

PROTOCOL
AMENDING THE AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF
SINGAPORE FOR A NEW-AGE ECONOMIC PARTNERSHIP

Japan and the Republic of Singapore (hereinafter referred to in this Protocol as "the Parties");

Having undertaken a general review of the Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership, signed in Singapore on January 13, 2002 (hereinafter referred to as "the Agreement"), pursuant to Article 10 of the Agreement;

Desiring to conclude a protocol to amend the Agreement pursuant to Article 151 of the Agreement;

HAVE AGREED as follows:

Article 1

Article 5 of the Agreement shall be amended by renumbering paragraph 2 as paragraph 3, and inserting the following new paragraph immediately after paragraph 1:

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

Article 2

Article 11 of the Agreement shall be amended by deleting sub-paragraph (d) and renumbering sub-paragraphs (e) through (g) as sub-paragraphs (d) through (f) respectively.

Article 3

Article 14 of the Agreement shall be amended as follows:

1. By inserting the expression "or reduce" immediately after the expression "eliminate" in paragraph 1; and

2. By deleting the expression "Annex I" in paragraph 1, sub-paragraphs (a) and (b) of paragraph 2 and paragraph 3 and replacing it respectively by the expression "Annexes I A and I B".

Article 4

Article 18 of the Agreement shall be amended as follows:

1. By deleting paragraph 1 and replacing it by the following:

"1. Subject to the provisions of this Article, if an originating good of the other Party listed in the Schedule of a Party in Annex I B, as a result of the elimination or reduction of a customs duty in accordance with Article 14, is being imported into the territory of the latter Party in such increased quantities, in absolute terms, and under such conditions that the imports of that originating good alone constitute a substantial cause of serious injury, or threat thereof, to a domestic industry of the latter Party, the latter Party may, to the minimum extent necessary to prevent or remedy the injury and to facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty on the good; or
- (b) increase the rate of customs duty on the good to a level not to exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty in effect at the time when the measure set out in this paragraph is taken; and
 - (ii) the most-favoured-nation applied rate of customs duty in effect on 31 March 2007."

2. By deleting the expressions "a period of one year" and "a total maximum period of three years" in sub-paragraph (d) of paragraph 3 and replacing them respectively by the expressions "a period of two years" and "a total maximum period of four years";

3. By deleting the expression "during the transition period" in sub-paragraph (e) of paragraph 3 and replacing it by the expression "for a period of time equal to the duration of the previous measure or one year, whichever is longer"; and

4. By inserting the following new paragraphs immediately after paragraph 8:

"9. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional emergency measure, which shall take the form of the measure set out in sub-paragraph (a) or (b) of paragraph 1 of this Article pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.

(b) The Party shall deliver a written notice to the other Party prior to applying a provisional emergency measure set out in sub-paragraph (a) above. Consultations between the Parties on the application of the provisional emergency measure shall be initiated immediately after the provisional emergency measure is taken.

(c) The duration of the provisional emergency measure set out in sub-paragraph (a) of this paragraph shall not exceed 200 days. During this period, the pertinent requirements of paragraph 2 of this Article shall be met. The duration of the provisional emergency measure shall be counted as a part of the period referred to in sub-paragraph (d) of paragraph 3 of this Article.

- (d) Sub-paragraph (f) of paragraph 3 and paragraphs 6, 7 and 8 of this Article shall be applied mutatis mutandis to the provisional emergency measure set out in sub-paragraph (a) of this paragraph. The customs duty imposed as a result of the provisional emergency measure shall be refunded if the subsequent investigation referred to in paragraph 2 of this Article does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

10. The Parties shall review the provisions of this Article, if necessary, after 31 December 2017."

Article 5

Article 22 of the Agreement shall be amended by deleting sub-paragraphs (b) and (c) and replacing them with the following:

- "(b) the term "non-originating material" means a material whose country of origin, as determined under this Chapter, is not the same country as the country in which that material is used in production;
- (c) the term "production" means methods of obtaining goods including manufacturing, producing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing;
- (d) the terms "fungible originating goods of a Party" or "fungible originating materials of a Party" respectively mean originating goods or materials of a Party that are interchangeable for commercial purposes, whose properties are essentially identical; and

- (e) the term "Generally Accepted Accounting Principles" means the recognised consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures."

Article 6

Article 23 of the Agreement shall be amended as follows:

1. By deleting sub-paragraphs (f) and (g) of paragraph 1 and replacing them by the following:

"(f) goods of sea-fishing and other goods taken from the sea, outside the territorial sea of that Party, by vessels:

- (i) which are registered in that Party;
- (ii) which sail under the flag of that Party;
- (iii) which are owned to an extent of at least 51 per cent by nationals of either Party or both Parties, and/or by a juridical person^(Note) with its head office in the territory of either Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of either Party or both Parties, and of which at least 51 per cent of the equity interest is owned by nationals and/or juridical persons of either Party or both Parties; and
- (iv) of which at least 75 per cent of the total of the master, officers and crew are nationals of either Party or both Parties or non-Parties which are member countries of the Association of Southeast Asian Nations;

Note: For the purposes of sub-paragraphs (f) and (g), 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 or association.

