

AGREED MINUTES TO THE AGREEMENT
BETWEEN JAPAN AND THE REPUBLIC OF SINGAPORE
FOR A NEW-AGE ECONOMIC PARTNERSHIP

In connection with the Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership, signed at Singapore (hereinafter referred to as "the Agreement") today, the undersigned hereby wish to record the following understandings which they have reached in the course of negotiations for the Agreement:

It is confirmed that:

(1) with respect to matters relating to several Chapters, the term "regional and local governments and authorities" as used in the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "the WTO Agreement") and the term "local governments" as used in the Agreement are the same in the sense that the latter term encompasses all forms of decentralised government in their respective territories;

(2) with respect to Chapter 1 (General Provisions):

(a) paragraph 3 of Article 4 of the Agreement does not apply to Chapter 2;

(b) with reference to Article 4 of the Agreement, Japan and the Republic of Singapore (hereinafter referred to as "the Parties") will, through the Supervisory Committee established pursuant to Article 8 of the Agreement, meet expeditiously to review paragraph 3 of Article 4 if the World Trade Organization (hereinafter referred to as "the WTO") adopts any findings or recommendations that affect the understanding of that paragraph, such as those on the treatment or classification of digital content;

(c) with reference to Article 5 of the Agreement, to the extent that the provisions of the Agreement are applicable to taxation measures pursuant to that Article, Chapter 21 shall apply to such taxation measures;

(d) the separate agreement referred to in Article 7 of the Agreement is interpreted in accordance with the provisions of the Agreement, including Chapter 21; and

(e) if a Party wishes to raise any issue pertaining to the movement of manpower related to an investment, that Party may request that the Supervisory Committee established pursuant to Article 8 of the Agreement recommend, as it considers appropriate, the Parties to discuss such issues;

(3) with respect to Chapter 2 (Trade in Goods):

(a) with reference to Article 14 of the Agreement, the terms "customs duties" and "other duties or charges" do not include excise duties, sales taxes and any other internal taxes;

(b) paragraph (a) of Article 17 of the Agreement requires the Parties, where non-tariff measures inconsistent with their obligations under the WTO Agreement exist, to eliminate, or amend as the case may be, such measures to ensure full compliance with such obligations; and

(c) with reference to paragraph 1 of Article 18 of the Agreement:

- (i) a determination that an originating good is being imported as a result of the reduction or elimination of a customs duty provided for in Article 14 of the Agreement shall be made only if such reduction or elimination is a cause which contributes significantly to the increase in imports;
- (ii) the passage of a period of time between the commencement or termination of such reduction or elimination and the increase in imports shall not by itself preclude the determination referred to in sub-paragraph (i) above; and
- (iii) if the increase in imports is demonstrably unrelated to such reduction or elimination, the determination referred to in sub-paragraph (i) shall not be made;

(4) with respect to Chapter 3 (Rules of Origin):

(a) with reference to sub-paragraphs (f) through (h) of paragraph 1 of Article 26 of the Agreement, illustrative examples of the phrases used are as follows:

<u>Sub-paragraph</u>	<u>Phrase</u>	<u>Illustrative Example</u>
(f)	"simple cutting"	the cutting of fabrics to size or shape
(g)	"simple mixing"	the mixture of pebbles and gravel
(h)	"simple assembly of parts to constitute a complete product"	the assembly of furniture by screwdriver

(b) with reference to paragraph 1 of Article 32 of the Agreement, the phrase "reasonable grounds to deny the issuance" relates to cases of tariff classification that have been or are to be referred for consideration by the Harmonized System Committee of the Customs Co-operation Council;

(5) with respect to Chapter 7 (Trade in Services):

(a) the substantive business operations criteria provided for in (i) of sub-paragraph (m) of paragraph 6 of Article 58 and Article 62 of the Agreement apply to:

- (i) juridical persons of the other Party supplying the service through the cross-border or consumption abroad modes as defined in (i) or (ii) of sub-paragraph (o) of paragraph 6 of Article 58;
- (ii) juridical persons who own or control a juridical person of the other Party which supplies the service through the commercial presence mode as defined in (iii) of sub-paragraph (o) of paragraph 6 of Article 58; and

- (iii) service suppliers other than those of the Parties, that are juridical persons constituted under the law of either Party, and who supply a service through commercial presence, as provided for in Article 62;

(b) where the substantive business operations criteria provided for in (i) of sub-paragraph (m) of paragraph 6 of Article 58 and Article 62 of the Agreement apply, the juridical person is not regarded as being engaged in substantive business operations in the territory of either Party if:

- (i) it does not undertake real and continuous business activities in the territory of either Party; or
- (ii) in the case of juridical persons provided for in (i) and (ii) of sub-paragraph (m) of paragraph 6 of Article 58, it only establishes, in the territory of either Party, an office which does not engage in activities related to the supply of a service in question; and

(c) in the case of the Republic of Singapore (hereinafter referred to as "Singapore"):

- (i) the term "measures by a Party" defined in sub-paragraph (p) of paragraph 6 of Article 58 does not include the activities of juridical persons^(Note) in whose daily operational decisions the government is not directly involved, unless such juridical persons are non-governmental bodies that exercise powers delegated by the government. This applies even if the government owns equity interest thereof, names directors thereto, or provides funding thereto; and

Note: "The activities of juridical persons" include the disposal (including divestment) of equity interest of juridical persons.

- (ii) such juridical persons (except for those that are not service suppliers) and their services are accorded the same treatment that other juridical persons (except for those that are not service suppliers) and their services are accorded pursuant to Chapter 7;

(6) with respect to Chapter 8 (Investment):

(a) market access measures, as provided for in Chapter 7, which are applied on a national treatment basis, are deemed to be not inconsistent with Chapter 8;

(b) with reference to sub-paragraph (h) of Article 72 of the Agreement, an enterprise of a Party is not regarded as being engaged in substantive business operations in the territory of that Party if it does not undertake real and continuous business activities in the territory of that Party;

(c) with reference to paragraph 1 of Article 75 of the Agreement:

(i) if one Party takes measures intended to restrict the domestic availability of goods and services to consumers within its territory, such measures are deemed not inconsistent with the obligation under paragraph 1 of Article 75 provided that such measures are not intended to afford protection, to accord preference to domestic providers of that Party or to adjust the balance of payments; and

(ii) all conditions pertaining to licensing which are based on voluntary commitments in writing by an investor are deemed not to be prohibited performance requirements under paragraph 1 of Article 75;

(d) with reference to paragraph 2 of Article 77 of the Agreement:

(i) the purposes specified in section 5(1)(b) and (c) of Singapore's Land Acquisition Act (Cap. 152) as in force on 13th January 2002, are examples of "public purpose" as provided for in paragraph 2 of Article 77; and

(ii) the requirement of "public purpose" is deemed to be satisfied, if the measures are taken for the public use, the public welfare or the public benefit, or in the public interest, including, in the case of Singapore, the purposes provided for in the said Land Acquisition Act (Cap. 152);

(e) with reference to paragraph 3 of Article 77 of the Agreement:

(i) the phrase "the laws of the expropriating Party concerning the expropriation", in the case of Singapore, refers to the Land Acquisition Act (Cap. 152), as in force on 13th January 2002; and

(ii) if this Act is amended so as to change the amount of compensation which is payable for expropriated land, such amendments:

(A) shall be applicable for the purpose of paragraph 3 of Article 77 should the amendments place investors of Japan in a more advantageous situation than if the amendments had not been effected; and

(B) shall not be applicable for the purpose of paragraph 3 of Article 77 in any other case;

(f) with reference to paragraph 4 of Article 77 of the Agreement, in the case of Singapore, where land is subjected to compulsory acquisition, the time of expropriation for the purpose of computing the interest that would be payable shall be the date of physical possession of the land;

(g) with reference to Article 78 of the Agreement, in the case of Singapore, the agency of the Government of Singapore responsible for leasing industrial land stipulated in Article 78 is, at the time of entry into force of the Agreement, the Jurong Town Corporation, for such time as it continues to be a statutory board created by the Jurong Town Corporation Act;

