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Jeremy Gatdula et al.

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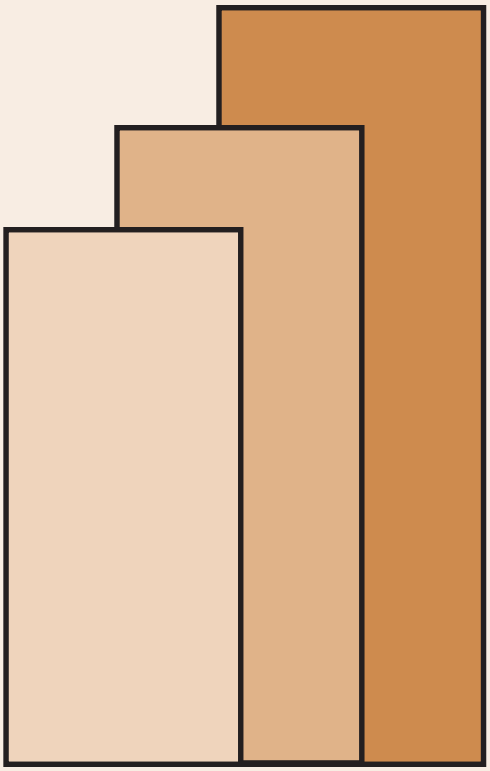

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ABSTRACT

A general review of the Philippine-Japan Economic Partnership Agreement (PJEPA or the Agreement) was originally scheduled in December 2011. Accordingly, it was deemed that an assessment on how the Agreement affected the Philippine economy after three years of implementation would be helpful not only for the immediate purposes of the review but also for future negotiating processes. Part of the assessment would be to review Japanese bilateral agreements with other Asian countries to compare the concessions that each country got in relation to that provided for in the Agreement. This is for the Philippines to assess whether to propose revisions to the Agreement in cases where conceivably better concessions were obtained by the other countries. The main objective of this paper is to compare the provisions of the free trade agreements (FTAs) on trade in goods, trade in services, investment, and sanitary and phytosanitary measures that Japan has with other select Asian countries. Those countries are Brunei, India, Indonesia, Malaysia, Singapore, Thailand, and Viet Nam. The results of the comparison will be further compared with the provisions of the PJEPA. The output of the project is a comparative study, including data on the differences and similarities of the provisions of these FTAs, taking into consideration the economic and political environment as rationale for these variations.

Keywords: Philippines-Japan Economic Partnership Agreement (PJEPA), Japan Economic Partnership Agreements (JEPAs), bilateral trade agreements, free trade agreements, trade policy, comparative textual difference, trade negotiations, trade institutions

Comparative Study on the Different Free Trade Agreements Entered into by Japan with other Asian countries:

A Look into Provisions of Trade in Goods, Trade in Services, Investments, Sanitary and Phytosanitary Measures

Jeremy Gatdula
(with George Habacon, John Vincent Pimentel, Mary Jaselle Din)
June 2012

EXECUTIVE SUMMARY

As the general review of the Philippine-Japan Economic Partnership Agreement (PJEPA) was scheduled to commence on December 2011, an assessment on how the agreement has affected the Philippine economy after three years of the implementation is helpful. Part of the assessment is the review of Japan bilateral agreements with other Asian countries to compare the concessions each country got for the Philippines to level up in cases where better concessions were obtained by the other countries. The main objective of this paper is to compare the provisions of the free trade agreements (FTAs) on trade in goods, trade in services, investment, and sanitary and phytosanitary measures that Japan has with other Asian countries, particularly with Brunei, India, Indonesia, Malaysia, Singapore, Thailand and Viet Nam. The results of the comparison will be further compared with the provisions of the PJEPA. The paper aims to present a comparative study, including data on the differences and similarities of the provisions of these FTAs, taking into consideration the economic and political environment as rationale for these variations.

The trade-in-goods chapter of PJEPA is one of the most comprehensive, containing most of the provisions found in other JEPAs. Having said that, PJEPA still doesn't contain provisions on areas such as: 1) Anti-Dumping Investigation, 2) Miscellaneous, and 3) Relation to the Agreement on Comprehensive Economic Partnership among Japan and the Members States of Association of Southeast Asian Nations (AJCEPA). Some provisions may not be necessary to be explicitly added since they are assumed to operate in the context of their other commitments such as the third distinct provision. On the other hand, the urgency of including the special provision on Anti-Dumping in PJEPA is dependent on the current conditions or severity of traded goods being dumped (allegedly and if so) into the Philippines. If dumping cases are indeed prevalent in the Philippines, then such conditions warrant the inclusion of the special provision on anti-dumping. The miscellaneous provision may be an accessory provision that can provide for contingencies in the trade situation between the Philippines and Japan.

All of the JEPAs appear to comply with WTO standards of bilateral Free Trade Agreements, as evidenced by their universal adherence to the international system of Classification and National Treatment of Goods being traded. Most importantly, all JEPAs contain crucial provisions on emergency measures. However, these provisions vary widely among JEPAs. These differences in emergency measure provisions hint at the policy inclinations of countries. Understandably, the more prudent parties are developing countries, as evidenced by the greater degree of specifications and conditionality inherent in their emergency measure provisions. Moreover, this prudence or willingness is seen in conspicuous provision or non-provision of prohibitions of Export Duties, Export Subsidies, and Non-Tariff measures. Logically, prohibiting export taxes signals the country's commitment (at least in principle) towards genuine trade liberalization by preventing conferring unfair advantage to domestic players, which these export duties, subsidies, and non-tariff measures apparently aim to favour. Although a clear, credible correlation between the textual differences and the actual output of trade remains to be weak and hence needs to be proven, certain observable trends in Trade in Goods suggest considerable differences among the countries.

With regard to the chapter on trade in services, agreements of Japan with Thailand and India included specifically an article on Domestic Regulation which commits countries to ensure that measures are administered in a reasonable, objective and impartial manner. The creation of tribunals, which are consistent with the legal system of each party, or procedures for review of and appropriate remedies for administrative decisions, is also mandated by the article. This article which is specific for trade in services ensures an open and fair competitive trading between the two countries. PJEPA also lacks an article on subsidies. The agreement with India is the only one which refers to subsidies under the chapter on trade in services. PJEPA only mentioned subsidies under the chapter on trade in goods. In the agreement with India, this section which commits each party to review the treatment of subsidies and can enter into consultations should these be found adversely affecting any Party. The providing Party can also request for information relating to the subsidy programme. The provisions in this chapter of PJEPA on the liberalization of services trade are generally similar with other agreements of Japan with other Asian countries. Minor textual differences can be found and articles not seen in PJEPA are included and mentioned in the previous chapters in the agreement such as in the case of General Principles, Modification of Schedule, Subsidies, Review of Commitments, Domestic Regulation, etc. A further study can be done to look at the differences of the concessions of the agreements on trade in services as specified in the Schedule of each agreement.

In the chapter on investments, one major distinct difference is the lack of an investment specific provision on the settlement of disputes in PJEPA, which is subject for further negotiations. All the other agreements have this section which defines investment dispute as a dispute between a Party and an investor of the other Party. The section provides the mechanism of solving investment disputes and actions that can be taken if the dispute cannot be settled through negotiations and consultation. Although PJEPA mentioned that this shall be negotiated further, there are still no mechanisms in place to perform such function. Other major differences which can be cited are the distinct articles in the agreement between Thailand and Japan.

Sanitary and Phytosanitary Measures (SPSMs), which are lacking in PJEPA, are highly significant regulatory measures for two main reasons. They are understandably relevant because they aim to protect citizens from daily food hazards. Their establishment assures the trading parties that the products are certified to comply with health, environmental, and safety standards. Hence, its proper management or implementation boosts trade in goods, especially the sensitive agricultural goods. As shown by the surveys, case studies, and computations of general equilibrium models, the non-establishment or lack of proper implementation of SPS results into significant losses of trade potential that ranges from 30% to almost 70%. Besides the obvious boosting effect to trade output, the adoption of SPS measures also enhances trade liberalization in multiple levels. It promulgates more open trading by facilitating increased market access and increases transparency, predictability, and fairness of trade practices by equalizing levels of standards. Lastly and most importantly, it safeguards environmental protection, public (including animal and plant) health and safety by ensuring quality control of goods being traded. However, the SPS Agreement, along with other modalities included in the WTO agreement, are potential sources of trade disputes given the scrupulous, complex nature of its details. Although the cases

presented have similar environmental, socio-cultural conditions, and political institutions, a study that substantially examines the effects of SPS measures between Philippines and Japan under PJEPA is still yet to be undertaken. For now, SPS measures seem to serve as trade boosting instruments, provided it is given importance and implemented properly.

The paper suggest three probable factors that might have affected these differences as supported by certain issues during the negotiations and the implementation of the agreement: lack of cooperation with the private sector, lack of centralization of trade functions, and the lack of coordination between the executive and legislative branches. Recommendations include a) having a centralized trade office which does not necessarily mean creating a new office but ensuring having the trade discussions centralized in one); b) closer coordination between legislative and executive branch, c) creation of a legal office dealing specifically on trade issues, and d) Continued education and develop a feedback mechanism from the private sector and academe.

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Annex

I. INTRODUCTION

A. Background of Philippine- Japan Economic Partnership Agreement

Entered into force in December 2008, the Philippines-Japan Economic Partnership Agreement (PJEPA) is one of Japan's bilateral free trade agreements with Asian countries and the first most comprehensive bilateral economic agreement entered by the Philippines. It covers trade in goods and services, investments, movement of natural persons, cooperation, among other measures. The PJEPA aims to facilitate and promote the free trans-border flow of goods, persons, services and capital between the Philippines and Japan, and strengthen the existing economic relations between the two countries. The basic agreement consists of (1) the basic agreement with 16 chapters (120 pages) and eight annexes (100 to 170 pages); and (2) the implementing agreement (33 pages), each providing specific provisions on various areas of trade and related aspects.

It is the Philippines' most comprehensive bilateral agreement to date since the Laurel-Langley agreement of 1954[1] and the Philippines-Japan Treaty of Amity, Commerce and Navigation of 1973. Billed as a "new age" free trade agreement, the Agreement was signed by President Gloria Macapagal-Arroyo and Japanese Prime Minister Junichiro Koizumi in Helsinki, Finland in 9 September 2006. Its implementation was expected to reap economic benefits for the country.

Japan's first FTA was with Singapore. Having virtually zero tariff in all its goods, except for a limited range of alcoholic beverages and no agriculture sector to worry about, Singapore was considered a safe FTA partner. That agreement was signed on January 2002 and put into effect on November of the same year. With the JSEPA successfully signed, Japan proceeded to explore FTA negotiations with other FTA partners including Mexico, Malaysia, Chile, and ASEAN. EPAs under negotiation or scheduled to be launched are with the Gulf Cooperation Council (GCC-Bahrain, Oman, Qatar, Saudi Arabia, UAE, Kuwait), Republic of Korea, Vietnam, India, Australia, and Switzerland. In terms of geographic coverage, Japan has become one of the most dynamic FTA leaders in the world.

Having shared strong economic ties with Japan for many decades, the Philippines had long been a sought for partner for a bilateral economic arrangement. For the Philippines, Japan is an important economic partner. It is the second largest trading partner of the Philippines, largest source of Overseas Development Assistance (ODA), major source of Foreign Direct Investment (FDI), and major source of workers' remittances (as it hosts about 218,038 overseas Filipino

[1] Briefing Paper on the Japan-Philippines Economic Partnership Agreement prepared by the office of Rep. Teddy Casiño; 22 November 2006

workers). For Japan, on the other hand, the Philippines' potential is immense, both as an important potential market, as well as a potential export base, for Japanese companies planning to operate in Southeast Asia.

It is within this context that a review of the textual provisions of the Japan bilateral agreements with the selected individual Asian countries is important in order further to compare the benefits each country acquired. This will then enable the Philippines to determine whether to renegotiate in cases where better agreements were obtained by the other countries. The rationale behind the selection of the said countries (i.e, Brunei, India, Indonesia, Malaysia, Singapore, Thailand and Viet Nam) are the proximate dates of signing and implementation (or entry into force), as well as the similarities in regional economic environment and more or less similar economic structures with the Philippines. This comparative study intends to contribute to the on-going review process by providing better perspective in evaluating the agreement and proposing necessary revisions. PJEPA will be compared with the other selected Japanese bilateral agreements. Lastly, this paper will try to present probable factors that contribute to the textual differences.

B. The Other Japan-Economic Partnership Agreements (JEPAs)

B.1. Brunei- Japan Economic Partnership Agreement (BJEPA)

The Brunei-Japan Economic Partnership Agreement (BJEPA) is Brunei Darussalam's first bilateral free trade agreement. The BJEPA was signed by His Majesty the Sultan of Brunei Darussalam and Prime Minister of Japan, Shinzo Abe, on 18 June 2007 in Tokyo. There are 11 chapters in the agreement, covering Trade in Goods, Rules of Origin, Trade in Services, Investment, Energy, Cooperation, Improvement of Business Environment, Custom Procedures, General Provisions, Final Provisions, and Dispute Settlement. With the signing of the BJEPA, Brunei and Japan's relations have moved on to a higher level, particularly in the economic sphere.

The BJEPA was notified to the WTO on 31 July 2008 and was considered by the CRTA (Committee on Regional Trade Agreements) on 15-16 September 2009. An exchange of diplomatic notes was held on 1 July 2008 and the BJEPA entered into force on 31 July 2008.

The agreement is expected to foster liberalization and streamlining of trade in goods and services between Japan and Brunei Darussalaam, strengthen ties in energy, and improve the business environment. It is also meant to strengthen investment opportunities for closer ties between the two economies.

B.2. India-Japan Economic Partnership Agreement (I[d]JEPA)

The I[d]JEPA entered into force on 01 August 2011 and is seen as a major step for an East Asia partnership,[2] The CEPA is expected to bring development, innovation and prosperity in two countries. This agreement is India's third CEPA after Singapore and South Korea. It covers more than 90% of trade, services, investment, IPR, customs and other issues. From India's side, only 17.4% of the tariff lines have been offered immediate tariff elimination. 66.32% of the tariff lines will be brought down to zero in 10 years to give industry time for trade liberalization adjustments. Japan reduced tariffs of 87% of the tariff lines to zero, including India's export interests such as seafood, agricultural products such as mangoes, citrus fruits, spices, instant tea, most spirits such as rum, whiskies, vodka etc, textile products such as woven fabrics, yarns, synthetic yarn, readymade garments, petro chemical &chemicals products, cement, jewellery, etc. (MCI, 2011).

Japan's exclusion list consists of rice, wheat, oil, milk, sugar, leather and leather products with the trade volume of 2.93%. India, on the other hand, contains 13.62% of the tariff lines in the exclusion list, including auto parts and agricultural items. Also, to help Indian pharmaceutical companies, the agreement included that the Japanese government shall accord no less favourable treatment to the applications of Indian companies. Indian professionals will also be accepted in Japan for its IT Sector's further development. Japan also agreed to the conclusion of the Social Security Agreement within three years. Contractual Service Suppliers (CSS), Independent Professionals (IPs) such as Accounting, R& D Services, Tourist Guide, Market Research; and Management Consulting firms can also provide services in Japan. Further benefits include Japanese investments, technology and world-class management practices. On the other hand, Japan can also take advantage of India‘s huge and growing market and human resources. The agreement is seen to be a win-win situation for both countries as it will strengthen economic ties of the two with mutual benefits. Bilateral trade between the two countries is expected to double by 2014 from US$ 12.6 billion to US$ 25 billion (MCI, 2011).

B.3. Indonesia-Japan Economic Partnership Agreement (I[n]JEPA)

The Agreement aims to improve bilateral trade, investment and cooperation between Indonesia and Japan. In the agreement, Indonesia commits to eliminate 93% of 11,263 tariffs on Japanese products and Japan, on the other hand, will eliminate 90% of 9,275 tariffs n Indonesian products. 58% of Indonesia's tariff cuts and 80% of Japan's tariff cuts are cut immediately upon implementation. Indonesia's main exports included for tariff elimination are textiles, footwear, plywood, tropical fruits and fishery products, and other industrial products. Estimate of the increase of bilateral trade is US$65 billion by 2010. Indonesia's Trade Minister Mari Elka Pangestu expected exports to Japan to grow 4.68% a year. The biggest immediate beneficiaries

[2] according to Shri Rahul Khullar, India's Commerce Secretary, after co-chairing the Joint Committee of India-Japan CEPA

of the agreement in Indonesia are the automotive, electronics and construction sectors (Stott, 2008).

No FDI commitment was included in the agreement but Japanese investment undertakings have been agreed to be worth around US$557.5 million. Aside from easing trade barriers, the agreement also includes investment rules, intellectual property rights, government procurement, and improving the business environment. One distinction of the agreement is the inclusion of capacity-building in its commitments in order to increase Indonesia's technological capabilities to enhance labour skills. Technical assistance to various sectors is also included as Japan will provide training to businesses that use raw materials in return of the special dispensation that will enable free access to Japanese raw materials for use by their firms in Indonesia (Stott, 2008).

B.4. Malaysia-Japan Economic Partnership Agreement (MJEPA)

Work for the establishment of the agreement started in 2003 and negotiations on 2004 and 2005 were held. The agreement was finally signed in 2005 and entered into force in 2006. The agreement consists of an FTA component and bilateral economic cooperation with tariff concessions to be implemented over 10 years. Areas include trade in industrial and agricultural goods, trade in services, investment, rules of origin, customs procedures, standards and conformance, intellectual property, competition policy, enhancement of business environment, safeguard measures and dispute settlement. Areas for cooperation include agriculture, forestry and commodities, education, human resource development, information and communication technology (ICT), small and medium enterprises, science and technology, tourism and environment (MITI- Malaysia, 2011).

Benefits expected to be gained include the expansion of Malaysia's share of the Japanese market and as a destination for foreign direct investments (FDI). The cooperation and collaboration activities are expected to promote growth of new sectors. Economic and technological cooperation is also seen as beneficial for SMEs for quality enhancement, vendor development and inclusion of Malaysian SMEs in Japanese companies supply chain (MITI- Malaysia, 2011).

From RM 60.2 billion in 1994, Malaysia's total trade with Japan increased to RM 136.9 billion in 2008. In 2008, Japan accounts for 11.5% of Malaysia's trade (MITI- Malaysia, 2011).

B.5. Singapore-Japan Economic Partnership Agreement (SJEPA)

The agreement, signed by Prime Minister Lee Hsien Loong and Japanese Prime Minister Shinzo Abe in 2007, was known as the New-Age Economic Partnership. The agreement entered into force first in November 2002 but was reviewed in the areas of market access, particularly in industrial and agricultural products, rules of origin, financial services, customs procedures and competition. The revised agreement in 2007 is expected to bring about greater liberalization in trade in goods and services with enhance market access which will hopefully boost trade and investments between the two countries (MTI, 2007).

From the agreement, 92% of Japan's tariff lines are bound for tariff eliminations with improvements starting in 2008 for trade in goods. In the area of financial services, Singapore granted access for one Full Bank licence for Japan, given that they meet the requirements. The agreement also contained insurance and asset management commitments (MTI, 2007).

B.6. Thailand-Japan Economic Partnership Agreement (TJEPA)

The Japanese and Thai governments started exploring a possible bilateral FTA in 2001-2002, but official negotiations didn't start until February 2004. They concluded their talks in April 2007 and the Japan-Thailand Economic Partnership Agreement (JTEPA) came into force on 1 November 2007. The FTA is comprehensive, covering trade in goods and services, investment, intellectual property rights, agriculture, competition policy, etc.

It was strongly opposed by social movements both in Thailand and Japan. Thai groups mobilised against the FTA's provisions on patenting life forms, toxic wastes and investment. One special concern was that the Japanese would take advantage of the deal not to ship Thai health workers to Japan (as under Japan's FTAs with the Philippines and Indonesia) but to operate an exclusive health facility in Thailand, for Japanese people, who would be flown in to avail of the best medical personnel Thailand has to offer — who would then be unavailable to treat poorer Thai citizens. A major row also erupted around the legalities of Thailand's interim military regime pushing through the ratification and entry into force of the deal during their hold on the country after the September 2006 coup. Japanese groups mobilised particularly on the potential of the deal to increase Japan's exports of toxic waste to Thailand.

Another important feature would be on trade in services which committed both countries to allow the other Party to establish more business and provide services than obligated by the World Trade Organization. The third is investment which committed Thailand to allow Japan to hold up to 50% equity in auto production firms while Japan committed to liberalize all area of investment for Thai investors. Both countries also agreed to facilitate entry and temporary stay for the other's nationals under specific conditions. Lastly, the agreement specified 9 areas for cooperation for both countries, particularly, agriculture, forestry and fisheries; education and human resource development; enhancement of the business environment; financial services; information and communication technology; science, technology, energy and the environment; small and medium enterprises; tourism; and trade and investment promotion (DTN).

B.7. Viet Nam-Japan Economic Partnership Agreement (VJEPA)

The Viet Nam- Japan Economic Partnership Agreement (VJEPA) was signed in 2008 following 9 rounds of negotiations. One major component of the agreement is economic cooperation in the areas of agriculture, industry, trade and investment, development of human resource, tourism and transportation. In the agreement, Japan's average tariff rate for Vietnamese goods will be reduced to 2.8% by 2018. At least 86% of agro-forestry- aquatic products and 97% of industrial

products of Viet Nam will benefit from the tariff reduction. Viet Nam will also gradually reduce average tariff rate for Japanese products to 7% by 2018 (MUTRAP, 2009).

Some of the products which will benefit from the agreement include aquatic, farm products, apparel, steel, chemicals and electronic appliances. With the next 10 years, both countries will reduce tariffs which will exempt 94.5% of Viet Nam's export revenues and Japan's 87.6% export revenues from import tariff. Investment and cooperation will also be assured in the agreement. The chief negotiator of VJEPA from Viet Nam, Mr. Phan The Rue, assured the positive impacts that the agreement will bring in the long term to the two economies. It was also noteworthy that Japan agreed to work with Viet Nam towards the recognition of the country's market economy. He also mentioned that competition between businesses will also increase with the agreement and will open up opportunities to access capital sources, modern technology, materials and goods (MUTRAP, 2009).

II. TRADE IN GOODS

A. Background

In any FTA, the chapter on Trade in Goods (TIG) forms part of the vital core of any Free Trade Agreement for it contains the essential provisions on tariff reduction or structure of eliminating industrial and agricultural products being traded between parties. As such, the TIG chapter typically lays down the fundamental provisions mandating the compliance and adherence of the FTA parties to the general agreements established in the WTO (GATT 1994, the WTO Agreement), especially in the area of emergency measures, where conditions may differ among parties involved.

Concessions granted by the Philippines

PJEPA covers 5,968 tariff lines of Philippine imports. The Agreement provides that 66% (3,947) of these imported Japanese goods remove tariff immediately (given an "A" classification), while the rest would be subjected to gradual tariff reduction. Some of the goods subjected to gradual tariff reduction are automotive, iron, and steel in consistence with the Philippine commitment to the ASEAN Free Trade Area (AFTA) to eliminate tariffs by 2010 for the ASEAN-6.

A total of 91.6% of the goods subject to immediate tariff elimination are industrial goods, while 8.4% are agriculture goods. Among the products included for immediate tariff elimination are machinery and equipment, clothing and textiles, organic chemicals and pharmaceutical products, and other miscellaneous manufactured products.

Concessions granted by Japan

JPEPA covers 7,476 tariff lines of Philippine exports. Around 80% (5,994 product lines) of these goods are for immediate tariff elimination. Of the 7,476 tariff lines, 93% of this is composed of industrial goods, while 7% is comprised of agricultural products.

Almost 10% of the tariff lines are subjected to gradual tariff reductions. Most of these goods are agricultural products. Only a small percentage of tariff lines (0.5%) offered by Japan are subjected to specific commitments:

- TRQ for pineapples smaller than 900grams under a zero in quota rate, instead of the applied 17% MFN rate.
- Creation of TRQ for chicken meat with 8.5% in quota rate, instead of the 11.9% MFN Rate.
- Tariffs on sausages and similar products will be reduced on the second year from 19.2% to 17% in 5 equal annual installments.

Almost 10% of the tariff lines are either excluded from any commitments or subject to renegotiations. Among the products excluded are: agricultural products such as boneless meat of bovine animals, fresh Pacific salmon, frozen red and atlantic salmon, trout, herrings, cod, sardines, mackerel, frozen bluefin tuna fillets, scallops, milk and cream, whey, butter and dairy spreads, wheat and meslin, barley, rice, wheat starch, animal and vegetable oils and pineapples weighing more than 900 grams.

Among the products subjected to renegotiations are: agricultural goods such as meat of bovine, meat of swine, bigeye tunas, bluefin tunas, longfinned tunas, tanner crabs, certain dairy products, maize flour and starch.

B. Cross-Country Provision Comparison

ARTICLES	PJEPA	BJEPA	MJEPA	I[d]JEPA	I[n]JEPA	SJEPA	TJEPA	VJEPA
Definitions	•	•	•	•	•	•	•	•
Classification of Goods	•	•	•	•	•	•	•	•
National Treatment	•	•	•	•	•	•	•	•
Elimination of Custom Duties	•	•	•	•	•	•	•	•
Customs Valuation	•	•	•	•	•	•	•	•
Export Duties	•	•				•		
Export Subsidies		•	•	•	•		•	•
Non-tariff Measures	•	•	•	•	•	•	•	•
Emergency Measures	•	•	•	•	•	•	•	•
General Security Exceptions	•		•			•		
Anti-Dumping Investigation			•					
Measures/Restrictions to Safeguard the Balance of Payments	•	•	•	•	•	•	•	•
Operational Procedures on Trade in Goods and Rules of Origin	•	•	•	•	•		•	
Sub-committee on Trade in Goods	•			•	•		•	
Cooperation in relation to Export	•				•			
Review	•		•	•	•	•	•	•
Miscellaneous				•				
Relation to the Agreement on Comprehensive Economic Partnership among Japan and Member								•

States of the Association of Southeast Asian Nations								

For this reason, a cross country comparison is done to examine the major differences in the provision of the TIG chapter and the implications of such in the kind of agreement created by the parties involved. Most if not all of the JEPAs contain the fundamental elements of tariff elimination and provisions on emergency measures in cases of balance-of-payment crisis. Salient differences are seen in special provisions such as those on anti-dumping Investigation, export duties, and miscellaneous provisions. Nonetheless on the average, all eight (8) Asian JEPAs have TIG provisions ranging from eleven (11) to fourteen (14) articles. Generally, a lesser number of provisions come from countries that are small in size but significant in trade share, such as Singapore and Brunei Darussalam, while more provisions are seen in countries that are relatively bigger in size and are seen to exhibit greater tendency for political instabilities/volatility, like the Philippines and Indonesia.