- (g) goods obtained or produced on board factory ships, outside the territorial sea of that Party:
 - (i) which are registered in that Party;
 - (ii) which sail under the flag of that Party;
 - (iii) which are owned to an extent of at least 51 per cent by nationals of either Party or both Parties, and/or by a juridical person with its head office in the territory of either Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of either Party or both Parties, and of which at least 51 per cent of the equity interest is owned by nationals and/or juridical persons of either Party or both Parties; and
 - (iv) of which at least 75 per cent of the total of the master, officers and crew are nationals of either Party or both Parties or non-Parties which are member countries of the Association of Southeast Asian Nations,
- provided that these goods are manufactured from goods referred to in sub-paragraph (f) above";

2. By deleting the expression "For the purpose of sub-paragraph (c) of paragraph 4" in paragraph 5 and replacing it by the expression "For the purpose of sub-paragraph (c) of paragraph 5";

3. By deleting the expression "not less than 60 per cent" in sub-paragraph (b)(i) of paragraph 5 and replacing it by the expression "not less than 40 per cent";

4. By deleting paragraph 6 and replacing it by the following:

"6. The value of a material used in the production of a good in a Party shall be the CIF value and shall be determined in accordance with the Agreement on Customs Valuation^(Note), or, if this is not known and cannot be ascertained, the first ascertainable price paid for the material in the Party.

Note: The Agreement on Customs Valuation shall apply mutatis mutandis to domestic transactions or to the cases where there is no transaction of the material."; and

5. By renumbering paragraphs 2 through 7 as paragraphs 3 through 8 respectively, and inserting the following new paragraph immediately after paragraph 1:

"2. For the purposes of this Agreement, goods which are produced entirely in the territory of a Party exclusively from originating materials of the Party shall be treated as originating goods of that Party."

Article 7

Article 25 of the Agreement shall be amended by deleting the expression "each chapter of".

Article 8

Paragraph 1 of Article 26 of the Agreement shall be amended by deleting the expression "paragraph 2 of Article 23" and replacing it by the expression "paragraph 3 of Article 23".

Article 9

The following new article shall be inserted immediately after Article 28 of the Agreement:

"Article 28A
Fungible Goods and Materials

1. For the purposes of determining whether a good is an originating good of a Party, where fungible originating materials of the Party and fungible non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the territory of the Party.

2. Where fungible originating goods of a Party and fungible non-originating goods are commingled in an inventory and, prior to exportation, do not undergo any production process or any operation in the territory of the Party where they were commingled other than unloading, reloading or operations to preserve them in good condition, the origin of the goods may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the territory of the Party."

Article 10

Article 33 of the Agreement shall be deleted and replaced by the following:

"Article 33
Assistance for Checking of Certificate of Origin

1. The importing Party may, within three years after the importation of the good, request the exporting Party to assist to check the authenticity or accuracy of the certificate of origin. Where such request has been made, the exporting Party shall endeavour to take necessary measures to provide the assistance requested.

2. Paragraph 1 of Article 14 shall not be construed so as to oblige the importing Party to accord the preferential tariff treatment to a good whose qualification as an originating good cannot be determined by the importing Party even after checking the authenticity or accuracy of the certificate of origin with the assistance provided by the exporting Party in accordance with paragraph 1 of this Article."

Article 11

The following new article shall be inserted immediately after Article 33 of the Agreement:

"Article 33A
Miscellaneous

1. Communications between the importing Party and the exporting Party shall be conducted in the English language.
2. For the application of the relevant product-specific rules set out in Annex II A and the determination of origin, any applicable valuation method under the Generally Accepted Accounting Principles in the territory of the exporting Party shall be applied."

Article 12

The following new articles shall be inserted immediately after Article 35 of the Agreement:

"Article 35A
Definitions under Chapter 4

For the purposes of this Chapter:

- (a) the term "customs administration" means, in Japan, the Ministry of Finance, and, in the Republic of Singapore (hereinafter referred to in this Agreement as "Singapore"), the Singapore Customs of the Ministry of Finance; and
- (b) the term "customs laws" means such laws and regulations administered and enforced by the customs administration 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.

Article 35B
Transparency

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is kept up to date and readily available to any interested person.

2. When information that has been made available must be revised due to changes in its customs laws, each Party shall make the revised information readily available to enable interested persons to take account of them.

3. At the request of any interested person of the Parties, each Party shall provide, as quickly and accurately as possible, information relating to the specific customs matters raised by the interested person and pertaining to its customs laws. Each Party shall supply not only the information specifically requested but also any other pertinent information relating to customs matters which it considers the interested person should be made aware of."

Article 13

Article 56 of the Agreement shall be amended by deleting the expression "the Republic of Singapore (hereinafter referred to in this Agreement as "Singapore")" and replacing it by the expression "Singapore".

Article 14

Annex I to the Agreement shall be renumbered as Annex I A to the Agreement, and Annex I B set out in Annex 1 to this Protocol shall be inserted immediately after Annex I A to the Agreement.

Article 15

1. The schedule of specific commitments set out in Annex 2 to this Protocol shall replace the corresponding sectors 7.A. and 7.B. of Section II of Japan's Schedule of specific commitments in Annex IV C of the Agreement.

2. The schedule of specific commitments set out in Annex 3 to this Protocol shall replace the corresponding subsector 7.B.(a) of Section II of Singapore's Schedule of specific commitments in Annex IV C of the Agreement.

3. The schedule of specific commitments set out in Annex 4 to this Protocol shall replace the corresponding subsector 7.B.(i) of Section II of Singapore's Schedule of specific commitments in Annex IV C of the Agreement.

Article 16

1. This Protocol shall be approved by the Parties in accordance with their respective legal procedures, and shall enter into force on the 5th day after the date on which the Parties exchange diplomatic notes indicating such approval.

2. This Protocol shall remain in force as long as the Agreement remains in force.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Tokyo this 19th day of March of the year 2007 in duplicate in the Japanese and English languages, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For Japan:

For the Republic of Singapore: