article 8
Review and Appeal

1. Each Party shall establish or maintain judicial tribunals or procedures for the purpose of the subsequent review and, where warranted, correction of administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the authorities entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding 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 or, where required by its domestic laws and regulations, the record compiled by the administrative authorities.

3. Each Party shall ensure, subject to appeal or subsequent review as provided for in its laws and regulations, that a decision referred to in subparagraph 2(b) shall be implemented by, and shall be taken into consideration of the authorities with respect to the administrative action at issue.

Article 9
Measures against Corruption

Each Party shall ensure that measures and efforts are undertaken to prevent and combat corruption regarding matters covered by this Agreement in accordance with its laws and regulations.

Article 10
General Exceptions

1. For the purposes of Chapters 2 through 6, Article XX of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 7 through 9, Article XIV of the GATS is incorporated into and made part of this Agreement, *mutatis mutandis*.

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 relating to the conservation of living and non-living exhaustible natural resources.

Article 11
Security Exceptions

1. For the purposes of Chapters 2 through 6, Article XXI of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 7 through 9, Article XIV *bis* of the GATS is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 12
Taxation

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided for in this Article.

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. Paragraphs 1 and 2 of Article 5 and paragraph 1 of Article 7 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Note 1: For greater certainty, taxation measures do not include:

- (a) customs duty as defined in Article 18;
- (b) anti-dumping or countervailing duty that is applied pursuant to Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Anti-dumping") or the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "Agreement on Subsidies and Countervailing Measures"); or
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered.

Note 2: Nothing in this Article shall affect the rights and obligations of the Parties under the WTO Agreement.

Article 13
Temporary Safeguard Measures

In accordance with Article XII of the GATT 1994, the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, and Article XII of the GATS, and consistent with the Articles of Agreement of the International Monetary Fund, a Party may adopt or maintain measures:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

Article 14
Commission

1. The Parties hereby establish a Commission which shall be co-chaired by Ministers or senior officials of the Parties who are competent over this Agreement.
2. The Commission shall be composed of representatives of the Governments of the Parties.
3. The Commission shall:
 - (a) review and monitor the implementation and operation of this Agreement;
 - (b) when necessary, make appropriate recommendations to the Parties and provide them with its opinion regarding, among other issues, the interpretation or application of this Agreement;
 - (c) endeavor to resolve disputes between the Parties about any matter concerning the interpretation or application of this Agreement;

- (d) supervise and coordinate the work of all Sub-Committees established under this Agreement; and
 - (e) take any other action as the Parties may agree.
4. The Commission may:
- (a) establish Sub-Committees and any other working-groups necessary for the operation of this Agreement;
 - (b) delegate its responsibilities to Sub-Committees and any other working groups established under this Agreement;
 - (c) consider, recommend to the Parties and promote any amendment to this Agreement, subject to the fulfillment of the internal legal procedures of each Party; and
 - (d) adopt the Operational Procedures referred to in Article 70.
5. All decisions of the Commission shall be taken by mutual agreement.
6. If the Commission makes a decision, subject to the fulfillment of internal legal requirements, such decision shall enter into force on the date when the Parties notify each other, that such internal legal requirements have been fulfilled, unless the Parties agree otherwise.
7. The Commission shall meet at least once a year alternately in Japan and Peru, unless the Parties agree otherwise.

Article 15 Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement, and shall communicate such designation to the other Party within 90 days following the entry into force of this Agreement.

2. Any information, request or notification to the other Party shall be carried out through the contact point, unless otherwise provided for in this Agreement.

3. The contact point shall:

- (a) work jointly to develop agendas and make other preparations for the Commission meetings and to follow up on the said meetings as appropriate;
- (b) address any matter entrusted by the Commission; and
- (c) provide administrative support to the arbitral tribunal established under Article 209.

Article 16 Implementing Agreement

The Governments of the Parties shall conclude a separate agreement (hereinafter referred to as "the Implementing Agreement"), which sets forth the details and procedures for the implementation of certain provisions of this Agreement. The Implementing Agreement shall enter into force on the same date as this Agreement and shall remain in force as long as this Agreement remains in force.