(h) with reference to Article 80 of the Agreement, the laws relating to criminal matters referred to in sub-paragraph (c) of paragraph 3 of Article 80 include laws relating to the forfeiture of proceeds of crime;

(i) with reference to Article 82 of the Agreement, the administrative settlement referred to in paragraph 3 of Article 82 means, in the case of Japan, the administrative procedures through which an independent institute or Commission renders a decision, equivalent to a judicial decision, which is subject to appeal to a judicial body, such as hearing procedures before the Fair Trade Commission and the Marine Accidents Inquiry Agency;

(j) with reference to Articles 77 and 87 of the Agreement, in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant:

- (i) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and of itself constitute expropriation;
- (ii) taxation measures which are consistent with internationally recognised tax policies, principles and practices do not constitute expropriation. In particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory; and
- (iii) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are less likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force, and information about the measure was made public or otherwise made publicly available; and

(k) in the case of Singapore:

(i) the term "measures adopted or maintained by a Party" referred to in paragraph 1 of Article 71 does not include the activities of enterprises^(Note) in whose daily operational decisions the government is not directly involved unless such enterprises are non-governmental bodies that exercise powers delegated by the government. This applies even if the government owns equity interest thereof, names directors thereto, or provides funding thereto; and

Note: "The activities of enterprises" include the disposal (including divestment) of equity interest of enterprises.

(ii) such enterprises (except for those that are not investors) and their investments are accorded the same treatment that other enterprises (except for those that are not investors) and their investments are accorded pursuant to Chapter 8;

(7) with respect to Chapter 9 (Movement of Natural Persons):

(a) "nationality" referred to in paragraph 2 of Article 90 of the Agreement only applies to Japan and "citizenship" referred to in the same paragraph only applies to Singapore; and

(b) with reference to Article 93 of the Agreement, when a Party recognises professional qualifications granted in the territory of the other Party, the mere fact of such recognition does not mean the automatic liberalisation of immigration measures by the recognising Party. Nothing in the preceding sentence shall be understood to prejudice the application of paragraph 2 of Article 95 of the Agreement; and

(8) with respect to Annexes to the Agreement:

(a) with reference to paragraph 3 of IV of Annex IV B to the Agreement, Japan is not obliged to require a major supplier to allow other suppliers to locate their equipment or to install their cables and lines, which are essential for interconnection, in areas outside the buildings and building sites of the major supplier;

(b) with reference to Annex VI to the Agreement, the following part of paragraph 34 of the Guidelines for the Scheduling of Specific Commitments (WTO Document S/L/92, dated 28 March 2001) does not apply to the specific commitments undertaken by Japan in B of Part A of the specific commitments of Japan:

"With respect to the fourth mode of supply, many participants have chosen to inscribe their bound commitments in the form of undertakings rather than in the form of market access limitations. In such cases the bound measures affecting the entry and temporary stay of natural persons are explicitly stated. Thus, in the absence of a reference to a specific duration for the temporary stay of a foreign service supplier, it could be understood that no binding is being undertaken in respect of the duration of that stay. ...Commitments should include the duration of temporary stay of natural persons for the purpose of supplying a service"; and

(c) with reference to Annex VII B to the Agreement, the entities of Japan which have been privatised, as provided for in Article 101, are as follows:

Japan Tobacco Inc.

Hokkaido Railway Company

East Japan Railway Company

Central Japan Railway Company

West Japan Railway Company

Shikoku Railway Company

Kyushu Railway Company

Japan Freight Railway Company

Nippon Telegraph and Telephone Co. ^(Note)

Note: Nippon Telegraph and Telephone Co. refers to:

Nippon Telegraph and Telephone Co.

Nippon Telegraph and Telephone East Co.

Nippon Telegraph and Telephone West Co.

NTT Communications Co.

DONE at Singapore on this 13th day of January, 2002, 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 the Government of
Japan:

For the Government of
Singapore: