

# THE JOINT STUDY GROUP REPORT ON JAPAN-MONGOLIA ECONOMIC PARTNERSHIP AGREEMENT (EPA)

## I. BACKGROUND

- In February 2007, Japanese Prime Minister Shinzo Abe and Mongolian President Nambar Enkhbayar signed “Japan-Mongolia Basic Action Plan toward Next 10 years”. In the Plan, Japan took note of Mongolia’s interest in concluding Free Trade Agreements/Economic Partnership Agreements with foreign countries and committed to providing possible support such as offering relevant information and advice in Mongolia’s preparation for that matter.
- In April 2009, Mongolian Minister for Foreign Affairs and Trade Sukhbaatar Batbold proposed Japanese Minister of Economy, Trade and Industry Toshihiro Nikai to conclude an Economic Partnership Agreement between Mongolia and Japan (hereinafter referred to as “the EPA”) and asked for Japanese experts to be sent to Mongolia. Minister Nikai, in response to Minister Batbold, sent the experts promptly.
- In July 2009, Mongolian Prime Minister Sanjaa Bayar proposed Japanese Prime Minister Taro Aso to conclude the EPA.
- In December 2009, Mongolian Minister for Foreign Affairs and Trade Gombojav Zandanshatar met Japanese Foreign Minister Katsuya Okada and Minister of Economy, Trade and Industry Masayuki Naoshima, and they decided to hold official talks between the governments towards the launching of the Joint Study Group.
- On November 9<sup>th</sup> 2010, the Japanese Cabinet made a decision on the “Basic Policy on Comprehensive Economic Partnerships”, stating that Japan will work towards commencement of “EPA negotiations with Mongolia, with which it is now undertaking a joint study, as soon as possible.”

- The first meeting of the Joint Study Group was held in Ulaanbaatar in June 2010, the second in Tokyo in November 2010 and the third in Ulaanbaatar in March 2011.

## II. OVERVIEW

- Japan and Mongolia have been enjoying close economic relation in various areas such as trade and investment. More specifically, Japan's export to Mongolia has been recovering from a recession after "the Lehman Shock" from 10 billion yen in 2009 to 14 billion yen in 2010 while Japan's import from Mongolia has been remarkably increasing from 678 million yen in 2009 to 2 billion yen in 2010, according to the statistics of the Japanese Finance Ministry. The foreign direct investment from Japan to Mongolia has also shown a steady growth from 2.5 million US dollars in 2007 to 7.1 million US dollars in 2010, according to the statistics of the Mongolian Foreign Investment and Foreign Trade Agency.
- It is getting increasingly important for Mongolia and Japan to enhance a framework for energy and mineral resources including rare metal, rare earth and coal.
- In order to further increase trade and investment between the two countries and develop the bilateral economic relationship, it has been recognized that it is important to pursue tariff elimination, liberalization of trade and investment and improvement of business environment.
- The conclusion of EPA between Japan and Mongolia, which will be the first FTA for Mongolia, will not only contribute to strengthening political and economic ties between the two countries but also become one of the key steps in building Japan-Mongolia "Strategic Partnership" emphasized in the Japan-Mongolia Joint Statement signed by Japanese Prime Minister

Naoto Kan and Mongolian President Tsahia Elbegdorj in  
November 2010.

### III. SUMMARY OF DISCUSSIONS

#### 1. Trade in Goods: tariffs, non-tariffs measures and rule of origin (including MRA)

##### (1) General Principle

###### (a) Substance:

- Both sides shared the view to keep that the EPA needs to be consistent with Article XXIV of the GATT and more than 90 % of all the trade value needs to be liberalized for this purpose.
- Both sides noted the necessity to include trade remedies (safeguard measures) in the EPA. The Mongolian side has been processing a draft Law on trade remedies.
- The Mongolian side considers “Enabling Clause” for developing countries decided by the CONTRACTING PARTIES of GATT in 1979 as a legal basis for the EPA. The Japanese side pointed out that in practice FTAs/EPAs between a developed country and a developing country followed the Article XXIV of the GATT and therefore “Enabling Clause” should not be applied to the EPA between Japan and Mongolia.

###### (b) Proceedings:

- Both sides confirmed to exchange trade statistics and tariff schedules before market access negotiations on Trade in Goods, which will be conducted on a line-by-line basis. The Japanese side pointed out that the trade data should be of the year 2010 version and the tariff data of the year 2011 version.

##### (2) Industrial goods

(a) The Japanese side expressed its strong interest in the tariff elimination on industrial goods such as motor vehicles, industrial machinery and ships in particular.

Business representatives of Mongolia maintained that possible harmful effects on nature and environment should be duly considered in negotiating for tariff elimination on motor vehicles.

(b) The Mongolian side expressed its interest in transferring technology, scientific knowledge from Japan in promoting new sectors of industry and developing human resources. Furthermore, the Mongolian side expressed its interest in importing the high tech, software, information and nanotechnology, and equipments and machinery for the usage in small and medium enterprises, mining, quality testing laboratories, necessary for in- depth procession of raw minerals and products of animal origin

The Japanese side considers that exploring a specific cooperation may need to be discussed in the framework of Cooperation.

(c) The Mongolian side requested the elimination of customs tariffs imposed on textile and textile articles (HS 51, 57, 61, 62, 63 and so on).

(d) The Mongolian side expressed its interest in further enhancing the cooperation with Japan in the investment, production and export sectors, car parts and accessories, computer components and accessories, processed mining products.

The Japanese side considers that exploring a specific cooperation may need to be discussed in the framework of Cooperation.

(3) Agriculture, forestry and fisheries

(a) The Japanese side explained that it would promote EPAs/FTAs, while ensuring food safety, stable food supply, food self-sufficiency ratio and promotion of domestic agriculture and its community.

The Japanese side also stated the sensitive products such as beef and dairy products should be treated carefully in a possible Japan-Mongolia EPA in order not to affect domestic agriculture negatively.

(b) The representative from academic sector on agricultural issues emphasized that both sides should endeavor to reach a positive and constructive agreement, considering the mutual understanding that both sides have sensitive sectors.

(c) The representative from the Japanese agricultural sector insisted that sufficient consideration should be given to the beef cattle and dairy management which are in serious situation due to the rise of domestic feed price and weak performance of end product, and the livestock industry in Japan accounts for greater portion in the agriculture and therefore has great impact on the regional economy and employment.

(d) The Mongolian side noted the importance of the following points:

To increase the production of ecologically clean goods,

To promote the technical co-operation in strengthening and capacity building of quarantine laboratories on raw materials and products of animal and plant origin;

To cooperate in protection of endangered river and lake fish species in their preservance and breeding, and in disseminating the experience of Japan in preserving and restoring rivers, lakes and water basins areas; and

To develop cooperation in the area of marine utilization.

(e) The Mongolian side requested the elimination of customs tariffs imposed on vegetable oils, seabuckthorn oil, seabuckthorn extract, pet food, hot-steam processed meat products, animal and plant originated food, health and cosmetic products and construction materials.

#### (4) Rules of Origin

(a) Rules of Origin (ROO) are criteria to determine the country of origin of a certain product. ROO in the EPA should allow the importers of the goods of Japanese and Mongolian origin to benefit from the preferential tariff treatment of the EPA.

(b) There are three types of basic approaches of ROOs, namely wholly obtained rules, change in tariff classification (CTC) rules, and value-added (VA) rules. CTC rules and VA rules are basic approaches to use in conferring origin to a certain good. For application to most of the industrial goods, the option to choose between CTC and VA rules should be given for users ("Co-equal Rule").

- Under CTC rules, a certain product which falls under a HS classification different from the HS classification applicable to any of the materials used is considered to be an originating good because the change in tariff classification represents that the used materials have undergone sufficient manufacturing or processing. Appropriate digits of the HS classification code should be considered and determined in the future.
- The value-added rule determines the applicability of the EPA preferential tariff treatment to a good, by determining its country of origin through reference to the value-added to goods in its manufacturing or processing undergone in the

country. Appropriate percentage of the value added requirements should be determined in the negotiation.

For CTC and VA rules to be applied, substantial change from materials to final products is required for obtaining originating status. For example, in the case of textile and apparel goods, Japanese EPAs usually adopt a “fabric-forward” rule (Fabric must originate within a Party.), which is based on CTC with conditions to require specific production process.

Wholly obtained rules would be more appropriate for mineral products or unprocessed agricultural products. These rules should be based on the industrial needs and considered with the market access.

(c) The representative from the Japanese business sector stressed that a system such as the one wherein a declaration of origin can be completed by an approved exporter should be discussed in the EPA negotiations.

(d) Both sides shared the following points as important guidelines in deciding ROO and proof of origin for the EPA:

- To prevent circumvention of goods from third countries;
- Not to create unnecessary hindrance to trade;
- To develop and apply in impartiality, neutrality and consistency and with due transparency, clarity and predictability; and
- Rules easy to understand and use.

## 2. Energy and Mineral Resources

(1) Both sides expressed interest in developing a mechanism for stable supply and improvement of business climate in the areas of energy and mineral resources with a view to having transparent and consistent rules / regulations in order to promote investment in particular.

Both sides have common interest in establishing a framework for investment environment in order to address and discuss business issues.

(2) The Japanese side requested the improvement on the following issues that obstruct private sector investment

- In particular, the Japanese side asked for improvement of legal framework on profit sharing under the Law of Mineral and Natural Resources in order to encourage investment by Japanese companies. (In the strategic mining deposit, the profit sharing ratio for the Mongolian Government is up to 50% for a project surveyed with the Government's budget and 34% for a project surveyed without the Mongolian Government's budget.)
- The Japanese side also asked for improvement of legal framework on profit sharing under the Law of Nuclear Energy in order to encourage investment by Japanese companies. (The profit sharing ratio for the Mongolian Government is no less than 51% for a project surveyed with the Government's budget and no less than 34% for a project surveyed without the Mongolian Government's budget.) The Japanese side urged the Mongolian side that Japanese companies should be exempted from the provision stipulating that the Mongolian Government shall acquire the stock of joint venture companies without compensation.



- The representative from the Japanese academic sector on trade issues expressed that export duties imposed on mineral products should also be eliminated in the EPA.
- The representative from the Japanese business sector pointed out that there were some cases in which foreign companies are negatively affected due to the sudden amendment of laws in Mongolia without advance notice. In this regard, the Japanese side requested exchange of information and views prior to amending the Laws of Natural Resources and Nuclear Energy, and other relevant regulations. The Japanese side also expressed its desire to be informed immediately after such laws and regulations are amended.
- The representative from the Japanese business sector also requested that the administrative procedure in Mongolia be simpler, fairer and more transparent.

The Mongolian side expressed the need for future discussions and clarification on the above –mentioned areas.

(3) The representative from the Japanese business sector also asked the Mongolian side to understand that overcoming these problems would deepen, enhance and strengthen the relationship between the two countries.

On this point, the representative from the Japanese business sector noted that the EPA would be proved useful if the private sector were to join the framework of consultations on the improvement of the business environment.

(4) The Mongolian side noted the importance to cooperate in the following areas for the sake of cooperation enhancement in the mineral production sectors:

- Promotion of processing industry of raw minerals;
- Close cooperation with the Russian Federation and the Peoples Republic of China on creation of transit transport crossing points and reduction of transit transport tariffs;
- Improvement of domestic road and transportation carrying capacity;
- Introduction of environmentally sound production technology and recovering of nature;
- Peaceful use of nuclear energy (technology transfer and capacity building).

### 3. Investment

(1) In order to ensure sustainable economic development and investment promotion, Investment Chapter of the EPA should be of high level in quality. From that standpoint, both sides confirmed the importance of the following elements:

- National Treatment and Most-Favored-Nation(MFN) Treatment at the establishment stage;
- Prohibition of performance requirements above the level of the WTO/TRIMs Agreement;
- Negative list approach;
- “Umbrella Clause”; and
- Exchange of information and views (ex. in relevant sub-committees).

(2) The Mongolian side expressed the following priority directions of cooperation in investment with Japan:

- Science and technology;
- Infrastructure;
- Agriculture; and

- Tourism.

#### 4. Trade in Services

(1) Both sides noted the importance of the following elements:

- Consistency with Article V of the GATS;
- Sectors of interest of both countries;
- MFN, Market Access and National Treatment;
- Negative list approach.

(2) The Japanese side emphasized in particular the importance of adopting the negative list approach and MFN obligation, so as to keep evolving the benefits of the agreement in an effective and permanent manner.

The Japanese side expressed its interest in such sectors as computer-related service, telecommunication service, audio and visual service, distribution service, rental and leasing service, manufacturing-related service, maintenance/repair service and pipeline transport service.

With regard to the telecommunications services, the Japanese side affirmed that not only the liberalization itself, but also to ensure better competition policy is important, for which it is necessary to seek ways of making additional rules in forms of telecommunications reference paper or a chapter of telecommunications services.

(3) The Mongolian side expressed its interest in reciprocally opening the following sectors of both sides:

- business service;

- communication service;
- construction and related engineering service;
- distribution service;
- financial service;
- tourism and travel-related service; and
- outsourcing

## 5. Customs Procedures

(1) Both sides pointed out that, in order to promote trade facilitation, customs procedures need to be simplified, transparent, predictable and uniform. In addition, both sides emphasized the importance of cooperation between customs authorities for the effective border enforcement.

(2) Both sides shared their understanding on the importance of the following elements:

- Ensuring transparency of customs-related laws and regulations;
- Simplification and harmonization of the customs procedures; and
- Cooperation and exchange of information, while cooperation and exchange of information should be compatible with the existing national legislation in both countries.

(3) The Mongolian side noted the importance of creating effective mechanism against illicit trafficking of goods.

## 6. Intellectual Property

(1) Both sides recognized the importance of protection of intellectual property (IP) rights and emphasized the following points in particular:

- Improvement of IP rights protection system;
- Endeavor to accede to and compliance with international agreements relating to IP;
- Ensuring transparent and streamlined administrative procedures concerning IP; and
- Promotion of public awareness concerning IP rights protection.

(2) The Mongolian side noted the importance of the following points:

- To ensure that the benefits of intellectual property regimes are equitably shared between the owners and users of technology;
- To develop an intellectual property rights protection regime that encourages innovation and technological development in a manner that is also conducive to meet public and social policy objectives and transfer of technology to Mongolia;
- To develop mechanisms that provide for the disclosure of sources of traditional knowledge and genetic resources used in inventions;
- To develop mechanisms that provide for the protection of traditional knowledge, including expressions of folklore;
- To develop mechanisms that prevent from biopiracy; and
- To ensure that intellectual property rights protection does not prevent from access to social services.

The Japanese side has different views on the above-mentioned issues. The Japanese side expressed the need for further discussions and clarifications on these issues.

## 7. Competition Policy

(1) Both sides recognize the importance of competition policy in order to prevent anti-competitive activities from damaging the benefit of trade and investment liberalization.

(2) The Mongolian side noted the importance of the following points:

- Exchange of information;
- Capacity building; and
- Supporting corporate governance.

## 8. Dispute Avoidance and Resolution

Both sides recognize the importance of Dispute Settlement procedures. In this regard, the Japanese side explained dispute settlement procedures of the existing EPAs containing arbitration procedures.

## 9. Transparency

Both sides recognize the importance of transparency. In this context, the Japanese side explained its elements of the existing EPAs, such as publication and notification of relevant laws and regulations.

## 10. Improvement of Business Environment

(1) Both sides expressed their interest in establishing a sub-committee on improvement of business environment, in order to develop business relation smoothly between the two countries. Both sides shared the view that the sub-committee may invite relevant entities other than the government agencies with necessary expertise related to issues to be discussed.

(2) The Mongolian side proposed that the both sides cooperate in the following directions:

- Trade facilitation; and
- Reducing excessively stringent regulations and procedures

## 11. Government Procurement

(1) Both sides recognize the importance of liberalization of government procurement. In this respect, the Japanese side stressed the importance of transparency in government procurement procedures and non-discriminatory market access on the basis of National Treatment.

(2) The Mongolian side underlined that Mongolia is not yet a signatory to the Government Procurement Agreement of WTO.

## 12. Movement of Natural Persons

(1) Both sides recognize the importance of facilitating movement of business persons.

(2) The Japanese side explained its basic policy for the entry of foreign workers that Japan accepts human resources engaging in services which require advanced knowledge/skills and does not accept so-called unskilled workers.

(3) The Mongolian side noted the importance of the mobility of Mongolian skilled workers or professional workers in the areas, such as IT, agriculture, science and nanotechnology, health and social care, including nurses and care- givers.

13. Cooperation (including agriculture, SME, financial services, e-commerce, environment, tourism, science and technology)

(1) Both sides are of the view to establish a framework for cooperation on various issues.

On this point, the Japanese side mentioned that various sectors of cooperation can be discussed in the framework of Cooperation Chapter and that is the case in the existing Japanese EPAs.

(2) Both sides also noted that what sectors are to be taken up in the EPA would be decided in the course of negotiations, emphasizing that the modality of the Cooperation of the EPA should not be unilateral but reciprocal and mutually beneficial in nature.

(3) The Mongolian side noted the importance of the following cooperation:

- Science and technology
- Mineral and energy processing sector
  - o Coal, ferrous and non-ferrous metals, rare earth metal processing technology
  - o Nuclear and other forms of energy ;
- Small and Medium-sized Enterprises
- Food, agriculture, crop farming
  - o Cooperation on SPS, TBT fields
  - o Marketing and certification of ecologically clean food products
  - o Production of value added agricultural products/wool processed construction heating materials/



- Cooperation on horticulture, livestock and crop farming
- Banking and financial sector
  - Improvement of governance and management of banking and financial institutions;
- Natural environment protection and recovering
  - After- mining rehabilitation
  - Coping with desertification ;
  - Air, soil,water pollution prevention and elimination
- Creating of human resources capacity and skill
  - Professional education and technical training including to dispatch high-tech and technological engineers from Japan to Mongolia
  - Maintaining the on-going JITCO scheme for Mongolia
  - Higher education connected with technology transfer;
- Infrastructure and Tourism
  - International and domestic road and transport network.
  - Industrial parks

The Japanese side expressed the need for further discussions and clarification on areas of the possible cooperation above.

#### IV. RECOMMENDATIONS OF THE JOINT STUDY GROUP

Based on the detailed discussions on each sector above and convinced that the EPA covering a broad range of areas will contribute to further development of close economic relationship between Japan and Mongolia and the complementarity of the two economies, the Joint Study Group for the EPA decided to recommend to the Leaders of both countries that the two countries

should launch negotiations on the Japan-Mongolia EPA immediately. The Joint Study Group believes that this report will prove a solid foundation for the negotiations of the EPA.

-END-