B.1. Definitions

Agreements	Provisions
MJEPA	- Same except PJEPA does not provide this at least in the article of definitions Sec. b: "the term 'customs duty' means any customs or import duty and a charge of any kind, imposed in connection with the importation of a good, but does not include any" - However, its specifics, bi, bii, bii are referred to in PJEPA's Elimination on Customs Duties article (18), specifically in sections 4a, 4b, 4c: (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Country or in respect of goods from which the imported goods have been manufactured or produced in whole or in part; (ii) anti-dumping or countervailing duty applied pursuant to a Country's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, as may be amended, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement, as may be amended; or (iii) fees or other charges commensurate with the cost of services rendered;
SJEPA	- Same except PJEPA does not explicitly provide Sec. d in the definition article: "the term 'transition period; means the period of 10 years immediately following the entry into force of this Agreement'
TJEPA	Like MJEPA, TJEPA provides explicit definition of "customs duty", which PJEPA doesn't provide explicitly in the Definitions article but specifies in the Elimination on Custom Duties article (18)
VJEPA	Like MJEPA, TJEPA provides explicit definition of "customs duty", which PJEPA doesn't provide explicitly in the Definitions article but specifies in the Elimination on Custom Duties article (18)

The Asian JEPAs vary in the number of terminologies defined but all of them contain essential terms such as customs value of goods, which refers to the value of goods for the purposes of levying ad valorem; customs duties on imported goods domestic industry, originating goods; and

serious injury and threat to serious injury, which pertain to a significant and overall impairment in the position of a domestic industry. Some agreements contain distinct terms not found in other Asian JEPAs, such as Singapore-Japan FTA, which defines “transition period” as explicitly the period of 10 years immediately following the entry into force of the agreement. Most others use different words but essentially mean the same thing, as in how “Bilateral Safeguard Measure” and “Provisional Bilateral Safeguard Measure” in BJEPA, I(d)JEPA, I(n)JEPA, TJEPA, and VJEPA are referred to as “Emergency Measure” and “Provisional Emergency Measure” in PJEPA. These measures typically refer to measures applied in cases of balance-of-payment crises and other extra-ordinary circumstances warranting the general suspension of trade commitments/concessions. Still, there are some agreements like PJEPA which doesn’t contain a more detailed definition of critical terms such as “customs duty” and “export subsidies” as in its MJEPA, TJEPA, and VJEPA counterparts. Customs duty is a charge of any kind imposed in connection with the importation of a good but is different from internal taxes and anti-dumping/countervailing duty. Although the differences in definitions can’t show a clear manifestation of the advantages and disadvantages that a presence or the absence of a definition can incur on a JEPA, the list of definition nonetheless reflects the priority areas or structural orientation of the trading countries.

The PJEPA does not include definitions of the following terms: “transition period”, “customs duties” and “export subsidies”. The implications of these omissions are discussed in the next paragraphs.

Transition period

The omission of a transition period does not necessarily have any effect on the effectivity of the PJEPA since the transition period is usually provided so as to provide a gradual implementation of the provisions of the agreement. The SJEPA provides for the term “transition period” which means the period of 10 years immediately following the entry into force of this agreement. This transition period is referenced only in the emergency measures provision of the Singapore-Japanese agreement. The provision provides that the various emergency measures given in the agreement may only be exercised during the transition period.

This may indicate the cautious application of the agreement between the two developed nations. Singapore’s emphasis on the “transition period” of ten years may signal the country’s premium on institutional innovation or properly orienting government institutions, given the country’s reputation for effective governance.

It may also be important to note that the Japan-Singapore Economic Partnership Agreement (JSEPA) was Japan’s first EPA/FTA. This may be an explanation as to why a transition period was provided since this was Japans first foray into entering these kind of agreements. Tariffs were eliminated on 98% of the merchandise trade between the two countries, and further liberalization took place in services and investment. Given that there is virtually no agricultural

trade between the two countries, and tariffs were already very low, it reportedly was a very easy FTA to conclude.

In any event, the non-inclusion of the term “transition period” does not affect the PJEPA since the emeregency measures contained in the PJEPA does not refer to any “transition period.”

Customs duties

The PJEPA does not contain a definition of what is a custom duty. However, while PJEPA doesn’t provide explicitly in the Definitions article but is specified in the Elimination on Custom Duties (article 18). A customs duty is a tariff or tax on the importation (usually) or exportation (unusually) of goods. The definition that is likely to be used in the PJEPA will be based on the normal usage for both Japan and Philippines. This might create a problem of interpretation although this is likely remote because the definition of what is a custom duty is generally universally accepted and will be limited by the specific provisions in the Elimination on Custom Duties found in article 18.

Export Subsidies

There is no specific provision regarding export subsidies but the term is is alluded to under the article on Non-tariff Measures (Article 21): “Each Party shall not introduce or maintain any nontariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement.” This will be discussed particularly in the different subheading.

This lack of definition is not necessarily favorable or unfavorable for the Philippines. Most of those not defined by the JPEPA can, nevertheless, be inferred from the other provisions in the agreement. However, a problem might arise if there is a conflict between the interpretation of the Philippines and Japan as to what the terms mean. This confusion can be solved by clearly defining what is a custom duty and an export duty. This action will generally be in favor of both parties since the clarity of the terms would better the position both parties in crafting their respective laws and policy regulation in implementing the JPEPA.

A way to look at export subsidies is that the Philippines does not really have the capacity to provide for export subsidies. The country might benefit if there is a provision which clearly define what is an export subsidy, the same as in MJEPA, TJEPA, and VJEPA. This would then be a pre-cursor to another provision would clearly disallow the practice of a party imposing an export subsidy. Export subsidies tend to penalise efficient agricultural producers who do not have access to subsidies. When there is no definition as to what an Export Subsidy clearly means the parties would then be free to claim that a certain action cannot be construed to be an export subsidy.

B.2. Classification of Goods and National Treatment.

All agreements apparently adhere to provisions on national treatment as espoused in Article III of the General Agreement on Tariffs and Trade 1994. This is understandably so as the Parties of the agreements are also signatories of the WTO agreement on national treatment as espoused in

Article III GATT 1994. ***Article III*** establishes the national-treatment rule. In simple terms, this requires that the products of other countries be treated the same way as like products manufactured in the importing country. This implies that no domestic laws should be applied to imported products to protect domestic producers from the competing (like) products. And imported products should receive treatment under national laws that "is no less favourable" than the treatment given to like domestic products (WTO, 2011). Pursuant to this, all the agreements also apparently follow the Harmonized System, which has been adopted as one of the classification scheme in the international trading system. The agreement between Brunei Darussalam and Japan though explicitly provides allowance with the inclusion of *mutatis mutandis* provision in the classification of goods. Besides the fact that it's mandatory or obligatory under international standards of the WTO, the Parties' adherence or compliance to WTO agreements gives them the benefit of a reserve or default institutions where parties can forward disputes or concerns that the provisions of the agreement itself cannot sufficiently resolve. On the other hand, complying to the national treatment clause.

B.3. Elimination of Customs Duties and Customs Valuation.

Agreements	Provisions
PJEPA	"Except as otherwise provided for in this Agreement, each Party shall **eliminate or reduce** its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule."
BJEPA	- Same except Par. 1 & 2, Art. 16 separately provide for the elimination of custom duties and non-increase of the same, respectively: "1. Except as otherwise provided for in this Agreement, each Party shall eliminate its customs duties on originating goods of the other Party in accordance with its Schedule in Annex 1. 2. Except as otherwise provided for in this Agreement, neither Party shall increase any customs duty on originating goods of the other Party from the rate to be applied in accordance with its Schedule in Annex 1." - PJEPA does not explicitly provide for Paragraph 4 at least in this article "4. If, as a result of the elimination or reduction of its most-favoured-nation applied rate of customs duty on a particular good, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall **notify the other Party of such elimination or reduction without delay."** - However, this call for prompt notification is alluded to or addressed in PJEPA's Customs Procedure chapter (4), particularly the article on Transparency (Article 52), which provides Par. 2: "2. When information that has been made available must be amended due to changes in its customs laws, each Party shall, wherever possible, continue to make the revised information publicly available prior to the entry into force of the changes."
I(d)JEPA	significantly shorter than PJEPA, as it does not include the following provisions present in PJEPA: "2. On the request of either Party, the Parties shall **negotiate on issues such as improving market access conditions** on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

	3. Each Party shall **eliminate other duties** or charges of any kind **imposed on** or in connection with the **importation** of originating goods of the other Party, customs duties of which shall be eliminated or reduced in accordance with paragraph 1 above, if any. Neither Party shall introduce other duties or charges of any kind imposed on or in connection with the importation of those originating goods of the other Party. 4. Nothing in this Article shall prevent a Party from imposing, at any time, on the importation of any goods of the other Party: (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part; (b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement respectively; and (c) fees or other charges commensurate with the cost of services rendered. - I(d)JEPA provides only 2 provisions, the second of which seems non-negotiable: "1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule. 2. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good."
I(n)JEPA	Contains all the provisions of PJEPA and includes the exact provisions on prompt notification contained in Brunei's agreement and the provision on application or lower rate between MFN and agreed customs duty contained in India's agreement; practically contains the all the provisions of BJEPA, I(d)JEPA, and PJEPA
MJEPA	- Contains first two provisions of PJEPA, but separates the first paragraph: 1. Except as otherwise provided for in this Agreement, each Country shall eliminate or reduce its customs duties on originating goods of the other Country in accordance with its Schedule in Annex 1. 2. Except as otherwise provided for in this Agreement, neither Country shall increase any customs duty on originating goods of the other Country from the rate to be applied in accordance with its Schedule in Annex 1. 3. On the request of either Country, the Countries shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.
SJEPA	Contains the same provisions of PJEPA except the following provisions: "2. On the request of either Party, the Parties shall consult to consider: (a) **accelerating** the elimination of customs duties on goods set out in the Schedules in Annex I; (b) scheduling the elimination of custom duties on goods that are **not yet** set out in the Schedules in Annex I

	3. Any agreement for **further liberalization** of trade in goods reached as a result of consultation pursuant to paragraph 2 above shall be reflected in Annex I.”
TJEPA	Contains only 2 of PJEPA’s provisions: 1) on adherence to the agreed Schedule of customs duties elimination & 2) negotiation on issues relating to improved market access
VJEPA	Contain all PJEPA provisions - adds more flexibly on I(d)JEPA’s application of lower rate between MFN rate & agreed customs duty rate: “3. In cases where its most-favored-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good **in accordance with its laws, regulations, and procedures**.”

The arrangements with regard to the elimination of custom duties vary from one Asian country to another but generally contain the essential components. All agreements mandate that the parties follow the tariff reduction scheme in accordance to what has been agreed by the parties. All agreements also provide for the negotiation on issues such as improving market access conditions on goods designated for renegotiation (as listed in the JEPAs’ respective tariff schedules). All agreements also provide for sections warranting that parties must aim to reduce or eliminate - and must not introduce other - duties and charges connected to the importation of goods of the other party. Nonetheless, all agreements also provide sections allowing the imposition of (a) internal tax consistent with Article III of GATT 1994, (b) anti-dumping or any similar countervailing duty in accordance to GATT 1994 provisions, and (c) fees or charges proportional to the services rendered by the customs of the importing party. In connection to this, all agreements also utilize the customs valuation agreed unanimously in the WTO (Article VII of GATT 1994 and Annex1A to the WTO agreement). Still, differences arise. BJEPA and I(n)JEPA provide for the prompt notification of one party to the other in cases of actual elimination/reduction of custom duties, albeit without a definite limit, a provision clearly not included in PJEPA. Unlike PJEPA, BJEPA and I(n)JEPA also stipulates that a party must apply the lower rate to the originating good in question, should the good’s MFN rate be lower than the customs duty in accordance to the party’s rules. But this conditional application of a lower rate between the MFN rate and the agreed customs duty is not provided for in VJEPA.

Others are simplified to the point of lacking a provision contained in other agreements, as in the case of TJEPA that does not provide for a section disallowing imposition of duties for importation other than what’s agreed upon, and I(d)JEPA which is significantly shorter than PJEPA’s by providing only 2 provisions: 1) the mandatory commitment to the schedule agreed on by parties and annexed in the bilateral agreement and 2) the application of the lower rate between the MFN rate and the country’s customs duty rate, which seems to be a non-negotiable provision. Clearly, I(d)JEPA also doesn’t provide other duties (internal tax, customs service fees, etc.) specified by PJEPA in its Elimination on Customs Duties article. On another hand, SJEPA distinctly and singularly provides for consultations for further trade liberalization that will be annexed in the agreement.

At the outset, BJEPA's inclusion of the clause mandating the prompt notification of any reduction of MFN rate to the point of being lower than the agreed customs duty seems to suggest BJEPA's over eagerness to liberalizing trade between Japan and Brunei. On the contrary, the Philippines did not include such explicit provisions in this particular article but the negotiating parties instead reinforced commitment to the open flow of information on customs duties (and its elimination) by providing a separate article on Transparency in its Customs Procedure chapter. Nevertheless, the Philippines' provision yet again is generally stated to cover any amendments or changes on customs duty and not just reductions or eliminations. This again may be a strategic call from the part of Philippine trade negotiators. This strategy seems to be shared by Malaysia, which includes both mandates on reducing customs duties and prohibiting the increase of the same but which precludes explicit mention of the prompt notification of customs duties amendments pushed forward by Brunei.

India's take on this situation of MFN rate and the bilaterally agreed customs duty rate is more straightforward, as its provision directly mandates the application of whichever is the lower rate between the two said rates, regardless if it's MFN rate or the agreed customs duty rate. Hence, this provision is, at least on the surface, expresses India's openness to liberalizing trade with Japan. This direct provision is not found explicitly in any chapters or articles in Philippines' agreement with Japan, suggesting caution on the part of Philippines, at least with regard to categorical lowering of customs duties. Yet, the Philippines' provisional non-inclusion may again be a strategic call or a purposeful strategy of ambiguity that may confer advantage on the less developed Philippine industries, given that such non-inclusion does not put pressure on the Philippines to effectively lower its customs duties.

Indonesia on the other hand seems to undertake a wholesale package by practically hoarding all the provisions combined from Brunei, India, and Philippines' agreements. Besides the staple mandate on committing to the schedule of customs duties elimination, on negotiating issues on market access, and elimination of import duties, Indonesia's provisions also included the mandate for prompt notification of any reduction of customs duty, the application of lower rate between MFN rate and agreed customs duty, and the exception from imposing some necessary duties (such as internal tax, anti-dumping duty, or customs service fees/charges). Although at the outset this wholesale inclusion may appear logically advantageous, it nonetheless may have mixed effects or probable effects on Indonesia's trade liberalization. On the one hand, relatively clear provisions such as the categorical application of the lower rate between MFN rate and agreed customs duty rate, the prompt notification of customs duty reduction, and the prohibition of imposing import duties imply Indonesia's unambiguous commitment to trade liberalization. On the other hand, its inclusion of provisions permitting negotiation of issues on market access and imposition of some necessary customs duties (internal tax, anti-dumping duty, customs service charges) highly suggests that Indonesia may also have strategic reservations against full trade liberalization, reservations that may prove necessary in situations calling for safeguard/emergency measures or domestic industry protection.

Like India, Singapore appears to also give the impression of openness to liberalization, as suggested by certain provisions. Besides the provisions that are included in the Philippine agreements, the revised Singapore agreement explicitly included a clause mandating a consultation between Japan and Singapore, on the aim of accelerating the elimination of customs duties and including customs duties on goods not originally listed in the Schedule attached to the

agreement. Needless to say, the mere use of the words ‘accelerating’ is a clear manifestation, if not a strong suggestion, of Singapore’s adherence to increased trade liberalization. More so, Singapore’s explicit provision of consulting for customs duties not originally included in the Schedule is effectively a guarantee for Singapore to lock Japan down on increasing the coverage of customs duties elimination, which eventually would translate to less restrained market access.

Similarly, Thailand’s simple or short provisions on adherence to the agreed Schedule and negotiation on market access may also suggest its no-frills stand on greater trade liberalization. This is so as negatively the absence of provisions allowing other duties (as in Philippines’ internal tax, anti-dumping duty, and customs service fee) implies that Thailand may not be anticipating certain exceptions or conditional provisions that tend to impede or delay the rapid elimination of customs duties. In other words, there are no exceptions or guarantee that can incentivize reversing or foot-dragging greater liberalization.

Like Thailand, Vietnam also has shorter provisions, including the staple adherence to the agreed schedule and negotiation on market access, although it incorporates the application of a lower rate between the MFN rate and the agreed customs duty. However, Vietnam’s agreement applies this provision more flexibly by specifying that it be implemented “in accordance with its laws, regulations, and procedure” (Par. 3, Art. 16, VJEPA). This conditional phrase may—at least based on the implication of its logical construction—loosen the implementation of clearcut application of lower rates by providing leeway for Vietnam to not effectively choose the lower customs rate. Based on this, it may be logically inferred that this conditional clause is itself a sort of guarantee, albeit an unclear one, as Vietnam might also have minimally considered the conditions of its domestic industry vis-à-vis greater trade liberalization.

The two main provisions that are lacking in the PJEPA and that can be found in the other JEPAs are first the provision on prompt notification and the clause providing for accelerated liberalization.

Provision on Prompt Notification

Both BJEPA and I(n)JEPA contain a provision on prompt notification which state that:

> “If, as a result of the elimination or reduction of its most-favoured-nation applied rate of customs duty on a particular good, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.”

This means that, as explained previously, there appears to be Indonesia’s and Brunei’s commitment to liberalizing trade between them and Japan because such MFN rate or customs duty reduction means lesser costs of—and greater—market entry of the goods in question. The prompt notification provision is a tool in favor of liberalization of trade of goods. The Philippines did not include such explicit provisions in this particular article but its negotiation party instead reinforced its commitment to the open flow of information on customs duties (and

its elimination) by providing a separate article on Transparency in its Customs Procedure chapter.

An active obligation contained in the agreement for parties to promptly notify the other party if the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied, may force the Philippines to divulge information to Japan which may not be favorable to it. The point of prompt notification is merely to let the Japan know that the tariffs for the other countries are now as low as that given to Japan. There is no substantial benefit for the Philippines to include this provision.

Provision on Accelerated Liberalization

The SJEPA contains a provision which mandates a consultation between Japan and Singapore, on the aim of accelerating the elimination of customs duties and including customs duties on goods not originally listed in the Schedule attached to the agreement. The provision states that:

> "2. On the request of either Party, the Parties shall consult to consider: (a) accelerating the elimination of customs duties on goods set out in the Schedules in Annex I;
>
> (b) scheduling the elimination of custom duties on goods that are not yet set out in the Schedules in Annex I
>
> 3. Any agreement for further liberalization of trade in goods reached as a result of consultation pursuant to paragraph 2 above shall be reflected in Annex I."

The non-inclusion of this provision may be favorable to the Philippines since this provision gives the Philippines an active obligation to consult with Japan on how to go about eliminating customs duties both those already included and those not included. This might tie the hands of the Philippines in how it would approach future types of goods to be included in the agreement. It might also force the Philippines into eliminating customs duties against its own timetable. Bilateral trading agreements essentially foster closer economic relations between two partner states. However, this does not mean that it should unnecessarily stifle the Philippines' discretion in how it would fulfill its obligations under the JPEPA.

B.4. Export Duties

PJEPA	BJEPA	SJEPA
Article 20 mandates "Each Party shall exert its **best efforts** to eliminate its duties on goods exported from the Party to the other Party."	Article 18 concisely provides a prohibition on export duties: "Neither Party shall introduce any export duties on goods exported from the Party to the other Party."	Like BJEPA, Article 16 also concisely provides a prohibition on export duties but specifically *territory* as a sort of parameter: "Neither Party shall adopt or maintain any duties on goods exported from its **territory into the territory** of the other Party."

PJEPA, along with BJEPA and SJEPA, briefly states the imperative to eliminate duties on goods exported from the Party to the other Party. This concise provision is not contained in I(n)JEPA, MJEPA, TJEPA, and VJEPA. These concise statements however contain significant differences that need to be nuanced. SJEPA specifically uses the word "territory" as a sort of parameter. Yet, the most striking difference is PJEPA's use of *best efforts* as a sort of guarantee against the levying of export duties.

Historically, export taxes have been used by governments as a tool in their industrial policy and to raise revenue since the 11th century. It was used for various functions. For one, it was the most important tool in industrial development while England was industrializing. For example, in England export taxes were applied to raw wool and hides from 1275 to 1660 to promote domestic industry processing (Devarajan, Go and Schiff in Third World Network, n.d.). With this so-called Tudor Plan, the Florentines were not able to compete with their English counterparts because the export duties on English raw wool ensured that raw wool was going to domestic producers for processing (Reinert in Third World Network, n.d.). In the colonialism period, export taxes were designed to favor the shipment of raw materials to the mother country or other destinations in the empire, and the use of national flag vessels. The main purpose, however, was to raise revenue" (Goode, Lent & Ojha in Third World Network, n.d.). The US did not use export taxes for exports coming from the country because paragraph 5 of section 9, Article I of the Constitution forbids export taxes (Gorton in Third World Network, n.d.). However, previously the US used preferential export duties on manila hemp from their former colony the Philippines from 1902-1913 (Third World Network, n.d.). In such cases then, preferential taxes were used to eliminate competition in other countries, protect domestic value added processing, raise government revenue, and ensure sufficient domestic supply.

Developing countries are rich in raw materials. For instance, "Over 50% of major mineral reserves are located in countries with a per capita gross national income of $10 per day or less. This creates new opportunities for these resource-rich developing countries, particularly in Africa" (European Union in Third World Network, n.d.). Developed countries on the other hand such as those in EU and the US don't have enough supplies and technically no longer have colonies in Africa and Asia to extract raw materials and to use preferential export taxes to secure their supply for their manufacturing sector (Third World Network, n.d.). Thus, developed countries, spearheaded by EU, attempts to limit the ability of other countries to impose export taxes, restrictions and prohibitions, through the WTO and FTAs, including economic partnership agreements (EPAs) in order to secure market access for cheaper imports (*ibid.*). Developing countries continue to use export taxes today as a source of government revenue, to encourage value added and infant industries, to attract foreign investment, for price stability, to improve terms of trade, or to deal with currency devaluations and inflation and as a method of addressing tariff escalation in importing countries (*ibid.*).

Given the wide usage of export tax, export taxes are not prohibited by the WTO (Piermartini in Third World Network, n.d.). About one third of WTO Members impose export duties. For example, in December 1995, the EU imposed a $35 per ton export tax on wheat. According to Piermartini (in Third World Network, n.d.), export taxes are mainly used by developing and least-developed countries (LDCs). Of the 15 LDCs reviewed in the context of the WTO Trade Policy Review Mechanism, 10 impose export duties, while only 3 of 30 OECD countries use them (Third World Network, n.d.).

Case: Indonesia's Plywood Industry

One example that epitomizes the use of export taxes and other export restrictions to develop a manufacturing industry is the case of Indonesia and plywood. Indonesia's wood products industry, in particularly the plywood industry, emerged in the 1980s as one of Indonesia's major manufacturing industries (Thee in Third World Network, n.d.). The wood products industry was developed by limiting the exports of logs through export taxes and subsequently by a partial and later by a total ban on log exports (*ibid.*). By the early 1990s, shortly after these measures were taken, Indonesia became the largest manufacturer of hardwood plywood in the world (*ibid.*)

In the 1970s, the Indonesian government's industrial development plan focused on processing raw materials such as timber, rubber, oil and minerals to higher value added products (Hidayat in Thrid World Network, n.d.). Therefore, "the government used an economic strategy that promoted resource-based industrialization. The strategy stresses on reducing Indonesia's reliance on import goods and building up the technology sector, paying more attention to processing raw materials obtained domestically" (*ibid.*).

The government began enacting many economic incentives for domestic timber producers (*ibid.*). For example, the government provided assistance to timber exporters who faced financial difficulties as a result of government restrictions on log exports (*ibid.*). The government reduced dependence on imported goods and began promoting domestic industries. "Although the market price of imported plywood was about 20% cheaper than domestic plywood, the government encouraged domestic capitalists to develop the plywood industry by buying locally" (*ibid.*).

In 1978, due to the sharp increase in the export tax, log exports declined sharply after 1970. "But the exports of processed wood like plywood and sawn wood rose significantly from 70,000m^3 and 756,000m^3 in 1978 to 245,000m^3 and 1,203,000m^3 in 1980 respectively, and increase of 250% and 60% respectively in only two years" (Thee in Third World Network, n.d.). It is important to note that "within a short time span, Indonesia was transformed from being the largest log-exporting country in the world into the largest plywood-exporting country in the world in the 1980s" (Thee in Third World Network, n.d.).

In the 1980s the government replaced the export tax with an export ban in order to maximize the amount of raw logs available for domestic processing industries. In 1980 Indonesia's share of plywood exports in the world market was only 4 % and in 1983 this rose to 24%. By the late 1980s Indonesia supplied about 80% of the world demand for plywood (*ibid.*). "As a result of the ban on log exports, domestic and foreign timber companies established wood-processing facilities, particularly plywood mills, which subsequently led to a surge in plywood exports" (*ibid.*). According to the World Bank, the wood products industry became the second most important contributor to Indonesia's rapid growth in the manufacturing sector.

The plywood industry wasn't the only manufacturing industry that greatly benefited from the export restrictions on raw materials. Other wood products that benefited from the export restrictions include saw mills, block board plants, particle board plants, woodworking plants, furniture plants, chip mills and cement-bonded plants (Thee in Third World Network, n.d.). For example, from 1985 to 1992, pulp and paper exports rose from US$28 million to US$400 million (*ibid.*).

Similar to when the British Empire used export taxes, Indonesia's export taxes on raw logs also gave their industries a significant advantage over international competitors. In 1982, when the export ban was introduced a major realignment of the world plywood industry took place. In fact, "many plywood mills in Japan, South Korea and Taiwan were forced to close down or relocate their plywood operations to Indonesia" (*ibid.*). Hence, similar to England and the wool industry and the British Empire, Indonesia was able to industrialize a sector of their economy and attract investors through the use of export restrictions such as export taxes.

Given this case and the Philippine's underdeveloped industries (relative to Japan's), it may have been beneficial for the Philippine party to only and diplomatically pledge its best efforts, rather than categorically lock on commitments to remove export duties, since again, these export duties may prove beneficial for developing countries like the Philippines, which may need to enact such export duties/costs in order to scale up or develop the export industry. In other words, the phrase *best efforts* may have been a beneficial general statement of ambiguity, which gives the Philippines leeway for protectionist or infant-industry measures.

As it is Mindanao and Manila stakeholders who took part in hearings to review the Philippine-Japan Economic Partnership Agreement (PJEPA) want to raise the Tariff Rate Quotas (TRQ)—a trade policy tool used to protect domestically-produced commodities by the importing market, while conceding that parties to be charged lower import duty rates may expect certain negotiated quantities. A Tariff Rate Quota may be loosely interpreted as an export duty since it is a requirement that will be imposed on exported goods. Since we only gave a vague promise to eliminate export duties, even without a review of our current export duties may still be imposed.

This provision is to our advantage since Japan and the Philippines share strong economic ties. Japan is the country's second largest trading partner. In 2000, Japan accounted for 14.73% of our total exports and 19.1% of total imports. The Philippines remains an important potential market and a potential export base for Japanese companies planning to operate in the Asian market. In 2000, the Philippines accounted for 2.14% of Japan's total exports and 1.9% of its total imports. Our top exports to Japan consist of agricultural products such as fresh bananas, pineapples, and asparagus and industrial goods like semi- conductor and electronic products.

The economies of the Philippines and Japan are complementary with Japan specializing in high-technology industrial products. On the whole, the costs associated with the implementation of JPEPA are perceived to be low. Based on trade weighted tariffs using 2001 imports from Japan, rough estimate of foregone tariff revenues amounted to around P3-5 billion. It should be noted, however, this is expected to be more than offset by tax revenue gain from increased economic activity resulting from the partnership.

Given our relatively low level of industrial tariffs, trade diversion effects may also be small. Trade regimes on the country's sensitive sectors such as automotive, steel, and cement have not yet been modified to provide time for these sectors to adjust.

On the other hand, Singapore's specification of territory and not just party establishes a clearcut parameter in the surveillance of export duties. At the outset, this unambiguous specification indeed suggests that Singapore is clear on its commitment to trade liberalization by avoiding ambiguous or general statements (such as using the word party) that leave any loopholes or differing interpretations that may allow parties to exercise trade practices that circumscribe, if not renege, the implementation of eliminating export duties.

B.5. Export Subsidies

Agreements	Provisions
PJEPA	No explicit provision but is alluded to under the article on Non-tariff Measures (Article 21): "Each Party shall not introduce or maintain any nontariff measures on the importation of any good of the other Party or on the **exportation or sale for export** of any good destined for the

	other Party which are inconsistent with its obligations under the WTO Agreement."
BJEPA	Article 19 explicitly yet briefly prohibits the introduction of export subsidies particularly on agricultural goods: "Neither Party shall introduce any export subsidies on any agricultural good which is listed in Annex 1 to the **Agreement on Agriculture**."
I(d)JEPA	Article 21, entitled "Export Subsidy and Domestic Support", provides a more general prohibition against export subsidies and any domestic support inconsistent with WTO obligations: "Neither Party shall introduce or maintain any **export subsidies or domestic support**, which are inconsistent with its obligations under the WTO Agreement, on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Agriculture")."
I(n)JEPA	Specifies agricultural goods like BJEPA: "Neither Party shall introduce or maintain any export subsidies on any agricultural good which is listed in Annex 1 to the **Agreement on Agriculture**."
MJEPA	Also specifies agricultural goods like BJEPA and I(n)JEPA: "Neither Country shall in accordance with the Agreement on Agriculture introduce or maintain any export subsidies on any agricultural good which is listed in Annex 1 to the **Agreement on Agriculture**."
SJEPA	Like PJEPA, no explicit provision but is alluded to under the article on Non-tariff Measures (Article 17): "Each Party shall not introduce or maintain any nontariff measures on the importation of any good of the other Party or on the **exportation or sale for export** of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement."
TJEPA	Article 20, provides for the same prohibition on agricultural goods subsidy but is stated to be amendable while PJEPA doesn't provide for flexibility of amendment: "Subject to the Agreement on Agriculture in Annex 1A to the WTO Agreement, **as may be amended** (hereinafter referred to in this Chapter as "the Agreement on Agriculture"), neither Party shall introduce or maintain any export subsidy on **any agricultural good** which is listed in Annex 1 to the **Agreement on Agriculture**."
VJEPA	Article 18 briefly and more generally prohibits export subsidy: Neither Party shall, in accordance with its obligations under **the WTO Agreement**, introduce or maintain any export subsidies."

However, in terms of subsidies, both PJEPA and SJEPA don't explicitly prohibit the introduction of any export subsidies on any agricultural good listed in the Agreement on Agriculture (Annex 1A to the WTO agreement) while BJEPA, I(n)JEPA, MJEPA, TJEPA, and VJEPA contain such provision. Nonetheless, this prohibition of export subsidies may be subsumed under the more general provision of Non-tariff Measures (Article 21 for the Philippines and Article 17 for Singapore), which explicitly prohibits the introduction or maintenance of any form of Non-tariff measure for the importation or exportation of any traded goods. Needless to say, export subsidies are a form of Non-tariff measures.

TJEPA, in particular, states this provision to be amendable as necessary while the rest of the Asian JEPAs that have this don't exhibit this flexibility of amendment. India's agreement on the

other hand widens the scope to include other domestic support that may be inconsistent with WTO obligations.

Surprisingly, despite its well-known propensity to be one of the more liberally trading countries in the Southeast Asian region, Singapore also doesn't explicitly provide a separate article on Export Subsidy. Rather, such prohibition is subsumed under the more general coverage of non-tariff measures (Article 17, SJEPA). This may be so as the non-inclusion of such provision, as previously explained, may again be a circumscribable strategy to allow export support. Understandably, such strategic call would be favourable to a net exporting country like Singapore (DOS-Singapore, 2012).

In contrast to this, the rest of the Asian countries under study provide a clearer stand on export subsidy. Brunei, India, Indonesia, Malaysia, and Thailand all specify that prohibition must particularly cover agricultural goods listed in the Agreement on Agriculture. Given the historical context of agriculture as one of the most disputed areas in negotiations on market access and trade liberalization in general—and indeed one of the factors forestalling the hitherto gridlocked WTO Doha round—the explicit provision of prohibition of export subsidy in agriculture sends the signal at least at the outset or in writing that Brunei, India, Indonesia, Malaysia, and Thailand are committed to liberalizing this contentious trade area, since prohibition of export subsidy that tends to confer unfair advantage to a party would greatly contribute to greater market access, especially when effectively coupled with swift tariff reduction. Nonetheless, Thailand provides a slight allowance in the application by providing flexibility of amendment with its inclusion of "as may be amended" phrase, suggesting that Thailand might have reservations against full banning of export subsidy.

India on the other hand plays the safest among these countries as it has the most comprehensive coverage yet clearest parameter of prohibition. Not only did India specify agriculture as the specific area where export subsidy is prohibited, it also expanded the form of prohibition from merely export subsidy to other kinds of domestic support that confer unfair advantage to the domestic players. In this way, India gives the assurance to Japan of its greater commitment to trade liberalization, as it is indeed willing to avoid trade practices that hamper openness of the domestic market to foreign business/trade or measures that distort international market pricing through enhanced domestic production costs (i.e. subsidies and similar measures unfairly lowers production costs of domestic producers).

Vietnam for its part very shortly provides for the prohibition of export subsidy. Yet, its reference to existing WTO agreements and obligations in general and not only the particular Agreement in Agriculture as the conditional parameter suggests that Vietnam is willing enough to extend the prohibition of export subsidy beyond the area of agriculture. Therefore, this wider coverage in the prohibition of export subsidy may possibly suggest Vietnam's greater openness to trade liberalization, as wider prohibition of export subsidy would mean greater fairness in market access for local and foreign investors/traders/businessmen.

On a general note, the provision of prohibition against export subsidies in agriculture is supposedly an indication of the countries' commitment or adherence to the principles of liberalizing trade, given that export subsidies are a commonplace instrument for protecting the domestic industries. Yet, the different ways of stating the prohibition may reflect the varying degree or severity of binding effect/compulsion of the provision.

The Philippines' non-specification of an *explicit* provision officially locking down the Philippines to prohibit export subsidies and its choice to subsume it under a more general provision may have been done out of convenience. The problem with the lack of a specific provision prohibiting export subsidy is the practical fact that the Philippines does not have enough resources to provide for export subsidies and Japan has theses resources. The Philippines cannot effectively use export subsidies to help its exports, If the country cannot provide for export subsidies it is in the advantage to prohibit its use to prevent Japan from using such act.

However, as discussed before, the Philippines may be hurt by the lack of a specific prohibition in the JPEPA against export subsidies. Japan received 14% of the total agricultural exports of the country from 2004-2010. Japan was also the country's biggest export market for fresh banana, shrimps and prawns, and also a major destination for pineapple and pineapple products. However, there are currently minimal export subsidies in the country and the value of agricultural subsidies are less than the 10% ceiling level for developing countries. There is doubt as to the capability of the Philippines to provide for export subsidies to our exports to Japan. On the other hand, Japan is in a position to give export subsidies to its exports to the Philippines. Exports have been the main engine of Japan's economic growth in the past six years. Japan's major exports are: consumer electronics, automobiles, semiconductors, optical fibers, optoelectronics, optical media, facsimile and copy machines. Export subsidies tend to penalise efficient agricultural producers and other exporters who do not have access to subsidies. The Philippines may benefit if specific strict prohibitions on export subsidies on specific industries, industries where Japan export heavily to the Philippines, are imposed. In turn, the Philippines may concede industries where the country heavily exports on since with or without the prohibition, the Philippines might not be able to provide substantial export subsidies anyway.

B.6. Non-tariff Measures.

Agreements	Provisions
PJEPA	Article 21 concisely states: "Each Party shall not introduce or maintain any nontariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement."
BJEPA	Contains PJEPA's provision plus provision on transparency: "2. Each Party shall promote the **transparency** of its non-tariff measures which are **not inconsistent** with its obligations under the WTO Agreement."
I(d)JEPA	- No separate provision but is referred to in Article 21 as Domestic Support along with Export Subsidies; - Also expounded in a separate article (22) on "Import and Export Restrictions"; "1. Each Party shall not introduce or maintain any prohibition or restriction other than customs duties on the importation of any good of the other Party or on the exportation or sale for export of any good destined to the other Party, which is inconsistent with its obligations under the relevant provisions of the WTO Agreement. 2. In the event that a Party introduces a prohibition or **restriction otherwise justified under the relevant provisions of the WTO Agreement** with respect to the exportation of a good to the other Party, the former Party shall, upon the request of the

	other Party, provide to the other Party, **as soon as possible** after the prohibition or restriction is introduced, relevant information, which shall include a **description of the good involved** and the **introduced prohibition or restriction**, the actual **date of introduction** of such prohibition or restriction, **unless the sharing of such information is considered by the former Party as prejudicial to public interest**."
I(n)JEPA	Like PJEPA, concisely states: "Each Party shall not introduce or maintain any nontariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement."
MJEPA	Contains PJEPA's provision, albeit conditionally applied: "**Except as otherwise provided for in this Agreement,** each Country shall not introduce or maintain any non-tariff measures on the importation of any good of the other Country or on the exportation or sale for export of any good destined for the other Country which are inconsistent with its obligations under the WTO Agreement."
SJEPA	Like BJEPA, contains PJEPA's provision plus provision on transparency
TJEPA	- Like MJEPA, contains PJEPA's provision, albeit conditionally applied: "1. **Except as otherwise provided for in this Agreement**, each Party shall not introduce or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement. " - Like BJEPA, includes provision on insurance of transparency of measures is not provided for in PJEPA
VJEPA	Like BJEPA and SJEPA, includes provision on transparency: "2. Each Party shall ensure transparency of its non-tariff measures permitted under paragraph 1, including quantitative restrictions. Each Party shall ensure full compliance with the obligations under the WTO Agreement with a view to minimizing possible distortions to trade to the maximum extent possible."

In addition to the prohibitions on export duties, subsidies, and other charges not included in the WTO agreement, all the JEPAs also prohibits the introduction and/or maintenance of non-tariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement. The phrasing of the provision varies among the JEPAs. Whereas PJEPA and I(n)JEPA provide a single provision, BJEPA, SJEPA, TJEPA, and VJEPA additionally demands transparency or proper disclosure of these non-tariff measures. Also, compared to other JEPAs, MJEPA and TJEPA's provision appears to be negotiable, as the two warrant a conditional application of the provision.

Herein, the differences in how the provision is stated and the inclusion or non-inclusion of additional provisions suggest varying degrees of commitment to trade liberalization. For instance, Brunei's additional section that mandates disclosure of non-tariff measures not inconsistent, or in other words consistent, with WTO agreements and obligations provides insurance to Japan (and vice-versa) that any information regarding non-tariff that potentially affects open trading between the two are factored in whatever trading arrangements ensues from

their bilateral agreement. Thus, this section on transparency is a clear indication of Brunei's commitment to more open and competitive trade relationship through enhanced knowledge of trade measures that may affect market access conditions, such as these so-called non-tariff barriers. Such official call for transparency hence adheres to the WTO's principles of "predictable and transparent" trading for foreign companies/investors/governments and of "more competitive" trading to discourage unfair trade practice (WTO, 2012Bb). Singapore, Thailand, and Vietnam appear to share the same stand.

The Philippines, Indonesia, and Malaysia on the contrary do not contain this provision. Nonetheless, they provide the general prohibition. However, Malaysia, alongside Thailand, seems to state it in more negotiable terms compared to that of the Philippines, as the former includes the introductory disclaimer "Except as otherwise provided for in this agreement…" (Article 22, MJEPA; Par. 1, Article 21, TJEPA). This phrase hints at the possibility of Malaysia's (and Thailand's) slight reservation or may indicate an allowance for strategic flexibility, in case the actual situation of implementing the provision calls for certain exceptions to the prohibitions. Although this provision may remotely run the risk of allowing trade barriers to be raised, such provision may nonetheless be consistent with WTO's principle of "more beneficial for less developed countries," which provide countries with more adjustment time and greater flexibility in opening their markets to the world economy. Yet, once again, the extent of the effect of this to the degree of trade liberalization may be affected but is yet to be warranted by further research or study of statistical evidence, which this paper unfortunately will not tackle.

India does not have a separate article on non-tariff measures but it does establish clearer and more specific references. India, in Article 21, specifies prohibitions against any form of domestic support along with export subsidies, which are inconsistent with prevailing WTO agreements and obligations and which would confer unfair advantages to domestic industry players. India also expounded the non-tariff measure prohibition in a separate article (22) on "Import and Export Restrictions", which explicitly prohibits import and export restrictions inconsistent with WTO agreements and the urgent issuance of a notice in cases where introduction or maintenance of non-tariff prohibition is justified. At the surface, the provision of import and export restrictions and the accompanying mandate for an urgent notice of justified import and export restrictions also signify India's commitment (at least in writing) to a fairer trade arrangements, in the same manner that the provision on prompt notification of customs duty elimination is a clear manifestation of a country's commitment to a more open and fairer trade schemes, which is manifestation if not a prerequisite condition of trade liberalization.

However, the second provision's explicit mention of "justified" export restrictions alludes to the high probability that India may have reservations with exercising non-tariff measures on export. This reservation is indicated by the very fact that such mention of a justified export restriction presumes that the agreement does allow for exceptional export restrictions such as export taxes, which, as previous discussions shows, are used to develop certain domestic industry. Moreover, this reservation is indicated more concretely by the conditional clause or statement "unless the sharing of such information is considered by the former Party as prejudicial to public interest" (Par, 2, Article 21, I(d)JEPA). Conversely, this provision may also suggest that Japan may have acknowledge India's propensity to exercise unfair export restrictions, given that it is still considerably a developing country, albeit an emerging economy. In the end, although this particular provision on the urgent notice of justified export restrictions may have mixed

implications, the overall impression appears to be that this provision serves as a guarantee for Japan in cases wherein India may indeed resort to export restrictions that may confer imbalanced advantage to its domestic industry. As such, the provision then may still be included in view of greater trade liberalization through more open and fairer trading schemes. These guarantees are indeed exhibited by the detailed specificity of the conditional provision: 1) description of the good involved and the introduced prohibition or restriction, 2) the actual date of introduction of such prohibition or restriction and 3) other relevant information necessary.

The Philippines may benefit from copying the additional provision contained in I(d)JEPA. The provision provides that in the event that a party introduces a prohibition or restriction otherwise justified under the relevant provisions of the WTO Agreement with respect to the exportation of a good to the other Party, the former Party shall, upon the request of the other Party, provide to the other Party, as soon as possible after the prohibition or restriction is introduced, relevant information, which shall include a description of the good involved and the introduced prohibition or restriction, the actual date of introduction of such prohibition or restriction, unless the sharing of such information is considered by the former Party as prejudicial to public interest." This will then give the Philippines the chance to properly evaluate the non-tariff measure imposed by Japan. This is important since Japan have the tendency to impose strict requirements as to the agricultural imports it receives. The Japanese put high restrictions and qualifications on food quality and safety. To gain access to Japanese markets, we need to supply hormone free, even-sized, properly packed and hygienic products.

The agriculture and fishery sector remains a sensitive issue for Japan with certain products such as, among others, rice, wheat, milk, herrings, sardines, mackerel and other fish being excluded from the JPEPA. Apart from fresh pineapples and dried pineapples, Japan made no commitments on other forms of Philippine pineapples (processed, canned, etc.)

In contrast, JPEPA allows the entry of used clothing (ukay-ukay) and second-hand vehicles to the Philippines. Article 27 of the PJEPA, which allows secondhand vehicles from Japan to enter the country, is the only assurance against secondhand vehicle, that is, the ban on imported used vehicles under Executive Order (EO) 156 or the Motor Vehicle Development Program. This problem can be addressed by the fact that the provision in I(d)JEPA explicitly allows the introduction of "justified" restriction and prohibition. The Philippines is free to provide for domestic regulations that it could impose within reason.

B.7. Emergency Measures

Agreements	Provisions
PJEPA	- Sec. a, par. 3 uses the general term Party instead of Country: "3. (a) A **Party** may take an emergency measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the procedures provided for in each Party's relevant domestic laws and regulations that are consistent with Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as "the Agreement on Safeguards")." - Contains provision on handling confidential information (sec. c, par. 5, article 22): "(c) When the Party provides the other Party with pertinent information that includes confidential information, the other

	Party may only disclose non-confidential part, summary or version thereof to the public." - Sec. f, par. 5 specifies a period of transition of 1 year: "(f) No emergency measure shall be applied again to the import of a particular originating good which has been subject to such an emergency measure, for a period of time equal to the duration of the previous emergency measure or one (1) year, whichever is longer."
BJEPA	- Referred to as Bilateral Safeguard Measures - Sec. c, par. 3 expounds on the provision on investigation, which accordingly must encompass all relevant factors; this is not provided in PJEPA "(c) In the investigation referred to in subparagraph (a) to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Article, the competent authorities of a Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment." - Sec. d, par. 3 provides a disclaimer that in cases where factors other than increased imports are causing injury to the domestic industry, such importation shouldn't be attributed as the culprit; not provided in PJEPA: "(d) The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in subparagraph (a) demonstrates, on the basis of objective evidence, the **existence of the causal link between increased imports of the originating good and serious injury or threat of serious injury**. When factors other than the increased imports of the originating good are causing injury to the domestic industry at the same time, **such injury shall not be attributed to the increased imports of the originating good."** Sec. 11 stipulates that the review must be done after 5 years, compared to PJEPA's 10 years (Art. 22, Sec. 12): "11. The Parties shall review the provisions of this Article, if necessary, after **five years** of the date of entry into force of this Agreement."
I(d)JEPA	- Referred to As Art. 23, "Bilateral Safeguard Measures"; substantiates on the specifications of conducting the necessary investigation to prove the basis for declaring the emergency measures; - Like BJEPA, sec. c, par. 3 specifies that competent authorities evaluate all relevant factors in an objective and quantifiable manner in order to prove that the commitments in the agreement do in fact significantly affect the domestic industry (e.g. rate & amount import increase, the share of the domestic market taken by the increased imports, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment; "(c) In the investigation referred to in subparagraph (a) to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Article, the competent authorities of the Party who carry out the investigation shall evaluate **all relevant factors of an objective and quantifiable nature** having a bearing on the situation of that domestic

	industry, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment." - Like BJEPA, sec. d further require the evaluation to objectively establish a clear causal link between increased imports and serious injury in the domestic industry: "(d) The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in subparagraph (a) demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than the increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good." - Sec. d., Par. 4 sets the limit for applying the emergency measures at 3 years and in highly exceptional circumstances at 5 years while PJEPA (Sec. e, Par. 5) sets it at 3 years and 4 years (shorter), respectively: "(d) No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of **three years**. However, in highly exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, shall not exceed **five years**. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application." - provides for the right of claiming trade compensation and right of suspension (Sec. c.i., Par. 5) while PJEPA only mentions the right of suspension (sec. c.i, Par. 6): "(c) (i) The right to claim the trade compensation which is agreed on by the Parties under subparagraph (a) and the right of suspension provided for in subparagraph (b) shall not be exercised for the first two years that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such bilateral safeguard measure conforms to the provisions of this Article." - imposes that the right of compensation and suspension shall not be exercised for 2 years and allows extension of 1 year (Sec. c.ii) while PJEPA sets the prohibition at 12 months/1 year (Sec. c, Par. 6): "(ii) The two years period mentioned in subparagraph (i) may be extended by one year, provided that the Party applying the bilateral safeguard measure provides to the other Party, evidence that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury caused by an absolute increase in imports and that the industry concerned is adjusting." - does **NOT** include PJEPA's condition that if a decision to apply an emergency measure or a preliminary determination to apply a provisional emergency measure is taken by the last day of the seventh year (from the date of entry), each Party may increase the rate of customs duty on the

	good up to a level of customs duty rate that is non-discriminatory to the WTO members
I(n)JEPA	- Referred to as Art. 24, "Bilateral Safeguard Measures"; - Does not contain provision on confidential info. stipulated in PJEPA (Art. 22, Sec. 5c) - review must be done conditionally 5 years after entry of force of agreement; in PJEPA, review must be done 10 years after (Sec. 11, Art. 24): "11. The Parties shall review the provisions of this Article, if necessary, **five years** after the date of entry into force of this Agreement, unless otherwise agreed by the Parties."
MJEPA	- Referred to as Art. 23, "Bilateral Safeguard Measures" - Sec. a, Par. 3 refers to "Country" while PJEPA, uses "Party" in general: "3. (a) A **Country** may take a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Country in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Chapter as "the Agreement on Safeguards"). - Sec. d, par. 4 specifies limit of emergency measure up to 4 years, totalling 5 years while PJEPA sets it at 3 years, totalling 4 years: "(d) No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of **four years**. However, in very exceptional circumstances, a bilateral safeguard measure may be maintained for up to a total maximum period of **five years**. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Country maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application." - No provision on confidentiality of information, as stipulated in PJEPA (Sec. 5c, Art. 22) - Sec. c, par. 5 specifies 18 months while PJEPA (Sec. 6c Art. 22) specifies 12 months as the time the right of suspending trade concessions must not be exercised: "(c) The right of suspension provided for in subparagraph (b) shall not be exercised for the first **18 months** that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such a bilateral safeguard measure conforms to the provisions of this Article. The Country exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained."
SJEPA	- Sec. f, par. 5 doesn't specify period of transition while PJEPA's counterpart specifies 1 year: - Sec. 7 is not provided for in PJEPA, but provides for judicial tribunals handling review of emergency measures undertaken: **"7.** Each Party shall, to the extent provided by its laws and regulations, maintain judicial tribunals or procedures for the purpose of the prompt review of administrative actions relating to measures set out in paragraph 1 of this Article. Such tribunals or procedures shall be independent of the authorities responsible for the determination of the measure in question."
TJEPA	- Referred to as Art. 22, "Bilateral Safeguard Measures" - Sec. a, par. 2 more flexibly applies requirement of investigation prior to emergency measure application: "2. (a) A Party may take a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with Article 3 and paragraph 2 of

	Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Chapter as "the Agreement on Safeguards"), and to this end, Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards are incorporated into and made a part of this Agreement, ***mutatis mutandis***. " - No provision on confidentiality of information, present in PJEPA (Sec. 5c, Art. 22) - Sec. d, par. 3 provides extension of emergency measure up to 2 years, hence total becomes 5 years, while PJEPA counterpart, Art. 22, Sec. 5e doesn't provide any extensions but maximum is 4 years: "(d) No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such period of time shall not exceed 3 years. A bilateral safeguard measure **may be extended by up to 2 years**, provided that the conditions of this Article are met. The total period of a bilateral safeguard measure, including any extensions thereof, shall not exceed **5 years**. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over 1 year, the Party applying the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application." - Sec. a, par. 4 sets the limit for allowing consultations for trade concession in cases of emergency measure, as not later than 30 days while PJEPA counterpart (Art. 22, Sec. 5 d) doesn't provide such: "4. (a) A Party applying or extending a bilateral safeguard measure shall provide to the other Party an adequate opportunity to consult on adequate means of trade compensation in the form of concessions which are substantially equivalent to the bilateral safeguard measure without delay and **no later than 30 days** after such application or extension." - Sec. c, par. 4 provides that the affected party must notify the other party 30 days before the application of suspension while this is not provided in PJEPA: "(c) The Party exercising the right of suspension provided for in subparagraph (b) above shall deliver a written notice to the other Party **at least 30 days before suspending** the application of concession." - Sec. 4d specifies first 2 years while PJEPA (Art. 22, Sec 6c) specifies first 12 months as the time the right of suspending trade concessions must not be exercised: "(d) The right of suspension provided for in subparagraph (b) above shall not be exercised for the **first 2 years** that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such a bilateral safeguard measure conforms to the provisions of this Article." - Sec. 10 specifies review be done after 15 years while PJEPA (Art. 22, Sec. 12) sets it at 10 years: "10. The Parties shall review the provisions of this Article, if necessary, after 15 years of the date of entry into force of this Agreement."
VJEPA	- Referred to Art. 20, "Bilateral Safeguard Measures," - Sec. 1 explicitly provides for the superseding or guiding laws or rules of Article XIX of GATT 1994, WTO Agreement on Safeguards and Article 5 of the Agreement on Agriculture in applying Bilateral Safeguard Measure: "1. Each Party may apply a safeguard measure to an originating good of the other Party in accordance with **Article XIX of the**

	GATT 1994 and the **Agreement on Safeguards** in Annex 1A to the WTO Agreement (hereinafter referred to in this Article as "the Agreement on Safeguards"), or **Article 5 of the Agreement on Agriculture** in Annex 1A to the WTO Agreement (hereinafter referred to in this Article as "Agreement on Agriculture"). Any action taken pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture shall not be subject to Chapter 13 of this Agreement." - No provision on confidentiality of information compared to PJEPA's (Art. 22, Sec. 5c) - Sec. c, par. 7 specifies the limit for exercising the right for suspension must be the first 2 years that a bilateral safeguard measure is in effect while PJEPA's counterpart (Art. 22, Sec. 6c) sets it at first 12 months: "(c) If no agreement on the compensation is reached within the time frame specified in subparagraph (b), the Party against whose originating good the bilateral safeguard measure is taken shall be free to suspend concessions of customs duties under this Agreement, which is substantially equivalent to the bilateral safeguard measure. That Party may suspend the concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained. The right of suspension provided for in this subparagraph shall not be exercised for the **first two years** that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and that such a bilateral safeguard measure conforms to the provisions of this Article." - Sec. 8b provides the period of applying bilateral safeguard measure will not be interrupted by the party's non-application of the bilateral safeguard measure pursuant to GATT & similar agreements: "(b) The period of application of the bilateral safeguard measure referred to in subparagraph 6(d) shall not be interrupted by the Party's non-application of the bilateral safeguard measure in accordance with subparagraph (a)." - Sec. b, par. 13 explicitly provides for the review or re-evaluation of the relevance/necessity of the bilateral safeguard mechanism in the Joint Committee, a provision more generally implied by the mandate of the reviewing functions of the Joint Committee and Sub-committee on Trade in Goods in PJEPA: "b) If the Parties do not agree to remove the bilateral safeguard mechanism during the review pursuant to subparagraph (a), the Parties shall thereafter conduct **reviews to determine the necessity of the bilateral safeguard mechanism in the Joint Committee**."

The article on Emergency Measures or also called "Bilateral Safeguard Measures" is one of the most critical if not controversial provision since it pertains to criteria qualifying the circumstances that grant exemptions from upholding the commitments stipulated in or formulated by the agreement. Technically, the provisions on Emergency Measures or Bilateral Safeguard Measures are based on Article XIX of GATT 1994, the Agreement on Safeguards and Article V of the Agreement on Agriculture in Annex 1A to the WTO Agreement, which all basically set the parameter or qualifications in allowing the country import restrictions or temporary easing or suspension of trade concessions that have proven to be injurious to the importing countries' domestic market or industry. Given this, all agreements include in their

provision the rationale that there needs a proper examination of potential injury to domestic industry or economy in the event of opening up the markets and/or a responsive investigation in cases such injury has materialized. All the JEPAs hence include this provision in order to contain, remedy, if not avoid serious damage or adverse impact on the market being opened. Consequently, all agreements provides for conditions for suspending commitments or specifications on the level of exemption or adjustment of tariff rates reduction commensurate to the level of perceived injury. All agreements provide for the urgent response of parties upon the knowledge of injury to domestic economy whether perceived or actual in the form of written notification and procurement of credible evidence.

However, major differences are noticeable. Brunei, for one, expounds the provision on investigation of a case of serious injury to domestic industry, which accordingly must encompass all relevant factors. Brunei also distinctly provides a disclaimer that in cases where factors other than increased imports are causing injury to the domestic industry, such importation shouldn't be attributed as the culprit. These two salient statements are not provided for in PJEPA and in some other agreements. The absence of this provision that expounds on the provision on investigation may be an advantage to the Philippines since it gives it the flexibility as to how it would conduct its investigations. It would also relatively free the Philippines from any constraint as to how to proceed with the investigation. At first look it might seem that the investigation procedure in the PJEPA does not encompass all relevant factors, however since there is no provision on what factors should be considered in the investigation then it may be deduced that the parties are free to look at all factors involved in the case of serious injury to domestic industry.

This rather prudent provision seems to suggest that Brunei wants to ensure that bilateral safeguard measures will not be rashly or arbitrarily summoned but are rather well-contemplated and thoroughly investigated. This again may be consistent with WTO's aim of establishing a fairer competition policy, wherein countries wouldn't abuse legal exceptions such as bilateral safeguard measures as disguised protectionist policies.

Other agreements lack provisions contained in one such as Indonesia, Thailand, and Vietnam which don't contain explicit provision on partial disclosure of non-confidential parts of confidential information through summary or screened version to the public, a provision stipulated in PJEPA.

The provision on handling confidential information is crucial because it is a mandate that requires balance of perspectives from the trade representatives of the trading parties or countries. On one hand, summarizing would be antithetical to establishing transparency as there's always the possibility that the agencies in charge of disseminating the information to the public may either deliberately or accidentally omit critical details or sugar-coat the actual events. But on the other hand, this partial disclosure is necessary not only to avoid endangering the national interests of the other country but also to avoid inciting premature misunderstanding or loosely based negative sentiments or bias that can potentially strain the trade relations between countries. This is so, as reality is, the public is not homogenous in its understanding of the technical terms of trade. Some of the less discerning sectors of the public may misconstrue certain details which may not necessarily be what the public makes out of it. For instance, in PJEPA, there is considerable sensation or public uproar caused by the inclusion of technological waste in the agreed concessions. To a certain extent, this has nurtured in some negative sentiments against the government of Japan. However, what most people don't know is such inclusion is done only out

of the technicality that all tradable goods must be included in the agreement. In this case, careful dissemination of information that is nuanced or contextualized would most likely address this issue.

Other provisions refer to the same thing but in different quantity, number, or degree. Examples are periods of reviewing Emergency Measures provision and/or limits in periods of using emergency measures. Brunei sets its review 5 years after entry into force of the agreement while Indonesia specifies that its review must be done conditionally 5 years after entry of force of agreement, as compared to PJEPA's 10 years. Thailand on the other hand schedules its review 15 years after the agreement enters into force. In terms of actual emergency measures, Malaysia specifies limit of emergency measure up to 4 years, with a total of 5 years while the PJEPA counterpart sets it at 3 years with a total of 4 years. In this regard, the Philippines specifies that no repeated emergency measure applied to a certain good must exceed 1 year or the actual duration of the previous emergency measure. Singapore doesn't specify such limit.

The length of the period of various Emergency Measures appears to suggest the degree of prudence of countries. Based on the comparison, the Philippines, with its apparently shorter limits or periods, seem to have tighter policies on the conduct or exercise of bilateral safeguard measures. This may prove disadvantageous to the Philippines should crisis calling for these emergency measures occur. The Philippines main export to Japan is either agricultural products or services, which are areas not normally covered by emergency measures. The most likely user of those measures is the Philippines against Japanese exports. It is better for the Philippines that the rules are flexible at the JPEPA so that the Philippines can have the flexibility to hit Japan more or be more strict against Japanese product

In applying suspension of further reduction of customs duty, Thailand applies the provision more flexibly than PJEPA with the inclusion of *mutatis mutandis* clause. Thailand specifies first 2 years while the Philippines specifies first 12 months or first year as the time the right of suspending trade concessions must not be exercised. With period limits, Thailand also allows extension of emergency measure up to 2 years, hence a total limit of 5 years, while PJEPA doesn't provide any extensions but sets a maximum of 4 years. Malaysia specifies 18 months while the Philippine specifies 12 months as the time the right of suspending trade concessions must not be exercised. Vietnam on the other hand specifies the limit for exercising the right for suspension must be the first 2 years that a bilateral safeguard measure is in effect. Vietnam emphasizes further that the period of applying bilateral safeguard measure must not be interrupted by the party's non-application of the bilateral safeguard measure pursuant to GATT 1994 and the WTO agreement.

Thailand's flexible application in extending the suspension of further reduction of customs duty is a strong sign of prudence. On a hypothetical basis, this lenience would seem to benefit Thailand in cases of this emergency. However, the impact of the difference in length of the periods is still yet to be seen. In any case, Vietnam appears the most prudent with its limit for exercising the right of suspension of 2 years and its disclaimer that exceptions granted by GATT 1994 must not override or disrupt the application of bilateral safeguard measure determined in VJEPA's purview.

Vietnam for its part delegates the review or re-evaluation of the relevance or necessity of the bilateral safeguard mechanism to the Joint Committee, a provision more generally implied by the

mandate of the reviewing functions of the Joint Committee and Sub-committee on Trade in Goods in PJEPA. Singapore provides for judicial tribunals handling review of emergency measures being or previously undertaken while the Philippine agreement doesn't stipulate any such provision.

Vietnam and Singapore's provisions that call to subject the Emergency Measures for review reflect the degree of centralization of trade affairs management in these countries. Besides this, these provisions indicate Vietnam and Singapore's commitment towards establishing a fair and transparent trade regime, as the re-evaluation or review that such provisions entail ensure that the emergency measures being or about to be undertaken are not done so arbitrarily or are based on a credibly and carefully determined cause or justification.

Regarding notification, Thailand sets the limit for allowing consultations for trade concession in cases of emergency measure, as not later than 30 days while PJEPA counterpart doesn't provide such. Thailand's agreement provides that the affected party must notify the other party 30 days before the application of suspension. This clear specification is not provided in PJEPA.

A clear specification of deadlines can greatly contribute to a party's commitment to exercising transparency and predictability. Such qualities are important for they send the signal to the trade partner as to the kind of contracting party a country is. Compliance to such deadlines or limits is tantamount to expressing utmost commitment to the agreement. Deadlines for all their quantitative appearance are in effect tools of trade relations or trade dynamics, which is an important component/aspect in conducting trade affairs.

Yet, the agreement with the most striking differences is that of India. Referred to as "Bilateral Safeguard Measures", the article provision under India's agreement substantiates on the specifications of conducting the necessary investigation to prove the basis for declaring the emergency measures. It also specifies that competent authorities evaluate all relevant factors in an objective and quantifiable manner in order to prove that the commitments in the agreement do in fact significantly affect the domestic industry. In fact, it enumerates the indicators for measuring the impact of the injury: rate and amount import increase, the share of the domestic market taken by the increased imports, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment. The agreement clearly states further that the evaluation must objectively establish a clear causal link between increased imports and serious injury in the domestic industry.

Like in Brunei's agreement, this meticulous provision by India not only suggests greater prudence in India but more importantly, serve as desirable/advantageous/sensible surety/guarantee to its commitment to establishing a fair, transparent, and competitive trade with Japan.

The agreement also sets the limit for applying the emergency measures at 3 years and in highly exceptional circumstances at 4 years a year longer than PJEPA's 4-year highly exceptional emergency measure application. In terms of rights and obligations in cases of emergency measures, India provides for the right of claiming trade compensation and right of suspension while PJEPA only mentions the right of suspension.

The demand of the claim of trade compensation may suggest India's assertion of its own bargaining power regardless of Japan's supposedly greater economic wealth (and hence bargaining power) or its unwillingness to be perturbed by Japan's obviously greater economic wealth in bargaining for trade concessions. In other words, India is not hesitant to be direct in holding Japan accountable for any possible injury that Japan's exports and other trade activities can cause its domestic industry, regardless of Japan's greater bargaining power. The Philippines non-inclusion of the warranty for trade compensation seems to suggest a rather coy stance or consideration of the Japanese party's greater economic and bargaining power in the negotiation table.

India also distinctly imposes that the right of compensation and suspension shall not be exercised for 2 years and allows extension of 1 year while PJEPA sets the prohibition at 12 months or 1 year. However, this does not include PJEPA's condition that if a decision to apply an emergency measure or a preliminary determination to apply a provisional emergency measure is taken by the last day of the seventh year (from the date of entry), each Party may increase the rate of customs duty on the good up to a level of customs duty rate that is non-discriminatory to the WTO members.

The Philippines may benefit from copying from the MJEPA and the TJEPA. The MJEPA specifies limit of emergency measure up to 4 years, totalling 5 years while PJEPA sets it at 3 years, totalling 4 years. This provision would lengthen the possible exercise of safeguard measures. The TJEPA provides for a flexible application in extending the suspension of further reduction of customs duty. As earlier stated, our main export to Japan is either agricultural products or services, which are areas not normally covered by emergency measures. The Philippines need not copy the other JEPAs strict provisions on conducting investigation and imposing emergency measures. The ambiguity as to how the investigations are to be conducted and as to what factors are to be considered are generally in favor of the Philippines. It gives the country the leeway in how to impose such emergency measures.

B.8. General Security Exceptions

Agreements	Provisions
PJEPA	Article 23, TIG Chapter (2): "For the purposes of this Chapter, Article XX and XXI of the GATT 1994 respectively, shall apply *mutatis mutandis*."
BJEPA	- Not provided in TIG chapter (2) but provided in Article 8 of General Provisions chapter (1): "1. For the purposes of **Chapters 2**,3,4,5 other than Article 64, and 7, **Article XX** of the GATT 1994 is incorporated into and forms part of this Agreement, *mutatis mutandis*." - Article XXI of GATT 1994 on Security Exceptions is provided in verbatim in Par. 3
I(d)JEPA	Not provided in TIG chapter (2) but provided in Article 11 of General Provisions chapter (1): "1. For the purposes of this Agreement except Chapters 6 and 9, **Articles XX** and **XXI** of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*."
I(n)JEPA	Not provided in TIG chapter (2) but provided in Article 11 of General Provisions chapter (1): "1. For the purposes of Chapters 2, 3, 4, 5 other than Article 66, and 8 of this Agreement, **Articles XX** and **XXI** of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*."
MJEPA	Not provided in TIG chapter (2) but provided in Article 10 of General Provisions chapter (1): "1. For the purposes of Chapters 2, 3, 4, 5, 6 and 7 other

	than Article 82, **Articles XX** and **XXI** of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*."
SJEPA	-Provided the entire Article XX of GATT in Article 19 of TIG Chapter (1) in verbatim -adds the general provision on the overriding validity of WTO agreements: "2. In the application of paragraph 1 above, **the relevant interpretations and operation of the WTO agreement** shall, where appropriate, be taken into account." - Article XXI of GATT 1994 or the Security Exceptions is provided for in Article 4 under General Provision Chapter (1)
TJEPA	Not provided in TIG chapter (2) but provided in Article 10 of General Provisions chapter (1) "1. For the purposes of Chapters 2, 3, 4 and 8 other than Article 103, **Articles XX** and **XXI** of the GATT 1994 shall apply *mutatis mutandis*."
VJEPA	Not provided in TIG chapter (2) but provided in Article 8 of General Provisions chapter (1) "1. For the purposes of Chapters 2, 3, and 4, **Articles XX** and **XXI** of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*."

This article puts forth Article XX, or the General Exception provisions, of GATT 1994, which basically puts forth the parameter for allowing exceptions to trade liberalization measures that a member country of the WTO can enact in view of their own protection. Article XX, specifies the numerous cases qualifying exceptions to application of trade concessions. It allows measures in view of protecting public morals, human, animal or plant life, health, intellectual property rights, and most importantly national treasures of artistic, historic or archeological value. It also involves the measures in relation to importation or exportation of silver and gold. More conspicuously, it provides for measures that secure compliance with laws or regulations not inconsistent with GATT 1994 obligations, such as customs enforcement, enforcement of monopolies, and protection of different forms of intellectual property. In particular, it provides measures in relation to products of prison labour. The provisions also included measures ensuring compliance with any inter-governmental commodity agreement under which the trade partner are both parties to. The provision also tackles measures in conserving exhaustible natural resources, which are in conjunction with restrictions on domestic production or consumption. Yet most strikingly, Article XX explicitly provides for exceptions in cases involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry is held below the world price as part of a governmental stabilisation plan and not as a measure to protect domestic industry or a strategy to increase export output. Lastly, Article XX clearly details the provision of security exceptions essential to products acquisition/distribution in general, as long as such measures are consistent with WTO principle of equitable share of international supply of such products.

This article provision also upholds the validity of Article XXI of GATT 1994, which establishes the parameters of security measures that warrant exemptions from the agreed trade concession in view of the member country's own protection. This includes prevention of disclosure of any information that can jeopardize its security interests and adoption of measures that aim to protect the same security interests. The latter includes (1) those relating to fissionable materials (define), (2) those relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purposes of supplying a military establishment, and (3) those taken in time of war or other emergency in international

relations. Article XXI also allows WTO member nations to enact measures pursuant to their obligations under the United Nations Charter for the maintenance of international peace and order.

The article is separately classified, at least in PJEPA, as a backgrounder to Measures/Restrictions to Safeguard the Balance of Payments article provision. The Philippine agreement shortly provides for the agreement for general security exceptions under, Articles XX and XXI of the GATT 1994 respectively, shall apply *mutatis mutandis*. PJEPA's separate article provision as supposed to being consolidated in the General Provisions may in fact be symptomatic or suggest that the negotiations for the different chapters or the writing of the provisions of the different chapters are done separately, thereby confirming the observations (to be presented later in this paper) that the negotiations undertaken by the Philippine party may not have been as consolidated as other agreements are, as suggested by the comparison of the provision, or may have been a product of decentralized trade negotiation process, which may not necessarily be favourable or a preferable way of doing things.

BJEPA, I(n)JEPA, I(d)JEPA, MJEPA, TJEPA, and VJEPA don't contain explicit provision on this article in their Trade-in-Goods Chapter (1), but rather refer to it in their General Provisions Chapter (1). However, the provisions are placed slightly differently. I(n)JEPA, I(d)JEPA, MJEPA, TJEPA, and VJEPA all succinctly mentions Articles XX and XXI of GATT 1994 in the same paragraph of the General Security Exceptions articles under their General Provision chapters. BJEPA, on the other hand, only mentions the effectivity of Article XX in the first paragraph but elaborates on the specific stipulations of Article XXI, without labelling the provisions as Article XXI, on the third paragraph. All the same, the provisions, however stated differently, warrant the validity of Articles XX and XXI of GATT 1994. Although initially these exceptions may legitimately delay the bringing down of trade barriers between trading countries, they are nonetheless adherent to the principles of fair trade, as such allow countries to enact measures that would protect market vulnerabilities brought about by the entry of foreign entities into domestic markets. Hence, these exceptions are still consistent with WTO's principle of "more beneficial (liberal trading) for less developed countries" as these provisional exceptions confer greater flexibility and leeway for market adjustments to developing countries like the aforementioned ASEAN countries (WTO, 2012Bb).

Singapore on the other hand differs widely from this brevity by separately enumerating the provisions of Articles XX and XXI of GATT 1994. The specific provisions of Article XX (General Exceptions) are almost written in verbatim in Article 19 of the Trade-in-Good chapter (2) while the provisions of Article XXI (Security Exceptions) are placed in the beginning of the agreement, in Article 4 of the General Provisions chapter (1). Although this provisional difference may not mean anything substantial, it may still suggest Singapore's intent on being clear with its commitment to greater trade liberalization. By placing the actual WTO agreements (Articles XX and XXI of GATT 1994) on the agreement per se, Singapore appears to leave no room for potential differential interpretation as the actual provisions or agreements themselves are unambiguously or concretely stated.

B.9. Anti-Dumping Investigation

I(d)JEPA
"When the authority of a Party competent for initiating investigation under Article 5 of the **Agreement on Anti-Dumping** received a written application by or on behalf of its domestic industry for the initiation of the investigation in respect of a good from the other Party, the former Party shall, at least **10 working days** in advance of the initiation of such investigation, **notify** the other Party, and **provide it with the full text**, of such application. The other Party may inform the exporters, foreign producers and relevant trade associations known to the other Party of that notification and of the information included in that application. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5 of Article 6 of the Agreement on Anti-Dumping."

As in its emergency measures provisions, India provides another separate, special provision mandating the submission of 10-day prior notice in written form on the initiation to investigate possible anti-dumping case. In a certain sense, this is not surprising as India's history of India's participation in the WTO negotiations shows India has been known to be very vocal of their contentions on how international trade rules regime is being managed (Kennedy & Southwick, 2002). To illustrate, according to India's Directorate General of Anti-Dumping and Allied Duties of the Department of Commerce (MCI, n.d.), the first anti-dumping investigation in India was initiated in 1992. During the period from 1992 to 2005, the DGAD received large number of applications for initiating anti-dumping investigations. After examination of these applications, anti-dumping investigations were initiated in 188 cases involving 35 countries/territories, with 25 EU countries considered as single territory (*ibid.*). The countries prominently figuring in anti-dumping investigations are China PR, EU, Chinese Taipei, Korea RP, Japan, USA, Singapore, Indonesia, Thailand, and Russia (*ibid.*). These countries noticeably are industrialized or industrializing. This is so as the major product categories on which anti-dumping duty has been levied are chemicals and petrochemicals, pharmaceuticals, fibres/yarns, steel and other metals and consumer goods, mostly basic materials for industrial manufacturing or processing (*ibid.*). One salient example is the Poly Vinyl Chloride Resin, or more commonly known as PVC resin. This product is a basic material used in manufacturing pipes, other plastic goods of household, footwear, and for coating and insulation of wires and cable purposes (*ibid.*). On an application filed by the PVC Resin Manufacturers Association, the Designated Authority initiated on 06 October 1992 an Anti-Dumping investigation into the alleged import of PVC Resin originating in or exported from Argentina, Brazil, Mexico, Republic of Korea and the USA. Final findings notified on 30 July 1993 recommended anti-dumping duties in the range of Rs. 504 to Rs. 2036 per Metric Tonne on imports of PVC Resin from Brazil, Republic of Korea, Mexico and USA. Imports from Argentina however did not warrant Anti-Dumping Duty (*ibid.*).

Given this predisposition to anti-dumping, it may be indeed favourable for India to include an explicit provision in its agreement with Japan, which unambiguously or officially warranting an anti-dumping investigation when necessary. This is so as India, possessing the second biggest population in the world, has an attractively large market for imports. Although this provision would curtail efforts of other countries (most notoriously highly developed countries with saturated markets) to gain greater market access, formalizing this kind of agreement will nonetheless secure India against potential dumping of products at lower costs with the aim of gaining market share. Therefore, this special provision on anti-dumping consistently upholds

WTO's principle of "more competitive" trading scheme by discouraging unfair trade practice such as dumping.

The Philippines on the other hand, conducted 16 anti-dumping cases with Indonesia, Singapore, South Korea, China, Thailand, Finland, Malaysia, Hong Kong/China, and Taiwan from 1989-1994 under the amended section 301 of the Tariff and Customs Code of the Philippines (TCCP) (Abad, n.d.). In this period, the products being disputed were mostly industrial inputs, such as again PVC resin. From 1996 to 1999, after the enactment of the Anti-Dumping Act of 1994 that mandates the protection of a domestic industry being injured or is likely to be injured by the dumping of imported products into the country, the Philippines government initiated 21 investigations with Thailand, Germany, China, South Korea, Russia, Ukraine, Malaysia, and Taiwan (*ibid.*). The products again were industrial goods, most of which were glasses and steel products such as hot and cold rolled steel coils. Then, from 2000 to 2007, the Philippines conducted five major investigations of anti-dumping cases with China, Taiwan, Thailand, and Japan, this time under the purview of a new framework of R.A. 8752, or the Anti-Dumping Act of 1999 (*ibid.*). Again, the products are industrial goods such as clear figured glass, cement, Sulfuric Acid-Technical Grace (TG), etc. However, 3 cases were dismissed due to lack of merit or failure to prove injury while one was withdrawn by the petitioner (*ibid.*).

Based on this, dumping cases seems to be less prevalent in the Philippines compared to India. This may explain why the Philippines did not include a special provision on anti-dumping, as it might have felt it did not need to. Although a case was filed against Japan, it was nonetheless dismissed due to lack of merit. Hence, the inclusion of a special anti-dumping investigation clause in the PJEPA may not be warranted, as it may not necessarily be germane to existing conditions of dumping in the Philippines.

However, there may be some merit as to providing for at least a general statement against anti-dumping. As earlier discussed, Japan's major exports are: consumer electronics, automobiles, semiconductors, optical fibers, optoelectronics, optical media, facsimile and copy machines. These forms of goods have the penchant of being subject to dumping. The mention of or reference to some kind of anti-dumping measure may be beneficial as to protect possible dumping of Japanese industrial goods. This provision could then be used as basis for imposing domestic rules against dumping. Such provision should ideally be couched in ambigous terms so as to give the Philippines the proper latitude and freedom to impose its own domestic anti-dumping measures.

B.10. Measures/Restrictions to Safeguard the Balance of Payments

Agreements	Provisions
PJEPA	Article 24, TIG Chapter (1): "1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under **Article XII** and **Section B of Article XVIII** of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. 2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the

	Articles of Agreement of the International Monetary Fund.
BJEPA	- Same with - PJEPA except par. 1 doesn't mention section B of Article XVIII of GATT 1994 as another reference point & applies more flexibly: "1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under **Article XII** of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as **may be amended**." - Par. 2 provides more flexibility: "2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund, **as may be amended**."
I(d)JEPA	Par. 1, Article 25 does not include citation of section B of Article XVIII of GATT 1994 as another reference point, besides Article XII: "1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under **Article XII** of the GATT 1994 and the Understanding on the Balance-of- Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. 2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund."
I(n)JEPA	Like BJEPA & I(d)JEPA, only mentions Article XII of GATT 1994 as reference basis: "1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under **Article XII** of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. 2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund."
MJEPA	-Like PJEPA, par. 1 mentions Article XII and Section B of Article XVIII of GATT 1994 as reference point**:** "1. Nothing in this Chapter shall be construed to prevent a Country from taking any measure for balance-of-payments purposes. A Country taking such measure shall do so in accordance with the conditions established under **Article XII** and **Section B of Article XVIII** of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. - Like BJEPA, par. 2 provides more flexibility "2. Nothing in this Chapter shall preclude the use by a Country of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund, **as may be amended**."
SJEPA	Only mentions Article XII as reference point & applies more flexibly like BJEPA but doesn't specify if coverage extends to IMF: "1. Nothing in this Chapter shall be construed to prevent a Party

	from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under **Article XII** of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as may be amended." - The applicability of IMF agreement is not explicitly mentioned under the TIG chapter (1) but may be referred to the article of Temporary Safeguard (Article 84) under the Investment chapter (8) which states that: "1. A Party may adopt or maintain measures inconsistent with its obligations provided for in Article 73 relating to cross-border capital transactions or Article 80: (a) In the event of serious balance-of-payments or external financial difficulties or threat thereof; or (b) Where, in exceptional circumstances, movement of capital result in serious economic and financial disturbance in the Party concerned 2. The measures referred to in paragraph 1 above: **(a) shall be consistent with the Articles of Agreement of the International Monetary Fund"**
TJEPA	- Like BJEPA, I(d)JEPA, I(n)JEPA, & SJEPA, par. 1 only mentions Article XII: 1. "Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under **Article XII** of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement." - Like BJEPA, par. 2 provides flexibility: "2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund, **as may be amended**."
VJEPA	- Like SJEPA, single provision that doesn't specify Article XII or Section B of Article VIII & precludes IMF: "Where a Party is in serious balance of payments and external financial difficulties or threat thereof, the Party may, in accordance with the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, adopt restrictive import measures." - Like SJEPA, provision on IMF agreement is rather referred to Restrictions to Safeguard Balance of Payments article (69) of Investment chapter (7), particularly section b of par. 2: "1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressure on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its program of economic development or economic transition. 2. The restrictions referred to in paragraph 1: (b) shall be consistent with the Articles of Agreement of the International Monetary Fund"

All agreements explicitly permit the conditional resort to measures that will ensure securing balance-of-payment. They differ though in scope and applicability. This provision is based on the imperative set forth by Articles XII and Section B of Article VIII of GATT 1994. In sum, these stipulations officially allow member States to enact import restrictions and similar measures aimed at securing or remedying balance-of-payment difficulties and the eventual relaxing of such restrictions up to a level that is commensurate to balancing monetary health and trade opening (WTO, 2012a). The articles thus only allow import restrictions up to the extent that is necessary, such as restricting imports to raise international reserves to an adequate level in cases of serious reserves decline. In addition, these articles are applied in light of WTO's commitment to conferring governmental assistance to the economic development process of its member nations, especially the developing countries (*ibid.*).

Given the fact that most balance-of-payment crises happens in countries experiencing rapid economic development or considerable economic growth, it may be advisable or sensible for the Philippines to unequivocally officialise this form of safeguard measure through clearly stating or citing Articles XII and Section B of Article XVIII of GATT 1994. Most particularly, it is highly prudent of the Philippines to explicitly extend this provision to IMF obligations, as apparently IMF is the multilateral institution that finances government deficits through its monetary loans. Concretizing an agreement on balance-of-payment mechanics will surely provide useful guarantees, especially as balance-of-payment crisis tends to aggravate or complicate prompt loans payment to IMF. Needless to say, such a provision is reflective of WTO's principle of attributing special privileges to developing countries in order to give them ample room for adjustment (WTO, 2012b).

Like PJEPA, the rest of the Asian countries under study share this prudent stance. India and Indonesia's agreements also contain the same provisions, except these two preclude mention of Section B of Article VIII of GATT 1994 as one of the reference points. Nonetheless, amidst this minor difference, India and Indonesia appears to uphold the same stand on balance-of-payment predicaments.

Brunei clearly shares this prudence by institutionalizing the provisions contained in PJEPA. Although the Brunei agreement excludes mention of Section B of Article XVIII of GATT 1994, it nonetheless elevates its sense of prudence by including phrases that imply more flexibility in the application of the provision such as "as may be amended" (Par. 1, Article 22). This hint of conditional application/flexibility is also included in the second paragraph that extends the coverage to IMF.

Thailand also shares this discretion by including the provisions on justified import restrictions and application of IMF agreement on exchange controls. Although Thailand's agreement precludes mention of Section B of Article XVIII of GATT 1994 (Governmental Assistance to Economic Development), it nonetheless applies the provision on IMF exchange control with slightly greater flexibility, as hinted by the conditional phrase "as may be amended" (Par. 2, Article, 23, TJEPA).

Malaysia on the other hand appears to adopt a more prudent stance by including Section B of Article XVIII of GATT 1994, which meticulously details qualifications for the exercise of justified import restrictions, and by infusing greater flexibility in the treatment of IMF exchange control. This form of writing is suggestive of Malaysia's conservative intent to secure guarantees

against injurious tendency of liberal trade to distort balance-of-payment structure. Once again, this policy stand doesn't necessarily militate against free trade but rather complements gradual increase of market access through careful considerations of fiscal precautions.

Yet, among these countries, the most conspicuous provisions are those of Singapore and Vietnam, which both stipulate single paragraphs on the matter. Singapore simply lays down the mandate for allowing import restrictions to safeguard balance-of-payment prospects, without mentioning or highlighting the concomitant IMF agreement on the legitimate use of exchange controls/import restrictions. However, Singapore refers to the IMF agreement on balance-of-payment issues in the article of Temporary Safeguard (Article 84) under the Investment chapter (8), in particular, in section a of the first paragraph, which states that "A Party may adopt or maintain measures inconsistent with its obligations provided for in Article 73 relating to cross-border capital transactions or Article 80: (a) In the event of **serious balance-of-payments or external financial difficulties or threat thereof**…" [emphasis added](§ a, Par. 1, Article 84, SJEPA). In addition, section a of the second paragraph of the same article more specifically states that "The measures referred to in paragraph 1 above: **(a) shall be consistent with the Articles of Agreement of the International Monetary Fund"** [emphasis added](§ a, Par. 2, Article 84, SJEPA). Still, this provision pertains to Investment transactions and not necessarily trade in goods, which involves more concrete quantitative import restrictions. But then again, Singapore has consistently been a net exporting country (DOS-Singapore, 2012). Hence, from the standpoint of its economic structure, placing emphasis on import restrictions may not be necessary called for. Accordingly, the inclusion of IMF agreement may not be necessary as the issue of balance-of-payments may be sufficiently addressed by the WTO agreements.

Like Singapore, Vietnam provides a single provision that concisely yet clearly mandates import restrictions in cases of serious balance of payments difficulties. More exactly, Vietnam unambiguously states that import restrictions may be adopted in accordance with prevailing WTO agreements, "where a Party is in **serious balance of payments** and external financial difficulties or threat thereof..." (Article 21, VJEPA). Moreover, Vietnam's reference to "external financial difficulties" also extends the coverage of the provision into a wider range of financial situations which may hamper Vietnam's commitment to the trade concessions contained in its agreement with Japan. Yet again, this wording may be reflective of the typical prudence that emerging countries like Vietnam exercises in bilateral agreements, given that Vietnam is or has consistently been a net importing country or incurring negative trade balance since 1993 onwards (General Statistics Office of Vietnam, 2012). Be that as it may, Vietnam's non-inclusion of IMF agreement regarding the matter on balance-of-payment issues remains a matter of further speculation.

B.11. Operational Procedures on Trade in Goods and Rules of Origin.

Agreements	Provisions
PJEPA	Article 25: "Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures on Trade in Goods and Rules of Origin that provide detailed regulations pursuant to which the customs authorities, the **competent** governmental authorities defined in Article 28 and the **relevant** authorities of the Parties shall implement their functions under this Chapter and Chapter 3."

BJEPA	Referred to in Art. 45 of ROO chapter (3): "Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures that provide detailed regulations pursuant to which the **competent** governmental authorities and **other** authorities concerned of the Parties shall implement their functions under this Chapter."
I(d)JEPA	- No provision in TIG chapter (2) but briefly referred to in Article 40 of ROO chapter (3): "The operational certification procedures, as set out in Annex 3, shall apply with respect to procedures regarding certificate of origin and related matters." - Definition of competent governmental authority is stated in paragraph a, section 1 of Annex 3: "(a)the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of a certificate of origin, for the designation of certification entities or bodies, or, for taking appropriate measures when necessary in relation to the issuance of a certificate of origin. In the case of Japan, the **Ministry of Economy, Trade and Industry**, and in the case of India, **Department of Commerce, Ministry of Commerce and Industry**"
I(n)JEPA	-Provides provision twice in Article 27 of the TIG chapter (1) and Article 50 of the ROO chapter (3): "Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures for Trade in Goods that provide detailed regulations pursuant to which the **relevant** authorities of the Parties shall implement their functions under this Chapter." -Contains the word competent government in Article 50 of the ROO chapter (3): "Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures for Rules of Origin that provide detailed regulations pursuant to which the customs authorities, the **competent governmental authorities** and other relevant authorities of the Parties shall implement their functions under this Chapter." - Competent governmental authority is defined in section a, article 28 of ROO chapter (3): "(a) the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of a certificate of origin or for the designation of certification entities or bodies. In the case of Japan, the **Ministry of Economy, Trade and Industry** and in the case of Indonesia, the **Ministry of Trade**"
MJEPA	Not provided in TIG chapter (1) but referred to Article 50 of the ROO chapter (3): "Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures that provide detailed regulations pursuant to which the customs authorities, the competent governmental authorities of the Countries **defined in Article 27** and the relevant authorities of the Countries shall implement their functions under this Chapter." - Sec. a of Article 27 of ROO chapter (3) defines the specific competent government agencies: "(a) the term "competent governmental authority" means the authority of each Country that is responsible for the issuing of the certificate of origin or for the designation of the certification entities or bodies. In the case of Japan, the **Ministry of Economy, Trade and Industry**, and in the case of Malaysia, the **Ministry of International Trade and Industry**"
SJEPA	No provision either in the General Provision Chapter, TIG or ROO chapters
TJEPA	Like MJEPA, provides provision only once in Article 24 of TIG Chapter (3):

	"Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures that provide detailed regulations pursuant to which the customs authorities, the competent governmental authorities **defined in Article 27** and relevant authorities of the Parties shall implement their functions under this Chapter and Chapter 3. - Like MJEPA, sec. a of Article 27 of ROO chapter (3) defines the specific competent government agencies but provides more flexibility in case of government restructuring: "(a) the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of the certificate of origin or for the designation of the certification entities or bodies. In the case of Japan, the **Ministry of Economy, Trade and Industry** or **an authority succeeding this Ministry,** and in the case of Thailand, the **Ministry of Commerce** or **an authority succeeding this Ministry**"
VJEPA	- Like I(d)JEPA, no provision in TIG chapter (2) but briefly referred to in Article 36 of ROO chapter (3): "The operational certification procedures, as set out in Annex 3, shall apply with respect to procedures regarding certificate of origin and related matters." - Competent governmental authority or any other/relevant authorities not defined in the TIG chapter or in the Operational Certification Procedure Annex (3)

The article on Operation Procedures on Trade in Goods and Origin basically is a provision obligating the Joint Committee to adopt the Operational Procedures detailed in the Rules of Origin (ROO). It is basically an appraisal or pledge to the commitment of the contracting parties to adhere to the rules or mechanics of trading specified in ROO. This provision is variously stated in the different JEPAs but essentially they contain the same content. PJEPA, I(n)JEPA, MJEPA, and TJEPA only succinctly mentions it in the TIG Chapter and instead elaborates on a separate chapter on Rules of Origin (ROO). BJEPA doesn't mention it under the TIG chapter but refers to it in its ROO chapter. SJEPA and VJEPA also don't include a provision in the TIG chapter. All these provisions basically obligate the Joint Committee to adopt the Operational Procedures on Trade in Goods (TIG) and Rules of Origin (ROO). The procedures provide detailed regulations of how customs authorities are supposed to carry their functions (details contained in Rules of Origin chapters of each JEPA).

The Philippines' inclusion of the provision on operational procedures in Trade in Goods chapter may suggest that the party negotiating for this chapter is anticipating that the negotiations for the ROO would not result in a cementing of such a provision. Noticeably, the Philippine agreement identifies "competent governmental authority and other "relevant authorities" as the designated entity to oversee the operational procedures. This may be so as again, the management of trade affairs in the country is not centralized and so various agencies may undertake the functions of administering trade of various goods. In other words, the wording has to be as general enough to cover the wide range of different agencies but still selective enough to screening the possible agencies or entities who can execute the provisions or rules. Hence, using the word "relevant" fits these criteria or parameters. Indeed, looking at the Operational Procedures attached to the main agreement, one sees that the administration of different goods is handled by specialized agencies. For example, the certification of origin of "small bananas" is dispensed, if not examined, by the Export Coordinating Division of the Office of the Commissioner of the Bureau of Customs (BOC) and the Plant Quarantine Service of the Bank of the Philippines Islands (BPI)

for the Philippines and the Customs and Tariff Bureau of Ministry of Finance and International Affairs Department of the Ministry of Agriculture, Forestry, and Fisheries for Japan (MoFA-Japan, 2012). The operational procedures of certifying fermented beverages prepared from various agricultural produce on the other hand are handled by BOC's Export Coordinating Division under the Office of the Commissioner and the Industrial Technology Development Institute (ITDI) of the Department of Sciences and Technology for the Philippines and the Customs and Tariff Bureau of the Ministry of Finance for Japan (*ibid.*). Herein, the kind of phrasing of the provision under study attests to the decentralized nature of trade management in the Philippines.

For its part, Brunei also uses "competent" governmental authority criterion but merely states a general identity of "other" authorities. More specifically, Brunei identifies the focal points of competent governmental authority as the Origin Certification Policy Office of the Trade Administration Division of the Trade and Economic Cooperation Bureau of the Ministry of Economy, Trade and Industry for Japan and the Department of Trade Development of the Ministry of Foreign Affairs and Trade for Brunei. In the case of the relevant authority of the importing Party, the focal points designated are the Customs and Tariff Bureau of the Ministry of Finance for Japan and again the Department of Trade Development of the Ministry of Foreign Affairs and Trade. In this specification, it appears that the management of trade in goods again is centralized, as opposed to the Philippine case, which specifies various agencies for various goods. Literally, this centralization is translated into shorter agreements on operational procedures, which if viewed through the merits of incentives perception would mean lesser transaction costs and perhaps/plausibly greater incentives to engage in trade transactions. Centralization of the administration of operational procedure can thus be perceived herein as either beneficial or conducive to greater trade liberalization through easing of institutional procedural constraints.

India and Vietnam both do not contain the provision in their TIG chapters (2) but rather briefly place it in their ROO chapters (3), Article 40 for India and Article 36 for Vietnam, respectively. Defined in Annex 3 of the agreement as that authority in charge of issuing a certificate of origin and of enacting measures in relation to such function, competent governmental authority is identified as Department of Commerce under the Ministry of Commerce and Industry for India and the Ministry of Economy, Trade and Industry for Japan. This identification once again attests to the centralized trade management schemes that both India and Japan has, at least in the matter of certification of origin or facilitation of trade in goods. The clear identification of the agency responsible for operational procedure would at least theoretically facilitate easier trade transactions and hence can catalyse the increase of trading by addressing potential structural constraints otherwise raised by the non-specification or ambiguity in the delineation of authority or responsibilities between "relevant" authorities. In this light, a clearer, more specific assignment of governmental or, so to speak, relevant authorities can contribute to greater trade liberalization by enabling a more predictable and transparent trade scheme.

Vietnam on the other hand does not specify even in its annex regarding operational procedure (Annex 3) the focal point of administration. Although the agreement does detail specific ways or procedure of certifying or authenticating the origin of the goods being traded, its non-specification of the governmental and other pertinent authorities conjures another matter for speculation.

Seemingly exercising greater prudence, Indonesia cites the provision twice, first in Article 27 of the Trade-in-Goods chapter (1) and second, in Article 50 of the Rules of Origin chapter (3). The TIG provision generally identifies all "relevant" authorities in overseeing the operations of the trade in goods and rules of origin while the ROO provision specifies that these relevant authorities are composed of a "competent" government authority, customs authorities and other "relevant" authorities as the entities overseeing/monitoring the operations of rules of origin and trade in goods. The repetition of provision in TIG and ROO could either mean Indonesia's prudence or its commitment to a more transparent and predictable trade arrangement through the provision of a clearcut operational procedure in administering trade in goods and rules of origin. Indonesia further specifies in its ROO chapter (3) that competent governmental authority is embodied by both the Ministry of Trade for Indonesia and the Ministry of Economy, Trade, and Industry for Japan. Once again, this specificity reveals the centralized nature of trade management in Indonesia. More importantly, this clear delineation of authority over operational procedure is germane to increased trade liberalization, as it facilitates easier or more convenient trade operations through predictable and more transparent institutions.

Unlike Indonesia, Malaysia only cites the provision once in Article 50 of ROO chapter (3), which appraises or upholds the obligation of the joint committee to oversee the trade in goods and rules of origin operations. Yet unlike any other JEPA, Malaysia specifically defines the particular government agencies that qualify as competent authorities. Malaysia's agreement identifies in Article 27 of ROO chapter (3) the Ministry of Economy, Trade, and Industry of Japan and Ministry of Trade and Industry of Malaysia as the designated government agency that will handle the said aspect of the agreement. Hence this clearcut identification attests to the veracity of Malaysia's centralized trade negotiations/office and the consequential convenience of pinpointing the entities accountable to the functions prescribed by the provision.

Like Malaysia, Thailand provides the provision only once in the agreement but in its agreement, the provision is cited in the TIG Chapter, particularly in Article 24. Like Malaysia as well, section a. of Article 27 of ROO chapter (3) defines the specific competent government agencies that will handle operational procedures of trade in goods and certification of origins. Thailand's agreement identifies its Ministry of Commerce and the Ministry of Economy, Trade, and Industry of Japan as designated governmental authorities. Once again, this clear identification is consistent with WTO principle or the international trading system's aim of establishing a more transparent and predictable trading scheme, which is a core dimension or aspect of trade liberalization.

Furthermore, Thailand's agreement even ascribes greater flexibility by taking into consideration or proactively anticipating cases of administrative changes or government restructuring. That is, by additionally stipulating "an authority succeeding this Ministry" after the agencies abovementioned, Thailand's agreement ensures continuity in the validity and execution of the operational procedure, regardless of ministerial changes or amendments to the Ministerial authorities. Again, this proactive or more sustainable expectation of future institutional changes may be perceived as an embodiment or a manifestation of Thailand's commitment to the agreed trade concessions and ultimately to trade liberalization.

Based on how its agreement with Japan is structured, Singapore seems to directly refer this provision on operational procedures on Customs Procedure. Perhaps, on a hypothetical basis, Singapore deems reiterating upholding the validity of operational procedure as a form of

unnecessary redundancy. Indeed, this non-inclusion appears to be consistent with the observable fact that Singapore's agreement is one of the shortest compared to the agreements of other Asian countries under study.

B.12. Sub-Committee on Trade in Goods

Agreements	Provisions
PJEPA	- Sec. 3 provides for a special subcommittee on Iron and Steel and Automobile and auto parts, under this subcommittee: "(a) The Sub-Committee shall establish a Special Sub-Committee on Iron and Steel Products and a Special Sub-Committee on Automobile and their Parts. The Sub-Committee may establish any other Special Sub-Committees, if necessary. (b) The functions of the Special Sub-Committee shall be: (i) analyzing relevant matters on the relevant goods and its sector, including trade in such goods; (ii) reporting the findings of the Special Sub-Committees, through the Sub-Committee, to the Joint Committee; (iii) with regard to the Special Sub-Committee on Iron and Steel Products, reviewing the issues related to implementation of tariff elimination commitment on Iron and Steel Products; and (iv) with regard to the Special Sub-Committee on Automobile and their Parts, reviewing the issues related to implementation of tariff elimination commitment on Automobile and their Parts." - Sec. 4 clearly delineating who are part of sub-committee (government and relevant representatives from private sector): "4. The Sub-Committee and the Special Sub-Committee shall be composed of representatives of the Governments of the Parties. The Sub-Committee and the Special Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties, including those from **private sectors**, with the necessary expertise relevant to the issues to be discussed."
BJEPA	-No separate, explicit provision in TIG chapter but is referred to the article providing for the Joint Committee (article 11) in the General Provisions chapter (1), particularly section b of par. 3: "3. The Joint Committee: (b) may establish and delegate its responsibilities to Sub-Committees." -Composition of the Joint Committee generally refers to: "3. The Joint Committee: (a) shall be composed of **representatives** of the Parties; and" -Reviewing and monitoring functions and performing other agreed functions are mandated in par. 2, sec. a and e, respectively: "2. The functions of the Joint Committee shall be: (a) **reviewing** and **monitoring** the implementation and operation of this Agreement; (e) **carrying out other functions** as the Parties may agree."
I(d)JEPA	-Like BJEPA, no separate, explicit provision in TIG chapter but is referred to the article providing for the Joint Committee (article 14) in the General Provisions chapter (1), particularly section b of par. 3: "3. The Joint Committee: (b) may establish and delegate its responsibilities to Sub-Committees." -Unlike BJEPA, composition of the Joint Committee specifically refers to: "3. The Joint Committee: (a) shall be composed of representatives of the **Governments** of

	the Parties; and" -Reviewing and monitoring functions and performing other agreed functions are mandated in par. 2, sec. a and e, respectively: "2. The functions of the Joint Committee shall be: (a) **reviewing** and **monitoring** the implementation and operation of this Agreement; (e) **carrying out other functions** as the Parties may agree."
I(n)JEPA	-Same except 2 explicit functions: "(b) discussing any **issues** related to this Chapter; (c) reviewing and making appropriate **recommendations**, as necessary, to the Joint Committee on the **Operational Procedures for Trade in Goods** referred to in Article 27" -no provision of a specialized subcommittee - Composition of the sub-committee is specified in par. 2 of Sub-committees article (15) in General Provisions chapter (1): "2. A Sub-Committee shall: (a) be composed of **representatives of the Governments** of the Parties and may, by mutual consent of the Parties, invite representatives of **relevant entities other than the Governments** of the Parties with the necessary **expertise** relevant to the issues to be discussed; and (b) be co-chaired by **officials of the Governments** of the Parties."
MJEPA	- Same except one explicit function: "(b) discussing any issues related to this Chapter" - Like I(n)JEPA, no provision of a specialized subcommittee - Sec.3 only specifies government as part of subcommittee while PJEPA includes representatives from the private sector: "3. The Sub-Committee shall be: (a) composed of **representatives of the Governments**; and (b) co-chaired by officials of the Governments." - exclusivity further reinforced by par. 3 of Joint Committee article (13) of General Provisions chapter (1): "3. The Joint Committee: (a) shall be co-chaired by senior officials of the Governments, unless the Countries agree to convene the meeting at ministerial level; and"
SJEPA	No explicit provision of a sub-committee/joint committee specific to TIG, but provides for a "Supervisory Committee": 1. A Supervisory Committee shall be established to ensure the proper implementation of this Agreement, to review the economic relationship and partnership between the Parties, and to consider the necessity of amending this Agreement for furthering its objectives. 2. The functions of the Supervisory Committee shall include: a. Reviewing the implementation of this Agreement b. Discussing any issues concerning trade-related and investment-related measures which are of interest to the Parties c. Encouraging each other to take appropriate measures which will lead to significant improvement of business environment between the Parties d. Considering and recommending further liberalization and facilitation of trade in goods and services, and investments e. Considering and recommending ways of furthering the objectives of this Agreement through more extensive co-operation; and f. Considering and recommending, at any time and whether or

	not in the context of the general review provided for in Article 10, any amendment to this Agreement or modification to the commitments therein 3. Where there are any amendments to the provision of the WTO agreement on which provisions of this Agreement are based, the Parties shall, through the Supervisory Committee, consider the possibility of incorporating such amendments to this Agreement 4. The Supervisory Committee a. Shall be composed of representatives of the Parties b. Shall be co-chaired by senior officials or ministers of the Parties as may be delegated to them for this purpose; and c. May establish and delegate responsibilities to working groups 5. To promote dialogue between the government, academia, business communities of the Parties, for the purpose of developing and enhancing the economic partnership between the Parties, the working groups may, where necessary, invite academics and business persons with the relevant expertise to participate in the discussions of the working groups. 6. The Supervisory Committee shall convene once a year in regular session alternately in each Party. Special meetings of the Supervisory Committee shall also convene, within 30 days, at the request of either Party"
TJEPA	Same as PJEPA except without provision of a special subcommittee
VJEPA	-Like BJEPA & I(d)JEPA, no separate, explicit provision in TIG chapter but is referred to the article providing for the Joint Committee (article 11) in the General Provisions chapter (1), particularly section b of par. 3: "3. The Joint Committee: (b) may establish and delegate its responsibilities to Sub-Committees." -Like I(d)JEPA and unlike BJEPA, composition of the Joint Committee specifically refers to: "3. The Joint Committee: (a) shall be composed of representatives of the **Governments** of the Parties; and" -Reviewing and monitoring functions and performing other agreed functions are mandated in par. 2, sec. a and e, respectively: "2. The functions of the Joint Committee shall be: (a) **reviewing** and **monitoring** the implementation and operation of this Agreement; (e) **carrying out other functions** as the Parties may agree."

The provision on Sub-committee on Trade in Goods is basically a reiteration of the intent of the trading parties to reinforce the Joint Committee's monitoring, coordinating, and implementing functions. This particular sub-committee is assigned with three core functions: (1) reviewing and monitoring the implementation and operation of the TIF chapter, (2) reporting the findings to the Joint Committee, and (3) performing other functions that may be delegated by the Joint Committee as it sees fit. Although TIG chapter composes the core of the basic agreement of any FTA, not all Parties allot or assign a separate committee to handle its monitoring and review.

Brunei, India, and Vietnam preferred not to have a separate provision but instead referred to it in their Joint Committee articles under their General Provisions chapters. In particular, section a. of the third paragraph of their Joint Committee articles allows the Joint Committees to establish and delegate responsibilities to sub-committees. Moreover, the core functions of the Sub-committee

on Trade in Goods, namely reviewing and monitoring the operation of the agreements and performing other agreed functions, are mandated in par. 2, sec. a and e of their Joint Committee articles, respectively. Nevertheless, the three agreements diverge in specifying the composition of the committee. Both India and Vietnam specifically confines the membership to representatives of their governments while Brunei provides a wider scope by using the more general term "representatives". To a certain extent, confining the membership to the government may provide convenience or better yet easier accountability mechanisms as there is a clear identification of who's culpable or liable in cases of reneging from trade concessions. However, such a parameter tends to be limiting as it may preclude other stakeholders who may possess better information, deeper knowledge, or a more realistic perspective on the sectors relevant to, involved with, or targeted by the trade concessions. In any case, the specification of the membership of the Joint Committee and the designated sub-committee on trade in goods would definitely enhance the transparency and predictability of the review mechanisms of trade, which again is an important element of trade liberalization.

Like the three agreements abovementioned, Singapore also does not contain a separate, explicit provision of a sub-committee or, for that matter, a joint committee specific to TIG. Instead, it establishes what it calls a "Supervisory Committee", which executes the same reviewing and coordinating functions of the Joint Committee. However, it peculiarly seems to function as a centralized committee consolidating all the Joint Committee actions, as there are various Joint Committees assigned for other chapters such as the Joint Committee for Customs Procedure, Joint Committee on Paperless Trading, etc.. This overarching "Supervisory Committee" may attest to the fact that Singapore's trade affairs management resemble a centralized system. Such centralization again may warrant institutional advantage to Singapore, as again with centralization, transaction costs may be lower out of better information emanating from clearer delineation of accountability and responsibility and more effective or tighter coordination of monitoring functions or implementation efforts.

Among the agreements that establish this sub-committee, the Philippines is the most specific. Besides enumerating the core functions, the third paragraph of the article establishes a Special Subcommittee for Iron and Steel and Automobile and auto parts. This Special Subcommittee will be in-charge of (1) analyzing relevant matters on the relevant goods and its sector, including trade in such goods, (2) reporting the findings, through the Sub-Committee on Trade in Goods, to the Joint Committee, (3) reviewing the issues related to implementation of tariff elimination commitment on Iron and Steel Products, and reviewing the issues related to implementation of tariff elimination commitment on Automobile and their Parts. The Special Sub-committee may also establish another subcommittee as they deem fit.

The special attention paid to this sector comes from the fact that the Steel and Iron sector has had a considerable history of active engagement in the setting of tariff policy, with tariff rates averaging as high as 7% (Tariff Commission-Philippines, 2010). Yet, behind this seemingly meager rate is a series of political economic events, which gives it a different, meaningful context. The sector (at least the Steel industry) has been mired by controversies.

One of the largest players in the steel industry is is the Indian firm, Global Steel Philippines Inc. (GSPI), which owns the steel plant in Iligan City, formerly owned by the National Steel Corporation (NSC), the biggest steel company in the country. The beginnings of National Steel Corporation started with the foreclosure of Iligan Integrated Steel Mills (IISMI) on February 22,

1974 and the acquisition of cold rolling and tinning facilities of Elizalde Steel (ELISCON) years after (*ibid.*). The National Development Company (NDC) who took full control of the corporation in 1981 made different projects to increase the capacity of steel production with their land in Iligan City and Pasig City. With these projects came the acquisition of different technology and facilities for steel production. NSC became the leading producer of billets, materials for rebars and wire rods and flat- rolled products such as hot- rolled coils, hot- rolled plates and others. For many years, NSC has been at the top in market shares but in 1999, their shares decreased which was mainly attributed to dumping of cheap imported steel products in the country (*ibid.*). This caused NSC to file suits to the Tariff Commission against Russian HRCs, Taiwanese CRCs and South Korean tinplates but was all dismissed (Garcia and Vicente, 2005). On August 1991, the government encouraged the country's steel industry by signing a law that calls the state to boost the industry and to use the country's resources for this end. This was Republic Act 7103 or the Iron and Steel Industry Act. Also, privatization was also planned since 1990 and so Malaysia's Wing Tiek was able to control some shares in 1994. This was done to limit the exposure of finances of government- owned and controlled corporations. However, in 1999, despite plans of NSC in improving their corporation, they underwent a retrenchment of 1, 400 employees and finally closed shop which incurred losses to the scrap iron business and other related industries. NSC incurred a debt of about $350 million according to the Securities of Exchange and Commission (Tariffe Commission-Philippines). When the Malaysians left in 2004, Global Steel Philippines acquired the assets of the company. It was reported that from 1994- 2000, steel production went down, exports were down and imports were high in 1997 and 1999 (Garcia and Vicente, 2005). On October 2004, EO 375 was enacted to support local steel industries by raising the tariffs. However, the supply of HRC and CRC was still not sustained by local producers. So on May 2010, an executive order was proposed and supposedly approved by the former administration by June 2010 removing tariff on steel imports, particularly on hot rolled coil (HRC) and cold rolled coil (CRC), after having been reviewed by the National Economic Development Authority as recommended by the cabinet- level inter-agency committee on tariff and related matters (TRM).

This EO elicited almost bipolar opinions. From the government side, the failure of the GSPI is not caused so much by lack of government support by mismanagement. A senior official from the Board of Investment mentioned that GSPI had already been given preferential treatment by the government and yet GSPI, on the other hand, was not seen investing for the improvement of their company, which also accounts for their inability to produce for the local demand (Personal Communication, September 1, 2010). The low-quality steel that they were providing proved to be a cost for their consumers and losses for these downstream companies. Given that GSPI is the lone producer of flat products which are needed in other production of steel products, their failure as a company puts an end to the steel industry. Now, this is crucial since the steel industry is a key sector that provides the basic inputs to other sectors, especially to the vital manufacturing sector. Whether this situation has changed or not, the history of inefficiency ensuing from these events seems to justify why the agreement has specifically provided for a Sub-committee for Steel and Iron. Needless to say, the provision of this Special Sub-committee is undertaken in pursuit of the principle of a more transparent and predictable trade management, an element of trade liberalization.

PJEPA also clearly delineates government and relevant entities other than the Government, including those from the private sector, as part of the sub-committee. Ideally, this participative trade mechanism is supposed to provide greater leverage in negotiations or exchange in information, since including the stakeholders who are on the ground can provide the sub-committee better or more accurate information for assessment purposes. With better information and assessment, better initiatives or more effective implementation initiatives that are able to factor in realistic constraints and bottlenecks can be crafted. Hence, widening the scope of participation in the sub-committee both encourages greater transparency and fairness in trade regimes and fosters a better view of competition policies.

Malaysia contains the same provisions as those in the Philippine agreement but it also explicitly assigns the discussion of issues related to trade in goods, as an additional function of the subcommittee, a function not specified in PJEPA's Sub-Committee. However, like the other JEPAs, Malaysia doesn't include a provision of a specialized subcommittee. Another difference seen in Malaysia's agreement is the membership of the sub-committee. Malaysia only explicitly includes government representatives as the members of the Sub-committee. This exclusivity is further reinforced by the third paragraph of its Joint Committee article (13) under the General Provisions chapter (1), which states that the Joint Committee "shall be co-chaired by senior officials of the Governments, unless the Countries agree to convene the meeting at ministerial level" (par. 3, article 13, MJEPA). This exclusivity may reflect the fact that handling trade affairs in Malaysia is unabashedly centralized. In fact, in the latest WTO Trade Policy Review of Malaysia in January 25 and 27 of 2010, "the Ministry of International Trade and Industry (MITI) remains the central authority in charge of the planning and implementation of Malaysia's international trade and industrial policies" (WTO, 2010, p. 13). As such, the consultations with the private and other non-government sectors may most likely occur within the intra-national bounds of this centralized authority. Notwithstanding the opportunity cost or the difference of including other representatives in the "inter-national" subcommittee, this centralized feature of trade management may most probably ascribe advantage in Malaysia in terms of easier or simpler structure of accountability.

Indonesia, on the other hand, also contains the same provisions as the Philippine agreement does. However, like Malaysia, Indonesia's agreement specifies two other functions: (1) discussing any issues related to the TIG chapter and (2) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on the Operational Procedures for TIG. Although it is implicit that Sub-committee for Trade in Goods would tackle issues related to TIG operation upon convening for the review and monitor of the same, it nonetheless reinforces the mandate to carry out such function when the said function is explicitly stipulated in the provision per se as what Indonesia has done. This explicit mention again provides healthy pressure to both Indonesia and Japan by locking them into a commitment to not avoid or ignore these so-called issues. Thus this particular provision increases transparency between both parties. Unlike the Philippines, Indonesia doesn't have a provision on a specialized sub-committee. However, like the Philippines, the membership of its sub-committee is composed of government representatives and other relevant entities. The difference is Indonesia being more specific by qualifying that these other relevant entities must possess "the necessary expertise relevant to the issues to be discussed" (§ a, par. 2, article 15, I(n)JEPA). This additional clause effectively becomes a de facto criterion for screening the non-government component of the membership. In this way, membership is maximized by avoiding the inclusion of unnecessary parties which may just well

serve as nuisance to the matter of reviewing TIG provisions. This sense of organization is further guaranteed by the provision stating that the meetings of the sub-committee shall "be co-chaired by officials of the Governments of the Parties" (§ b, par. 2, article 15, I(n)JEPA). This again ensures order and predictability in trade affairs, as coordination efforts will be consolidated under the control of government officials with clear authority and irrefutable legal mandate. This sort of guarantee is hence conducive for greater trade liberalization.

B.13. Cooperation in Relation to Export

PJEPA	MJEPA
Article 27: "The Parties shall cooperate with each other on the utilization of appropriate mechanism on the conformance with the importing Party's safety and **environmental standards**, such as **roadworthiness** and **vehicle emission standards**, of used **four-wheeled motor vehicles** as may be agreed by the Parties, exported from the exporting Party."	Article 26 specifically provides for cooperation in Automotive Industry as opposed to the general provision in PJEPA: "The Countries shall co-operate, with the participation of their respective automotive industries, to further enhance **competitiveness** of the automotive industry in Malaysia."

Among the JEPAs, only PJEPA and MJEPA provides for the mandate for Parties to coordinate for export standards which may enhance conformity of Parties to safety and environmental standards, such as roadworthiness and vehicle emission standards. Malaysia in its article 26 specifically provides for cooperation in Automotive Industry as opposed to the general provision in PJEPA. Needless to say, both these provisions are initiatives or guarantees that highlight the commitment of both countries to establish the various infrastructures necessary to achieve enhanced trade relations. For the Philippines, the provision's explicit appraisal of the safety and environmental standards in conducting export is strongly consistent with the WTO's vital (yet frequently debated) principle of protecting the environment (WTO, 2012b). Yet, more than adhering to general principles, this provision may problematically puts institutional pressure on the Philippines to increase its standards of trade practice up to a level that is at par with its trading partner, in this case, Japan. The provision contained in PJEPA provides for an obligation that need not be provided for in the agreement. This initiative may be done by the Philippines on its own.

Although, it may be noteworthy to point out that it is Japan who exports vehicles to the Philippines. Replacing the provision of the PJEPA by copying the provision of MJEPA, may be beneficial for the Philippines because it is ambiguous enough to be used as the basis for the imposition of domestic rules without, in turn, tying the hands of the Philippines.

Malaysia's provision mandating the cooperation with Japan on the former's automotive industry also resembles this positive commitment. More exactly, the provision's explicit aim "to further enhance **competitiveness** of the automotive industry in Malaysia"[emphasis added](Article 26, MJEPA) is a clear indication of Malaysia's commitment to establishing a fair and more competitive trade market or structure.

Malaysia's automotive industry is worth noting since the industry has been cited as a premier success story and, in effect, an epitome of effective infant-industry measures (Rosli, 2006). Since

the launch of the first national car, the Proton Saga, Malaysia has obtained much recognition regionally and internationally for its outstanding achievements in its automobile industry. In the process of building this successful industry, the Malaysian government adopted various protective measures, such as tariff and non-tariff measures and local content policy to enable the automobile industry to survive and develop locally (*ibid.*). As a result of this conglomeration of policies and coupled with impressive economic growth, Malaysia's automobile industry was able to produce almost half a million vehicles in 2002, the highest achievement in production in its fairly recent history (*ibid.*). Two national automakers share the pride of this achievement: Proton and Perodua. However, the optimistic prospects of the industry are greatly challenged by the onset of AFTA. According to Dr. Mohd Rosli, an Associate Professor from the University of Malaya who has heavily studies the Malaysian automobile industry, the two national automakers aims to mitigate the challenge of opening the industry to foreign entrants by collaborating with foreign makers.

Given this, the provision hence can be interpreted in various ways. On Malaysia's side, this mandate for cooperation can both be a pledge of commitment to greater trade liberalization and/or a subtle means of levelling the playing field by extracting information, learning more advanced technology, and adopting industry practices that boost high capital-output efficiency. In other words, this provision (and the cooperation that ensues from it) may signal the attempt of Malaysia to ameliorate the disruptive effects of opening the industry to foreign automakers by ensuring that its industry will not be left behind by prospective foreign automakers which possesses greater economies of scale and competitive advantage, in which Japanese automakers are dominant. For Japan's part, it may be a strategy to monitor the internal mechanisms of Malaysia's industry and an effective means to gather insights and valuable information on the dynamics and performance of Malaysia's local industry, given the industry's historical propensity to enact protective measures. In any case, the resulting seems to be a trade relation with greater transparency and with competitiveness as an underlying goal, two defining features of a liberal trade regime.

This provision can be useful for the Philippines. The automotive industry in the Philippines is currently at a boom. Many international corporations have now established a manufacturing plant here in the Philippines. This provision may serve to not only protect the emerging industry buy more so it may help boost this industry.

The Philippine automotive industry is an important sector in the country in terms of its linkages to many diverse industries and sectors and its contribution to output, employment, investments and exports. The synergy in this industry has strengthened the linkages between the motor vehicle assemblers and the motor vehicle parts and components manufacturers.

The Philippine motor vehicle industry is comprised of two sectors: the motor vehicle assembly and the motor vehicle parts and components manufacturing. The components sector consists of 256 companies distributed as follows: metalworking – 48 percent, rubber – 15%, seats and trims – 10%, plastics – 9 percent, electrical – 8 percent and others 10 percent. The components sector currently manufactures about 330 parts.

The bulk of total exports were accounted for by wiring harnesses. Major component exports like transmissions and anti-lock brake system (ABS) controls are manufactured by Japanese vehicle assembly firms under the ASEAN Industrial Cooperation scheme. The principal components

manufacturers are Yazaki-Torres Manufacturing Corp. (wiring harness), United Technologies Automotive Phils. (wiring harness), Temic Automotive Phils. Inc, (ABS), Honda Engine Manufacturing Phils., Inc. (engines), Asian Transmission Corp. (automotive transmissions), Toyota Autoparts Phils. (automotive transmission), Fujitsu Ten Corp. Phils. (car stereos) and Aichi Forging Co., Inc. (forged parts). By end of 1999, the parts industry contributed investments of approximately PHP27 billion, employment of 45,000 and export of over US$ 1.1 billion, which represents an increase of more than ten-fold from 1988 level.

The motor vehicle assembly sector is grouped based on the type of motor vehicles, such as passenger cars, commercial vehicles (utility vehicles, pick-ups, vans, trucks, buses, special purpose vehicles) and motorcycles.

The Philippine motor vehicle industry is principally dominated by Japanese automobile manufacturers: Toyota Motor Phils., Inc., Honda Cars Phils., Inc., Mitsubishi Motors Phils., Corp., Nissan Motor Phils., Inc. and Honda Phils., Inc. Other principal motor vehicle manufacturers are Ford Motor Co. Phils., Columbian Autocar Corp., Pilipinas Hino Inc. and Norkis Trading Company. The top markets for Philippine merchandise exports of motor vehicles are Japan, Thailand, Singapore, Vietnam, Republic of South Africa and Taiwan (ROC).

However, it is again important to note that the provision in MJEPA does not really lay a concrete obligation on the part of Japan. The interpretation of this provision is largely open to different versions. This means that the Philippines has no actual obligation to increase its standards of trade

B.14. Review

Agreements	Provisions
PJEPA	No separate provision but is clearly referred to in sec. a, par. 2 of its Sub-committee on Trade in Goods article (26) of TIG chapter (1): "2. The functions of the Sub-Committee shall be: (a) **reviewing** the implementation and operation of this Chapter"
BJEPA	No separate provision but is referred to in sec. a, par. 2 of its Joint Committee article (11): "2. The functions of the Joint Committee shall be: (a) **reviewing** and monitoring the implementation and operation of this Agreement"
I(d)JEPA	Like BJEPA, no separate provision but is referred to in sec. a, par. 2 of its Joint Committee article (14): "2. The functions of the Joint Committee shall be: (a) **reviewing** and monitoring the implementation and operation of this Agreement"
I(n)JEPA	Like PJEPA, no separate provision but is clearly referred to in sec. a, of its Sub-committee on Trade in Goods article (26) of TIG chapter (1): "For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be: (a) **reviewing** and monitoring the implementation and operation of this Chapter;
MJEPA	Like PJEPA & I(n)JEPA, no separate provision but is referred to sec. a of its Sub-committee on Trade in Goods article (25) in TIG chapter (1):

	"1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 14 shall be: (a) **reviewing** and monitoring the implementation and operation of this Chapter"
SJEPA	No separate provision but is referred to in par. 1 & sec. a, par. 2 of its "Supervisory Committee" article (8) of General Provisions chapter (1): 1. A Supervisory Committee shall be established to ensure the proper implementation of this Agreement, to **review** the economic relationship and partnership between the Parties, and to consider the necessity of amending this Agreement for furthering its objectives. 2. The functions of the Supervisory Committee shall include: **(a) Reviewing** the implementation of this Agreement
TJEPA	Art. 26 provides a special/unique provision stipulating that Thailand and Japan parties will conduct a review of the schedule of trade concessions including those not originally part of the explicit commitment of duties elimination 10 years after entry into force of the agreement or as agreed upon by the parties: "1. The Parties shall undertake a general **review** of the provisions of this Chapter, including a general review of the Schedules in Annex 1 including the originating goods that are **excluded from any commitment of elimination or reduction of customs duties and commitment of negotiation**, in the tenth calendar year following the calendar year in which this Agreement enters into force, or earlier only if agreed between the Parties. As a result of such review, the Parties may, only if the Parties agree, **enter into negotiation on possible elimination or reduction of customs duties on originating goods on which the Parties agree, during such review, to negotiate**."
VJEPA	Like BJEPA & I(d)JEPA, no separate provision in TIG chapter but is referred to the article providing for the Joint Committee (article 11) in the General Provisions chapter (1), particularly sec. a of par. 2: "2. The functions of the Joint Committee shall be: (a) **reviewing** and monitoring the implementation and operation of this Agreement"

Among the JEPAs, only TJEPA contains a special/unique provision stipulating that Thailand and Japan parties will conduct a review of the schedule of trade concessions including those not originally part of the explicit commitment of duties elimination 10 years after entry into force of the agreement or as agreed upon by the parties. Although a separate provision on the review of the agreements may not be necessary given that the review is already subsumed by the Joint Committee and/or the Sub-committees on Trade in Goods, it nonetheless suggests the stand or commitment of the country to pushing forward with granting trade concessions and hence greater market access. As such, Thailand's explicit stipulation that the review will be undertaken in view of entering into a negotiation on the possible elimination or reduction of customs duties on originating goods on which the Parties agree strongly suggests Thailand's desire or intention to extend the coverage of lowering trade barriers. This desire for lower trade barriers in turn translates to greater desire to establish a more open, fairer trade regime.

However, the other countries do make clear reference to the need for review in their Joint Committee or Sub-Committee on Trade in Goods articles. Despite not specifying sub-

committees specific to TIG, Brunei, India, and Vietnam do in fact mandate the review of the agreement, stating that such review will be undertaken by their respective Joint Committees. The Philippines, Indonesia, and Malaysia on the other hand refer the reviewing function to their Sub-committees on Trade in Goods, which in turn report their findings and recommendations to the higher authority of their Joint Committees.

Yet, the most conspicuous of which is Singapore's agreement. Not only does it mandate its Supervisory Committee to conduct a review of the provisions on Trade in Goods, but it specifically directs the Supervisory Committee to review the "…**economic relationship** and partnership between the Parties [Singapore and Japan], and to consider the **necessity of amending** this Agreement for furthering its objectives"[emphasis added](par. 1, article 8, SJEPA). This deeper level of review reflects Singapore's commitment not only to the trade concessions but more plausibly to fostering an authentically liberal trade relation with Japan.

The difference in this provision does not really affect the application of the PJEPA. The review provision in the PJEPA is a general statement and may cover many areas concerning the trade in goods provisions. Although at first sight the Singapore agreement may seem more encompassing, the PJEPA provision is enough for the proper review of the other provisions. The provisions in the Singapore Agreement again do not create any concrete requirement for review. However, again, it may be beneficial for the Philippines to include this provision so as to give it more leeway in the review of the provisions. Given the large asymmetries in economic power (market sizes), the challenge for developing countries in North-South agreements is to ensure that any negotiated outcome is in their interest. For small and poor countries, the primary motivation for engaging in trade agreements is to help achieve economic development. Thus, for some of these developing countries, the priority needs are not merely trade policy-related but revolve around bolstering trade capacity and improving the investment climate.

B.15. Miscellaneous Provisions

Agreement	Provisions
SJEPA	Article 21: 1. In fulfilling its obligations under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure the observance of the provisions of this Chapter by the local governments within its territory. 2. If a Party has entered into an international agreement on trade in goods with a non-Party, or enters into such an agreement after this Agreement comes into force, it shall favourably consider according to goods originating in or destined for the territory of the other Party, treatment no less favourable than the treatment which it accords to like goods in or destined for the territory of the non-Party pursuant to such an agreement.

Of all the JEPAs, only MJEPA has a distinct "Miscellaneous provision," which provides for the compliance of local government with the provisions on trade in goods and the uniform application of treatment of originating goods from Party and like goods from non-Party. The first

provision reinforces accountability and hence furthers the principle of greater transparency. The second provision on the other hand clearly alludes to the Most-Favoured-Nation clause or principle of the WTO, which mandates its member nations to apply uniform tariff rates among the contracting parties' other trade partners, which are selling identical goods. This reference to MFN treatment is a clear endorsement of WTO's principle of non-discrimination or the directive to establish non-discriminatory trade measures that will curb trade practices, which confer unfair/preferential advantage to trading parties and which tend to cause trade disputes. In this line of thinking, the second provision is stipulated by Singapore and Japan in pursuit of safeguarding fair competition in trade.

In terms of strategic consideration, this provision confers Singapore room or allowance, if not the advantage, to provide coverage for possible contingencies that the core content agreement per se may not be able to account for. So the agreement may be provided with the ulterior aim fast-track deals and to lessen/avoid specifications or conditions that may serve as a deterrent for the Japan negotiating party to establish a friction-less trade deal.

B.16. Relation to the Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations

Agreements	Provisions
VJEPA	Art. 22: a single provision that explicitly assures stakeholders of VJEPA that any commitments entered by Vietnam and Japan under this agreement does not affect the parties commitments in AJCEPA; not explicitly provided for in PJEPA[3]

Among all the JEPAs, only VJEPA contains a single explicit provision that explicitly assures stakeholders of VJEPA that any commitments entered by Vietnam and Japan under this agreement does not affect the parties commitments in AJCEPA; not explicitly provided for in PJEPA. The other JEPAs do not contain such provision at least in the TIG chapter.

The provision of this article seems to be unnecessary as it is imperative for the country to ensure that any trade agreements must conform or not be inconsistent with commitments from previous free trade undertakings, especially if such free trade agreements are closely related or work in the same institutional/trade environment, such as that between PJEPA and ASEAN-Japan Comprehensive Economic Partnership Agreement. But nonetheless, this may be relevant or significant as the Philippines is also a party to AJCEPA and hence any conflicting provisions might affect the former's commitment to the latter.

C. Conclusion: Implications of Textual Difference

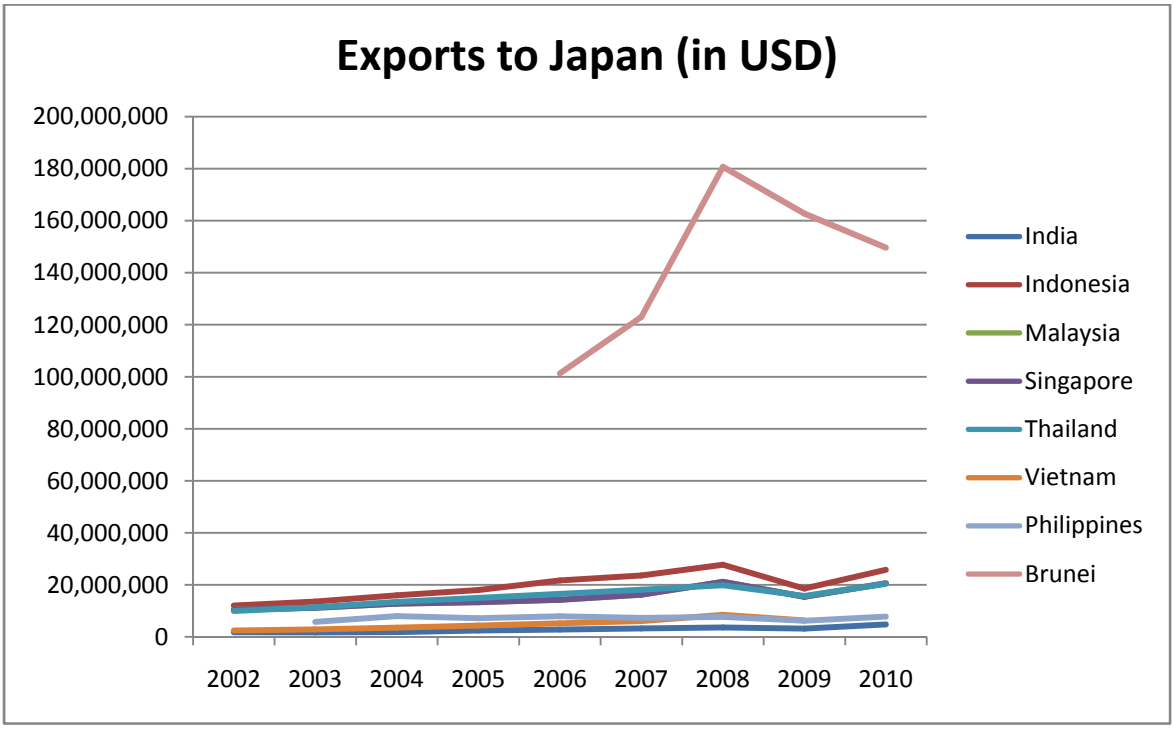
The trade-in-goods chapter of PJEPA is one of the—if not—the most comprehensive among the JEPAs, since it contains most if not all provisions found in other JEPAs: Definitions, Classification of Goods, National Treatment, Export Duties, Non-tariff Measures, Emergency Measures, General Security Exceptions, Measures/Restrictions to Safeguard Balance of

Payments, Operational Procedures in Trade in Goods and Rules of Origin, Sub-committee on Trade in Goods, Cooperation in Relation to Exports. However, PJEPA doesn't contain special articles such as: 1) Anti-Dumping Investigation, 2) Miscellaneous, 3) Relation to the Agreement on Comprehensive Economic Partnership among Japan and the Members States of Association of Southeast Asian Nations (AJCEPA). The third distinct provision may not be necessary to be explicitly added to PJEPA, since it is implicitly assumed that bilateral agreements of ASEAN nations are to operate in view of their concurrent commitments to AJCEPA. On the other hand, the urgency of including the special provision on Anti-Dumping in PJEPA is dependent on the current conditions or severity of traded goods dumping phenomenon in the Philippines. If dumping cases are indeed prevalent in the Philippines, then such conditions warrant the inclusion of the special provision on anti-dumping. The miscellaneous provision may be an accessory provision that can provide for contingencies in the trade situation between the Philippines and Japan.

All of the JEPAs appear to comply with WTO standards of bilateral Free Trade Agreements, as evidenced by their universal adherence to the international system of Classification and National Treatment of Goods being traded. Most importantly, all JEPAs contain crucial provisions on emergency measures. However, these provisions vary widely among JEPAs. These differences in emergency measure provisions hint at the policy inclinations of countries, i.e. whether they are prudent in trading arrangement with or willing to open markets for Japan's goods and services. Understandably, the more prudent parties are developing countries, as evidenced by the greater degree of specifications and conditionality inherent in their emergency measure provisions. Moreover, this prudence or willingness is seen in conspicuous provision or non-provision of prohibitions of Export Duties, Export Subsidies and Non-Tariff measures. Logically, prohibiting export taxes signals the country's commitment (at least in principle) towards genuine trade liberalization by preventing conferring unfair advantage to domestic players, which these export duties, subsidies, and non-tariff measures apparently aim to favour.

Although a clear, credible correlation between the textual differences and the actual output of trade remains to be weak (and well beyond the scope of this study) and hence needs to be proven, certain observable trends in Trade in Goods suggest considerable differences among the countries.

Figure 1. Export to Japan by Countries with JEPAs (in USD)



Based on the graph above, the export trend of the Philippines has remained on a low mark below the 10,000,000 USD threshold. Although Vietnam and India is well within this range, it important—and alarming—to note that Vietnam and India's agreement entered into force later than the Philippines, with India only commencing in 2011 and yet the Philippines' trade exports is as dismal as it India. Equivalently, Indonesia, whose agreement commenced in the same year as the Philippines, has been consistently reaching—and even surpassing—the 20,000,000 mark along with Singapore, Malaysia, and Thailand. On the other hand, Brunei's huge disparity with its ASEAN+1 (India) neighbors is highly understandable, given its relative abundance on oil, a commodity that a heavily industrialized country like Japan may need. In any case, these trends offer a lot of points to ponder regarding the Philippines stake in bilateral trading with Japan vis-à-vis its relatively more successful regional neighbors.

III. TRADE IN SERVICES

A. Background

Provisions related to trade in services are contained in Chapter 7 of PJEPA which calls for the liberalization of services related to the medical profession, tourism and travel, outsourcing, banking and other financial services, recreational, cultural and sporting services, advertising, management consulting, audio visual services, environmental services, and value added services on telecommunications (e.g., wired or wireless technology, voice telephone services, and satellite services, among others Obstensibly, the health care industry of Japan has liberalized. Before the agreement, nurses go to Japan and work for a limited time. This, however, is without being officially permitted to work. Rather, it is with the agreement that a new visa category be created for Filipino caregivers which permit them to work for a time while acquiring the qualifications. This has given the Filipinos more opportunities to tap the Japanese market (Medalla, 2010).

Issues rise from the difficulty of the requirements such as passing the language proficiency and Japanese licensure exams. Japan also agreed to fund a language institute in the Philippines. Given these difficulties, the agreement provided a package for language proficiency training for six months. After the training, they will be offered employment contract under the supervision of a Japanese nurse and will be given salary. 400 Filipino nurses and caregivers were sent to Japan under the agreement in 2009, smaller than the original target. In 2010, recruitment for the second batch of 500 nurses and caregivers has opened. Another benefit is the additional protection for Filipino workers in Japan provided by the agreement (Medalla, 2010).

Chapter 8 and 9 of the Agreement covers Movement of Natural Persons. The provisions in the Agreement states that both countries will allow the movement of natural persons for short term businesses and visits of 90 days, extendable, intra- corporate transferees, investors, natural persons who engage in Professional services and specialized/skilled workers one or three years extendable, depending on the classification; and nurses one year, extendable and caregivers up to three years, extendable. Nurses and caregivers have to qualify for the requirements of the Philippine and Japanese laws on the practice of their specific professions.

For Filipino nurses, he/she must:

a. pass the Philippine licensure exam and must have at least three years work experience

b. undergo skills and language training for six months in Japan

c. pass the Japanese Nursing Examination in Nihonggo, with a maximum of three attempts.

For a Filipino care worker, he/she must:

d. finish a four-year college course and must be a certified caregiver in the Philippines

e. undergo skills and language training for six months in Japan

f. pass the Japanese national exam in Nihonggo, for caregivers

A Filipino nurse is given a maximum of 2 years' stay in Japan to comply with the requirements, while a caregiver is given 3 years.

B. Cross- Country Provision Comparison

This section discusses the similarities and differences in provisions on the obligation or liberalization criteria for the service sectors compared to the Philippines. The tables show the agreements with the provisional differences as compared to PJEPA. The number of sections in the chapter ranges from ten (10) to eighteen (18). The chapter includes the following articles:

	PJEPA	BJEPA	MJEPA	I[n]JEPA	I[ndo]JEPA	SJEPA	TJEPA	VJEPA
General Principles							•	
Scope and Coverage	•	•	•	•	•	•	•	•
Definitions	•	•	•	•	•	•	•	•
Market Access	•	•	•	•	•	•	•	•
National Treatment	•	•	•	•	•	•	•	•
Additional Commitments	•	•	•	•	•	•	•	•
Schedule of Specific Commitments	•	•	•	•	•	•	•	•
Most-Favored Nation Treatment	•	•	•	•	•	•	•	•
Modification of Schedules							•	
Qualifications, Technical Standards and Licensing	•	•	•		•			•
Domestic Regulation				•			•	
Transparency	•	•	•	•	•		•	
Mutual Recognition	•	•	•	•	•		•	•
Monopolies and Exclusive Service Suppliers	•	•	•	•	•	•	•	•
Payments and Transfers	•	•	•	•	•	•	•	•

Restrictions to Safeguard the Balance of Payments	•	•	•	•	•	•	•	•
Denial of Benefits	•	•					•	
Sub-Committee on Trade in Services	•	•		•			•	
Subsidies				•				
Review of Commitments		•		•			•	
General Exceptions	•	•	•	•	•	•	•	•
Security Exceptions	•							

B.1. General Principles

Among the 8 agreements, only the agreement with Thailand included in the first part an article on General Principles. This includes the liberalization of trade in services between the two parties and to provide a framework for the Parties to improve the efficiency, competitiveness and diversity of services and service suppliers. Despite the lack of this provision, at least as is specifically can be found in this chapter, in other agreements the principles are implied in the chapter as they are included in the General Provisions of Chapter 1 of PJEPA and others.

B.2. Scope and Coverage

BJEPA	I(n)JEPA	SJEPA	VJEPA
Under sec. 2, addition: " (b) laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;" and " (d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality, or residence or employment on a permanent basis"	No mention of "(c) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance" as non-application of the chapter;	No mention of "(c) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance" as non-application of the chapter", "(d) measures pursuant to immigration laws and regulations" and "(e) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis".	No mention of "(c) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance" as non-application of the chapter;

Common to all the agreements is that the chapter is applicable to measures by a party affecting trade in services and not applicable to in respect of air transport services, measures affecting traffic rights or measures affecting services directly related to the exercise of traffic rights other than measures affecting aircraft repair and maintenance services, selling and marketing of air transport services and computer reservation system services. The chapter is also not applicable to cabotage in maritime transport services and subsidies or grants provided by a party or a state enterprise, measures pursuant to immigration laws, measures affecting natural persons seeking access to the employment market of a party or regarding citizenship, residence or employment on a permanent basis, and government procurement.

B.3. Definitions

I(n)JEPA	SJEPA	TJEPA
No definition of a "juridical person"	Included a definition of "direct taxes"	Included a definition of "Area"; uses "enterprise" instead of "juridical person"

The terms defined are generally the same including first the terms which define the scope of the agreement such as measures affecting trade in services, aircraft repair and maintenance services, selling and marketing of air transport services, computer reservation services. Subsidies or grants provided by a state enterprise were also defined. Other defined terms include the juridical person and natural person, measures by a party, sector, services, service supplier, supply of a service, trade in services and traffic rights. It is also notable that Thailand uses the word enterprise instead of juridical person.

B.4. Market Access

I(n)JEPA
Included that "Each Party shall endeavour to reduce the requirements for a service supplier of the other Party to establish or maintain a representative office or any form of enterprise or to be resident in its Area, as a condition for the cross-border supply of a service.

Under the article on Market Access, all the agreements have the same mandate of each party according their services and service suppliers of the other Party no less favourable than what is provided for as specified in its Schedule of Specific Commitments. Also, the sectors where commitments on market access are undertaken, measures on limitations on the number of service suppliers, limitations on the total value of service transactions or assets, limitations on the total number of service operations, limitation on the total number of natural persons that may be

employed, measures which require specific types of legal entity through which a service supplier may supply and limitations on the participation of foreign capital will not be adopted.

This provision was likely placed to reduce administrative barriers in trade in services for the parties. Again, there is no concrete obligation on the part of the parties that can be derived from this provision.

The ambiguity of this provision is disadvantageous for the Philippines. One of the Philippines' main industries in Japan is the service industry. Services account for almost 70% of the Japanese economy, a market which is among the most difficult to access. The provision does not create an actual obligation on the part of Japan to reduce the requirements for a service supplier of the other Party

B.5. National Treatment

PJEPA	BJEPA
Same except specified that this article cannot be invoked with respect to a measure within the scope of an international agreement relating to the avoidance of double taxation.	Same except specified that this article cannot be invoked with respect to a measure within the scope of an international agreement relating to the avoidance of double taxation.

All the agreements include the commitment of each Party to accord to service and service suppliers of the other party in the sectors included in the Schedule of Specific Commitments treatment no less favourable than that it accords to its own like services and service suppliers. All agreements except with the Philippines and Brunei have specified that this article cannot be invoked with respect to a measure within the scope of an international agreement relating to the avoidance of double taxation. This deficiency on provision on avoidance of double taxation may be and advantage to the Philippines since there is relatively no restriction on the provisions of national treatment which is more for our advantage because of the fact that we import more services to Japan than them to us.

B.6. Additional Commitments

All of the agreements allow parties to negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles on "Market Access" and "National Treatment", including those regarding qualifications, standards, or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in the Annex of "Schedules of Specific Commitments".

B.7. Schedule of Specific Commitments

All the agreements committed to specify terms, limitations and conditions on market access; conditions and qualifications on national treatment; undertakings relating to additional commitments; where appropriate, the time-frame for implementation of such commitments. Except for India and Viet Nam, agreements with other countries specified sectors and subsectors which shall be limited to existing non- conforming issues.

BJEPA	I(n)JEPA	TJEPA	VJEPA
Same except did not specify sectors and subsectors which shall be limited to existing non-conforming issues.	Same except did not specify sectors and subsectors which shall be limited to existing non-conforming issues.	Additional: "4. (a) If a Party has entered into an international agreement on trade in services with a non-Party, or enters into such an agreement after this Agreement comes into force, it shall favourably consider according to services and service suppliers of the other Party, treatment no less favourable than the treatment that it accords to like services and service suppliers of that non-Party pursuant to such an agreement. (b) An international agreement referred to in subparagraph (a) above shall not include an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound."	Same except did not specify sectors and subsectors which shall be limited to existing non-conforming issues.

B.8. Most-Favored Nation Treatment

All agreements except those with Singapore and Thailand require each country to accord to services and service suppliers of the other Country treatment no less favourable than that it gives to like services and service suppliers of any third State. All agreements except Singapore and Thailand mention that the provision that the treatment of the other party be not less favourable than what it accords to any third state shall not apply to any measure by a Country with respect to sectors, sub-sectors or activities, as stated in its Schedule in the Annex on List of MFN Treatment Exemptions. All agreements except those with Singapore and The Philippines mention that if a country has entered into an agreement on trade in services with a third State after their respective agreements come into force, with respect to sectors, sub-sectors or activities included in its Schedule in Annex on List of MFN Treatment Exemptions, it shall, upon the request of the other country, consider according to services and service suppliers of the other country, treatment no less favourable than that they accord to like services and service suppliers of that third State pursuant to such an agreement.

The lack of the provision that states that if a country has entered into an agreement on trade in services with a third State after their respective agreements come into force, with respect to sectors, sub-sectors or activities included in its Schedule in Annex on List of MFN Treatment Exemptions, it shall, upon the request of the other country, consider according to services and

service suppliers of the other country, treatment no less favourable than that they accord to like services and service suppliers of that third State pursuant to such an agreement, is detrimental to the Philippines since it does not give the parties the chance to request the other party to maintain an equal treatment of exported services. The lack of this provision does not contemplate a change of factual condition which may necessarily happen.

PJEPA	TJEPA
Same except did not mention that if a country has entered into an agreement on trade in services with a third State after their respective agreements come into force, with respect to sectors, sub-sectors or activities included in its Schedule in Annex on List of MFN Treatment Exemptions, it shall, upon the request of the other country, consider according to services and service suppliers of the other country, treatment no less favourable than that they accord to like services and service suppliers of that third State pursuant to such an agreement.	Same except did not include requiring each country to accord to services and service suppliers of the other Country treatment no less favourable than that it gives to like services and service suppliers of any third State; except did not mention that the provision that the treatment of the other party be not less favourable than what it accords to any third state shall not apply to any measure by a Country with respect to sectors, sub-sectors or activities, as stated in its Schedule in the Annex on List of MFN Treatment Exemptions.

B.9. Modification of Schedules

Only Thailand included this section which specifies that modifications shall be made in accordance with the article on Amendment under the chapter of General Review. A general level of mutually advantageous commitments shall be maintained.

B.10. Qualifications, Technical Standards and Licensing

Agreements with Thailand, India and Singapore did not include this section. Other agreements committed to ensure that any measure relating to the authorization, licensing or qualification of service suppliers is based on objective and transparent criteria, not more burdensome and not disguised as a restriction.

B.11. Domestic Regulation

Only Thailand and India included a section on domestic regulation with commitments to ensure that the measures are administered in a reasonable, objective and impartial manner. This also calls for the institution of tribunals or procedures for the review of and appropriate remedies for administrative decisions. These tribunals or procedure would be consistent with the nature of the legal system of each party. Parties shall jointly discuss disciplines on domestic regulations.

B.12. Transparency

Similar only to the agreements with Philippines, Brunei and India, the commitment for competent authorities to respond to question and provide information to the suppliers is included. Each Party shall prepare, forward and make public the existing measures in line with this chapter but inconsistent with Market Access and/or National Treatment. Singapore and Viet Nam do not include an Article on Transparency.

B.13. Mutual Recognition

All agreements, except that with Singapore, allows a Party to recognize the education or experience obtained, requirements met, or licences or certifications granted in the other Party for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of service suppliers of the other Party. This part mentions that when a Party recognises the education or experience obtained, requirements met or licences or certifications granted in the non-Party, the Party shall accord the other Party an adequate opportunity to demonstrate that these things granted in the other Party should also be recognized.

B.14. Monopolies and Exclusive Service Suppliers

All the agreements commit to ensuring that any monopoly supplier does not act inconsistently with the commitments of this chapter and where it competes, the Country shall ensure that the supplier does not abuse its monopoly position to act inconsistent with the commitments. These provisions also apply where a Country authorises or establishes a small number of service suppliers and substantially prevents competition. Singapore, India, Viet Nam and Thailand included a commitment that if a Party has reason to believe that a supplier of service is acting in an inconsistent manner, the Party can ask for specific information concerning relevant operations.

I(n)JEPA	SJEPA	TJEPA	VJEPA
Same except included a commitment that if a Party has reason to believe that a supplier of service is acting in an inconsistent manner, the Party can ask for specific information concerning relevant operations	Same except included a commitment that if a Party has reason to believe that a supplier of service is acting in an inconsistent manner, the Party can ask for specific information concerning relevant operations	Same except included a commitment that if a Party has reason to believe that a supplier of service is acting in an inconsistent manner, the Party can ask for specific information concerning relevant operations	Same except included a commitment that if a Party has reason to believe that a supplier of service is acting in an inconsistent manner, the Party can ask for specific information concerning relevant operations

B.15. Payments and Transfers

All agreements include that except under the circumstances envisaged in Article on Restrictions to Safeguard the Balance of Payments, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments. All agreements include that nothing stated in this chapter shall affect the rights and obligations of the Parties as members of the IMF, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article on Restrictions to Safeguard the Balance of Payments below, or at the request of IMF.

B.16. Restrictions to Safeguard the Balance of Payments

All agreements commit that in the event of serious balance-of-payments and external financial difficulties, restrictions on this trade can be adopted. Restrictions should ensure that Parties will not be discriminated and consistent with the Articles of Agreement of the International Monetary Fund. They will avoid unnecessary damage to the commercial, economic and financial interests of the Parties. The agreement with Singapore further specified that if a Party adopted certain restriction, consultations shall be done to review them. These will be subjected to annual review and consultations shall take into account the nature and extent of the balance- of- payments, external economic and trading environment of the consulting Party and alternative corrective measures.

B.17. Denial of Benefits

Only Philippines, Brunei and Thailand included as an article the Denial of Benefits. This provides the justifications for a Party to deny the benefits of this chapter to a service supplier. If established, a supplier which does not maintain diplomatic relations and adopts measures that prohibit transactions. In cases where the supplier is from a non- party, benefit of this chapter can be denied.

B.18. Sub-Committee on Trade in Services

Only Philippines, Brunei, Thailand and India included a section on the creation of a Sub-Committee on Trade in Services for purposes of the effective implementation and operation. The functions of the said committee are to review the commitments, implementation and operation of this chapter, report the outcomes of the discussions to the Joint Committee and to carry out other

functions to be delegated by the Joint Committee. Brunei specified further the composition of the committee which includes the representatives of both Parties, co-chaired by their officials and representatives from relevant entities.

B.19. Subsidies

Only the agreement with India included this section which commits each party to review the treatment of subsidies and can enter into consultations should these be found adversely affecting any Party. The providing Party can also request for information relating to the subsidy programme.

B.20. Review of Commitments

BJEPA	I(n)JEPA	TJEPA
Same except specified that a review should be conducted within two years from the date of entry	Same except specified that a review should be conducted within three years from the date of entry	Same except specified entering into negotiations within five years from date of entry to have a general review of all the commitments. There will be separate negotiations within three years from date of entry to review of maintenance and repair services, wholesale trade and retailing services and rental services. The review will include the scope, terms, limitations, conditions, qualifications or undertakings and this should be guided by the principle of progressive liberalization.

Only India, Thailand and Brunei included in this chapter to review commitments on trade in services aiming to improve them. India specified further that a review should be conducted within three years from the date of entry while Brunei within two years. The agreement with Thailand specified entering into negotiations within five years from date of entry to have a general review of all the commitments. There will be separate negotiations within three years from date of entry to review of maintenance and repair services, wholesale trade and retailing services and rental services. The review will include the scope, terms, limitations, conditions, qualifications or undertakings and this should be guided by the principle of progressive liberalization.

B.21. General Exception

In this section, it is specified by both agreements that the chapter shall not be construed to prevent the adoption or enforcement necessary for public morals and public order, protection of human, animal or plant life or health, securing compliance with laws or regulations especially for the prevention of deceptive and fraudulent practices, protection of confidentiality and safety.

Singapore adds that the chapter should ensure the equitable or effective imposition or collection of direct taxes of the other Party.

B.22. Security Exceptions

Only the agreement with the Philippines includes this section which commits the Parties not to construe the chapter for disclosure of information essential to security interest or preventing a party from taking any action necessary for security interests.

C. Conclusion: Major Textual Differences and their Consequences

Agreements of Japan with Thailand and India included specifically an article on Domestic Regulation which commits countries to ensure that measures are administered in a reasonable, objective and impartial manner. The creation of tribunals, which are consistent with the legal system of each party, or procedures for review of and appropriate remedies for administrative decisions, is also mandated by the article. This article which is specific for trade in services ensures an open and fair competitive trading between the two countries.

This deficiency may be detrimental to the Philippines since we are more affected by the domestic Regulation of Japan. Services account for almost 70% of the Japanese economy, a market which is among the most difficult to access. The lack of provisions which commits countries to ensure that measures are administered in a reasonable, objective and impartial manner may be used by Japan to abuse the JPEPA's restriction on trade in services and use it arbitrarily.

Under the bilateral agreement, the odds are stacked against the Philippines. It could be said that with the JPEPA Japan has opened the gate to the yard, but double-bolted the door to the house. Under the present inequitable terms of the JPEPA, a qualified Filipino nurse will not be accorded the equal status of a full-fledged Japanese nurse practicing in Japan.

Indonesian nurses under the Japan-Indonesia Economic Partnership Agreement (JIEPA) undoubtedly got a better deal compared to the Philippines. In the JIEPA, nurses who have only had three years of formal nursing education and only two years of work experience are already allowed entry into Japan. They are not even required to have passed a licensure exam in their country. In stark contrast, Filipino nurses are required to have had four years of formal nursing education plus three years of work experience in addition to having passed the licensure examination in our country. Seemingly, Japan has accorded better placement and career opportunities to Indonesian nurses and withheld them from those coming from the Philippines.

JPEPA also established a formal arrangement, subject to certain conditions, for the acceptance of 1,000 Filipino health professionals (400 nurses and 600 care workers) to work in Japan for the first two years JPEPA would be in force, considering that the demand for health professionals in Japan has been increasing with Japan's ageing population.

Despite efforts of both the government and non-government sectors to maintain the international standards demanded of professional health workers like nurses, JPEPA makes a registered Filipino nurse inferior to a Japanese nurse as the former will enter Japan not as professional nurses but as trainees. Moreover, a Filipino nurse has to undergo the rigorous nursing licensure examinations in Japan written in Japanese language for her to obtain a permanent employment.

Filipino nurses and caregivers are subjected to more stringent requirements before they could enter Japan compared to their counterparts in Indonesia. Pursuant to Japan-Indonesia Trade Agreement, Japan can accept an Indonesian nurse with three-year nursing course with or without a national licensure examination and at least two years working experience, while under the JPEPA, a Filipino nurse must be a duly-registered/licensed nurse who completed a 4-year nursing course, plus three years of work experience.

After almost three years of JPEPA implementation, recent data would show that the terms and conditions imposed by Japan pursuant to JPEPA are so stringent and unfair, especially the language proficiency and nursing examinations, that the failing rate for Filipino nurses is almost 100%, making the Filipino nurses' prospects of securing steady employment in Japan an elusive dream.

There are recent data showing discrimination on Filipino nurses in terms of rate of pay reveal that a Filipino nurse receives $400 per month as a trainee, which amount is deplorable because the average cost of living allowance in Japan is generally around $800 and even higher in Tokyo with $1,000 per month. The trainee status of Filipinos is also apparent when one compares the Filipino nurses' monthly salary with a registered Japanese nurse and nurse aide, which is around $2,000 and $1,400, respectively;

PJEPA also lacks an article on subsidies. The agreement with India is the only one which refers to subsidies under the chapter on trade in services. PJEPA only mentioned subsidies under the chapter on trade in goods. In the agreement with India, this section which commits each party to review the treatment of subsidies and can enter into consultations should these be found adversely affecting any Party. The providing Party can also request for information relating to the subsidy programme.

The provisions in this chapter of PJEPA on the liberalization of services trade are generally similar with other agreements of Japan with other Asian countries. Minor textual differences can be found and articles not seen in PJEPA are included and mentioned in the previous chapters in the agreement such as in the case of General Principles, Modification of Schedule, Subsidies, Review of Commitments, Domestic Regulation, etc. A further study can be done to look at the differences of the concessions of the agreements on trade in services as specified in the Schedule of each agreement.

IV. INVESTMENT

A. Background

Included in Chapter 8 of PJEPA are provisions on investment for the protection of investors from conflicts and for the provision of the proper conditions in relation to expropriation, compensation, strife, and safeguard and prudential measures. The agreement included provision on national treatment and most- favoured- nation (MFN) which should be granted to investors of both countries. The agreement also enumerated the exceptions and prohibitions in the Performance Requirement Prohibitions to investment conditions arising from the Philippine constitution or other existing domestic laws. Another prohibition in the agreement is the imposition or enforcement as condition or requirement for investment activities such as research and development, technology transfer and hiring and appointment of nationals as executives, managers or board member (Medalla, 2010).

Japan is currently the largest source of foreign direct investment in the Philippines. In 2003, its cumulative flows amounted to US$22.13 billion. Japan is also the country's largest source of official development assistance receiving 41.76 billion yen in 2002.

For the past ten years, 2007 posted the highest investment growth. Investments in 2008 decreased due to the global economic situation at that time but investments started growing back again in 2009. Japan is considered to be one of the major sources of investments in the Philippines (Medalla, 2010).

Japan's Trend for Outward FDI for Asia (in US$billion)

Year / Area	2006	2007	2008	2009	Share in Asia	Growth rate
Asia	17.11	19.36	23.01	20.66	-	-10.2%
China	6.14	6.20	6.48	6.94	30.2%	7.1%
NIEs	3.88	6.04	5.81	5.87	25.5%	0.9%
Asean4	6.03	5.00	4.05	3.55	15.4%	-12.4%
Indonesia	0.74	1.02	0.71	0.50	2.2%	-30.2%
Thailand	1.97	2.60	2.02	1.63	7.1%	-19.7%
Malaysia	2.96	0.32	0.60	0.62	2.7%	3.4%
Philippines	0.37	1.06	0.71	0.80	3.5%	12.6%
India	0.51	1.51	5.25	3.68	16.0%	-29.9%
Vietnam	0.46	0.48	1.09	0.57	2.5%	-48.1%
World	50.01	73.46	127.98	75.19	-	-41.2%

Source: Strategy Paper for Japan Investment Market (2010), Board of Investments

B. Cross- Country Provision Comparison

This section discusses the similarities and differences in provisions on investments of the seven (7) agreements since VJEPA does not have a chapter solely dedicated for investments. The tables

show the agreements with their differences compared to PJEPA. The number of articles in the chapter reaches up to forty (40). Notable differences are the additional articles in TJEPA on the observance of the provisions of the chapter, performance requirements, schedule of specific commitments, modification of specific commitments, special formalities, acquired treatment, transparency and review. The chapter includes the following articles:

Articles in the Chapter on Investments in the Seven Agreements

	PJEPA	BJEPA	MJEPA	I[n]JEPA	I[ndo]JEPA	SJEPA	TJEPA
Scope and Coverage	•	•	•	•	•	•	•
Definitions	•	•	•	•	•	•	•
Observance of the Provisions of this Chapter							•
National Treatment	•	•	•	•	•	•	•
Most-Favored-Nation Treatment	•	•	•	•	•		•
General Treatment	•	•	•	•	•		
Access to the Courts of Justice	•	•	•	•	•	•	•
Performance Requirements							•
Schedule of Specific Commitments							•
Modification of Commitments							•
Acquired Treatment							•
Transparency							•
Prohibition of Performance Requirements	•	•	•	•	•	•	
Specific Exceptions						•	
Reservations and Exceptions	•	•	•	•	•		
Special Formalities and Information Requirements				•			
Expropriation and Compensation	•	•	•	•	•	•	•
Repurchase of Leases						•	
Protection from Strife	•	•	•	•	•	•	•

Transfers	•	•	•	•	•	•	•
Subrogation	•	•	•	•	•	•	•
Settlement of Investment Disputes between a Party and an Investor of the Other Party		•	•	•	•	•	•
Special Formalities							•
Facilitation of Movement of Investors			•				
General and Security Exceptions	•		•			•	
Temporary Safeguard Measures	•	•	•	•	•	•	•
Prudential Measures	•	•	•	•	•	•	•
Intellectual Property Rights						•	
Environmental Measures	•	•	•	•	•		•
Relation to Other Obligations				•			
Duration and Termination				•			
Investment and Labor	•						
Taxation Measures as Expropriation	•				•	•	•
Denial of Benefits	•	•	•		•		•
Co-operation in Promotion and Facilitation of Investments			•				
Sub-Committee on Investment	•	•	•		•	JC*	•
Further Negotiation	•						
Review							•
Application of Chapter						•	

*JC= Joint Committee

B.1. Scope and Coverage

The chapter covers measures by a Party relating to the investors of the other country and their investments. This chapter does not cover measures pursuant to immigration laws and shall not be

construed to expand commitments under Trade in Services. PJEPA particularly mentioned the non-application of articles of National Treatment, Most-Favored- Nation Treatment and Prohibition of Performance Requirements to the measures that the Philippines adopts relating to Japanese investors with respect to the establishment, acquisition or expansion of investments. BJEPA, TJEPA and MJEPA also specified that this chapter does not apply to government procurement and services supplied under governmental authority. BJEPA, I[ndo]JEPA, MJEPA and I[n]JEPA also specified the conditions when there is inconsistency between this chapter and the chapter on Trade in Services. I[n]JEPA further specified that an investor of a Party with violations on the laws of the other Party shall not be allowed to submit an investment dispute and conciliations.

The investments provision in JPEPA grants both Philippines and Japan national treatment and most-favored-nation status to investors of each Party. National treatment (Article 89) means that each Party (Japan or the Philippines) shall accord to investors of the other Party and to their investments no less favorable treatment that it accords to its own investors and to their investments. MFN treatment (Article 90) means each Party shall accord to investors of the other Party and to their investments treatment no less favorable than that it accords to investors of a Third Party and to their investment. Annex 1 of the Agreement enumerates the exceptions where Japanese investments are limited or prohibited due to mandate of the Philippine constitution or existing domestic laws as listed in the Foreign Investment Negative List (FINL).

JPEPA also includes a provision on the performance requirement (Article 93), which means neither party can impose or enforce as a condition for investment activities requirements such as research and development requirement, technology transfer and hiring and appointment of nationals as executives, managers or board member.

B.2. Definitions

For the terms defined in the seven agreements, refer to the table on the next page. Most terms commonly defined are financial services, investments, investor of a Party, juridical person or enterprise.

B.3. Observance of the Provisions of this Chapter

Only TJEPA included a section on the Observance of the Provisions of this chapter which states that each party must guarantee that its local governments and authorities will observe these provisions.

B.4. and B5. National Treatment and Most-Favored-Nation Treatment

All the agreements included a chapter on National Treatment committing each party to treat its own investors and the investors of the other Party equally. Except SJEPA, all the other agreements also included the commitment for each party to treat the investors of the other party no less favourable than of a third State with respect to investment activities.

B.6. General Treatment (Brunei [Art 59]; Thai [95]-Minimum Standard of Treatment)

This article commits each party to treat investment of investors of the other party according to international law, which includes fair and equitable treatment and full protection and security. SJEPA and TJEPA did not include this article in the chapter.

B.7. Access to the Courts of Justice

This section mandates each party to allow investors of the other party access to the courts of justice and administrative tribunals and agencies for pursuit or defense of investor's rights.

Terms Defined in the Seven (7) Agreements

Terms	PJEPA	BJEPA	I[n]JEPA	I[ndo]JEPA	SJEPA	MJEPA	TJEPA
Financial services	•		•	•		•	•
Investments	•	•		•	•	•	•
Investor of a Party	•	•		•	•	"Investor of a country"	
Juridical Person	•	"enterprise"		"enterprise"	"enterprise"	"enterprise"	"enterprise"
Juridical Person of a Party	•	"enterprise of a Party"		"enterprise of a Party"		"enterprise of a Country"	
Transfers	•		•	•			•
Freely Usable Currency		•	•	"freely convertible currency"		•	•
ICSID		•					
ICSID Additional Facility Rules		•					
ICSID Convention		•					
Investments Activities		•		•			•
Measure		•					
Measures adopted or maintained by a Party		•	•				•
Natural Person of a Party		•	•			"natural person of a Country"	
New York Convention		•	•	•			
TRIPS Agreement		•					
National of the other Party				•			•
Investor					•		
Person					•		•
Natural Person of the other Party					•		
Enterprise of the other Party					•		•
Portfolio Investment						•	
Area							•
Buyer Credit							•
Direct investment enterprise							
Direct investor							
Investor of the other Party							•
Project financing							•
Reinvested earnings							•
Supplier credit							•

B.8. Performance Requirements

Only TJEPA has an article about Performance Requirements which states that nothing in the chapter should prevent them from indicating any performance requirements nor affect their rights and obligations in the WTO Agreement

B.9. Schedule of Specific Commitments

TJEPA has an article on Schedule of Specific Commitments which mandates the parties to set out in a schedule the specific commitments and that this should specify conditions and qualifications.

B.10. Modification of Commitments

TJEPA is the only agreement which includes an article on Modification of Commitments which mandates the parties to maintain the level of mutually advantageous commitments if there should be any change or modification.

B.11. Acquired Treatment

The article on Acquired Treatment in TJEPA states that both parties shall treat other investors equally.

B.12. Transparency

Only TJEPA has an article on Transparency which states that both shall ensure that its laws, etc. are published and provide opportunities for comment regarding such measures.

B.13. Prohibition of Performance Requirements

PJEPA, I[n]JEPA, I[ndo]JEPA and SJEPA in its article on the prohibition of performance requirements, indicated that neither party shall create conditions for investment activities of an investor of the other Party. Conditions prohibited include a level or percentage of goods or services exported, level or percentage of domestic content, preference to goods and services produced and provided in its area, to relate the volume of imports to the volume of exports or of foreign exchange inflows with investments, restriction of sales of goods or services, appointment of individuals of any particular nationality, hiring a given level of nationals, transfer of technology, locating the headquarters in the area, achieving a level of research and development in the area and supplying one or more of the goods or services to a specific region or world market exclusively from its area. TJEPA does not include this article in the chapter while MJEPA and BJEPA stated that further consultations should still be conducted to review issues pertaining to this area.

B.14. Specific Exceptions

SJEPA is the only agreement which has an article on Specific Exceptions which includes that certain articles will not apply to investors and investments in certain respects. It likewise states that the certain exceptions include the elements such as the sector, obligation (c) legal source of the exception; and (d) succinct description of the exception.

This article in SJEPA also mandates that one should notify the other if there are any amendments of the elements.

The Philippines need not copy this provision since this may be viewed as a provision restricting the inflow of investments.

B.15. Reservations and Exceptions

In PJEPA, I[n]JEPA, I[ndo]JEPA and MJEPA, articles on National Treatment, Most- Favored Nation and on the Prohibition of Performance Requirements are not applicable to non-confirming measures already maintained by a Party at the level of central government and as specified in the schedule on Reservations for Existing and Future Measures. These articles are also not applicable to non- confirming measures maintained by a prefecture, province for one year; or local governments. A Schedule to Part I of Reservations for Existing and Future Measures should be set out by the Parties within one year of entry into force of PJEPA. There are also certain sectors and subsectors where these articles are non- applicable. A measure cannot also be adopted requiring investors of the other party to sell or dispose of an investment existing when measure becomes effective just by reason of its nationality. A Party should also notify the other Party of elements or hold consultations with the other Party when amendments are made affecting sectors, subsectors and activities set out in the schedule. The same articles are also not applicable to measures respecting government procurement, as well as measures covered by exceptions to the obligations under the TRIPS Agreement. In BJEPA, only articles on National Treatment and Most- Favoured- Nation are not applicable to the same conditions set out in PJEPA.

B.16. Special Formalities and Information Requirements

The India-JEPA states that nothing in its Article 85 shall be interpreted such as to prevent a Party from prescribing special formalities. It also states that business information concerning investments of a party may be required, and that these be protected.

B.17. Expropriation and Compensation

BJEPA	I[n]JEPA	MJEPA
Addition: 5. (a) This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation. (b) Where subparagraph (a) applies, Articles 60 and shall also apply in respect of taxation measures.	Addition: 5. This Article shall not apply with respect to the grant of compulsory licences concerning intellectual property in accordance with the TRIPS Agreement. 6. This Article shall be interpreted in accordance with Annex 10.	Addition: 5. This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation.

In PJEPA, Philippines and Japan agreed that neither Party shall expropriate or nationalize investments in its Area of investors of the other Party except for a public purpose, on a non-discriminatory basis, if in accordance with due process of law and upon payment of compensation. This article also required compensation to be equivalent to the fair market value of the expropriated investments depending whether it was announced publicly or not. It should also be paid without delay and with an appropriate interest. Lastly, the concerned investors have the rights of access to the courts. The same paragraphs are included in the other JEPAs.

B.18. Repurchase of Leases

SJEPA is the only agreement with an article on Repurchase of Leases which includes that if the agency in charge of leasing industrial land repurchases leasehold interest in land, that agency should take into consideration the value of such interest, the priority allocation of an alternative property for the investor and the costs in relocation.

B.19. Protection from Strife

This commits each Party to accord to investors of the other Party treatment no less favourable which it accords to any investors that have suffered relating to their investments due to armed conflict or state of emergency. All the agreements include this article.

B.20. Transfers

All agreements included a section on Transfers which commits each Party to ensure that all transfers may be made freely into and out if its Area without delay by an investor of the other

Party. These transfers include initial capital and additional amounts to maintain or increase investments; profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments; proceeds from the total or partial sale or liquidation of investments; payments made under a contract including loan payments in connection with investments; earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party; and payments made in accordance with Articles 95 and 96.

Delay or prevention of transfer is allowed only through the equitable, non-discriminatory and good- faith application of its laws relating to bankruptcy, insolvency or the protection of the rights of creditors; issuing, trading or dealing in securities, futures, options or derivatives; criminal or penal offences; registration, reportorial and prior approval requirement concerning transfers of currency or other monetary instruments; or ensuring compliance with orders or judgments in adjudicatory proceedings.

B.21. Subrogation

All agreements include this article in the chapter. This article commits a party to recognize the assignment of any right of an investor and the right to exercise by virtue of subrogation any right to the same extent of a party which makes a payment to its investors for indemnity, guarantee or insurance contract arising from an investment within the area of the other party.

B.22. Settlement of Investment Disputes between a Party and an Investor of the Other Party

Only PJEPA does not include an article on settlement of Investment Disputes. This section defines investment dispute as a dispute between a Party and an investor of the other Party. The section provides the mechanism of solving investment disputes and actions that can be taken if the dispute cannot be settled through negotiations and consultation.

Some form of provision referring to the settlement of investment disputes would be beneficial for the Philippines. This provision may be couched in ambiguous terms so as to give the Philippines the right to formulate its own domestic rules in settling domestic disputes. Most of the investments in the JPEPA pertain to investments coming from Japan so this disputes would often occur and directly affect Philippine territory.

B.23. Special Formalities

Only TJEPA has an article on Special Formalities which states that both may prescribe special formalities in connection with activities of the investors.

This provision may not be beneficial to the Philippines since the country is usually the place where the investment is placed. Additional special formalities might be used by Japan in restricting the influx of investments in the country.

B.24. Facilitation of Movement of Investors

MJEPA has an article on Facilitation of Movement of Investors which provides that both should facilitate the documents regarding entry, temporary stay and authorization to work for investors of the other, related to this chapter. It also adds that they shall publicize the necessary requirements and procedures for such action.

B.25. General and Security Exceptions

Only PJEPA, MJEPA and SJEPA included a section on General and Security Exceptions. The agreements state that nothing in the chapter can prevent a Party from enforcing measures to protect human, animal or plant life or health, public morals and public order, international peace and security. When measures do not conform with the chapter, the other party shall be notified of the involved sector or activity, obligation concerned, legal source of the measure, description and purpose.

B.26. Temporary Safeguard Measures

Under this section, a party is allowed to adopt or maintain measures inconsistent with cross-border capital transaction when there is a serious case of balance- of payments and external financial difficulties or threat and when movements of capital cause serious difficulties in monetary and exchange rate policies. They should be consistent, however, with the Articles of Agreement of the International Monetary Fund if they are a party to the Articles of Agreement and measures should only be limited to what is necessary to deal with the cited circumstances. If circumstances improve, these measures should be eliminated and the other Party should be promptly notified. All the agreements included this section.

B.27. Prudential Measures (Thai: Prudential Measures and Measures to Ensure the Stability of the Macroeconomy or the Exchange Rate)

All agreements included this article allowing parties to adopt measures on financial services for prudential measures which includes protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a supplier of financial services, or ensuring the integrity and stability of the financial system.

B.29. Intellectual Property Rights

Only SJEPA included an article on Intellectual Property Rights (IPR) under the chapter on Investments. Both Singapore and Japan agreed than national treatment shall apply only to the extent provided in the Agreement on Trade- Related Aspects of Intellectual Property Rights annexed in the WTO Agreement.

B.30. Environmental Measures

Except for SJEPA, all the other agreements included an article on environmental measures which recognizes the inappropriateness to encourage investments by relaxing environment measures. This obliges parties not to waive or derogate from such environmental measures.

B.31. Relation to Other Obligations

Only India-JEPA has an article on Relation to Other Obligations which states that nothing in the agreement can be construed so as to derogate from laws and regulations of each party or any other international agreements which permit investors of the other Party and to their investments.

B.32. Duration and Termination

India-JEPA is the only agreement which has a section on Duration and Termination which states that this provision will still be effective for ten years after its termination.

B.33. Investment and Labor

Only the agreement with Philippines includes an article on Investment and Labor. This chapter provides that no party can weaken or reduce the protections for domestic labor laws. It also clarifies that “Labor laws” means each country’s legislations that are related to internationally recognized labor rights.

B.34. Taxation Measures as Expropriation

In PJEPA and SJEPA, provisions under the article on Expropriation and Compensation shall apply to taxation measures and areas where these apply, articles on Access to the Courts of Justice and Sub-Committee (Joint Committee for Singapore) on Investment also apply in respect of taxation measures. SJEPA includes the article on Settlement of Investment Disputes between a Party and an Investor of the other Party as applicable, in respect of taxation measures, to areas where article on Expropriation and Compensation apply. I[ndo]JEPA and TJEPA also included this article but added that no investor can invoke the article on Expropriation and Compensation as basis for an investment dispute where it has been determined that taxation measure is not an expropriation.

B.35. Denial of Benefits

Generally, this article provides the conditions where a country can deny the benefits of this chapter to an investor of the other country. If the enterprise is owned or controlled by a third state and the denying country does not maintain diplomatic ties with the third state or if it has measures that prohibit transactions with the enterprise of the third state, the benefits of this chapter can be denied. I[n]JEPA and SJEPA did not include this article in the chapter.

B.36. Co-operation in Promotion and Facilitation of Investments

Only MJEPA has an article on Co-operation in Promotion and Facilitation of Investments which mandates that both will promote investments between the countries through different ways.

B.37. Sub-Committee on Investment (Joint-Committee for Singapore)

PJEPA, BJEPA, I[ndo]JEPA, MJEPA and TJEPA included a section on the establishment of a Sub-Committee on Investment in-charge of reviewing the implementation of this chapter, the reservations in the Schedules, discussion of the issues related to this chapter even related to taxation measures as expropriation, reporting on the findings to the Joint Committee and performing other functions delegate by the Joint Committee. BJEPA and MJEPA further specified that the sub-committee will be composed of representatives of the Governments of the Parties, co-chaired by the officials of both Governments and can invite representatives of relevant entities. The venue and times of the meetings of the Sub-committee shall be agreed by the Parties. SJEPA uses the term 'Joint Committee' instead of 'Sub-Committee' to describe the body assigned the same functions enumerated. I[n]JEPA does not include an article on this in this chapter.

B.38. Further Negotiation

The agreement with the Philippines is the only one which includes an article on Further Negotiation which mandates that the parties shall agree on a mechanism on dispute settlement and that if there is no such mechanism, mutual consent is necessary when resorting to international conciliation.

B.39. Review

Only TJEPA has an article on Review which states that after 5 years they should assemble for a general review of their commitments. While on the 6th year, they shall meet for a review of certain provisions.

The inclusion of this provision may be beneficial to the Philippines since this would give the country a chance to review if the provisions in the JPEPA adequately generated the investments provided for in the provisions.

B.40. Application of Chapter

Only the agreement with Singapore includes a section on the Application of the provisions of the chapter, wherein it includes that the parties shall ensure observance. It likewise adds that if a party has entered into an international agreement on investment with another party, there shall be equal treatment.

C. Conclusion: Major Textual Differences and their Consequences

One major distinct difference is the lack of article on settlement of disputes in PJEPA, which is subject for further negotiations. All the other agreements have this section which defines investment dispute as a dispute between a Party and an investor of the other Party. The section provides the mechanism of solving investment disputes and actions that can be taken if the dispute cannot be settled through negotiations and consultation. Although PJEPA mentioned that this shall be negotiated further, there are still no mechanisms in place to perform such function.

Other major differences which can be cited are the distinct articles in the agreement between Thailand and Japan.

"National Treatment" Obligation and the Philippine Schedules to Parts 1 and 2 of Annex 7.

The "national treatment" obligation requires the Republic of the Philippines ("ROP") to treat Japanese investors as if they were Philippine nationals, and to treat Japanese investments in the Philippines as if such investments were owned by Philippine nationals. It is common knowledge that entry into certain sectors of economic activity in our country is constitutionally restricted to natural persons who are Philippine citizens or to juridical persons which are at least 60% (in some cases, 70% and 100%) owned by Philippine citizens. here are also a number of statutes and regulations which limit access to certain economic sectors to Philippine citizens and to juridical entities with a prescribed minimum Philippine equity content. Those appear to numerous to list down here.

Clearly, the constitutional and statutory provisions referred to above are inconsistent with the obligation to give Japanese investors "national treatment" established in Article 89 of JPEPA. However, JPEPA Article 94 provides for an option on the part of the Philippines to maintain the conformity with the "national treatment" obligation set out in Article 89. That option is exercised under Article 94 by listing down in the Schedule to Part 1 of Annex 7 of JPEPA, the existing non- conforming constitutional and legal provisions which the Philippines wishes to maintain in effect, notwithstanding the requirements of Article 89 of JPEPA.

The Philippines has exercised the option given to it in JPEPA Article 94 by attaching its Schedule to Part I of Annex 7 of JPEPA. It must, however, be stressed that the Philippine Schedule to Part 1 of Annex 7 is not a complete list of all the currently existing constitutional and statutory provisions in our legal system that provide for exclusive access to certain economic sectors by Philippine citizens and Philippine juridical entities with a prescribed minimum Philippine equity content. The most dramatic example of omission of a constitutional provision mandating exclusive access to Philippine nationals and juridical entities to a particular sector is Article XII, Section 11 of the Constitution relating to the operation of public utilities. This omission in the Philippine Schedule to Part 1 of Annex 7 means that should JPEPA come into legal effect, Japanese investors would be entitled to own more than 40% of a public utility

enterprise in the Philippines under the JPEPA. This result would be in direct contravention of our Constitution. One conclusion that emerges clearly from the above is that, if JPEPA Article 89 and 93 are to be saved from unconstitutionality, the Philippines' Schedule to Part 1 of Annex 7 must be amended so as to be a complete and detailed inventory of all existing constitutional provisions which are inconsistent with JPEPA Article 89 and 93. In addition, our Schedule to Part 1 of Annex 7 must be amended so as to become a complete and carefully detailed listing of all existing statutory and administrative regulations, including provision of existing Philippine treaties and other agreements with third countries which are inconsistent with the obligations set out in JPEPA Article 89, 90 and 93.

The amendment of the Philippine Schedules to Part 1 and Part 2 of Annex 7 will required the consent of Japan. Japan's consent to those amendments should not be too difficult to secure, considering (a) that we would be asking only for what Japan has secured for itself in Japan's Schedules to Part 1 and Part 2 of Annex 7; and (b) that we would be asking only for what Japan has already conceded to Thailand, Malaysia and Indonesia in their respective EPAs with Japan. Incidentally, the Schedules of comprehensive reservations for future non-conforming measures that Japan, Thailand, Malaysia and Indonesia adopted should provide models that our negotiators may examine carefully and ponder upon.

V. SANITARY AND PHYTOSANITARY MEASURES (SPSMs)

A. Background

The entry into force of the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement") coincided with the establishment of the World Trade Organization on 1 January 1995. The agreement was premised on the problem of ensuring consumers of an importing country to be supplied with food that is essentially safe to eat. As such the SPS agreement sets regulations securing food safety, animal and plant health (WTO, 1998). These sanitary and phytosanitary measures can take many forms, such as requiring products to come from a disease-free area, inspection of products, specific treatment or processing of products, setting of allowable maximum levels of pesticide residues or permitted use of only certain additives in food, and so on. Among technical regulations and standards, SPSMs are highly significant for regulators because these measures play the role of quelling growing concerns of health hazards associated with imported goods, especially given some recent food scares and epidemic (Iacovone, 2005). By mandate, the SPS agreement allows countries to set their own standards only to the extent necessary to protect plant, animal, and human health (*ibid.*). But these local/national standards need to conform to international standards and must be grounded on scientific justification to avoid arbitrarily or unjustifiably discriminating between countries with identical or similar conditions (*ibid.*). However, the SPS agreement is underlined by controversies implicating Sanitary and Phytosanitary Measures (SPSMs) as an excuse for protecting producers (*ibid.*). Yet although argued to be another technical trade barrier in itself, the WTO warrants that the inclusion of the SPS agreement in FTAs is in accordance to the basic aim of maintaining the sovereign right of any government to provide the level of health protection it deems appropriate (*ibid.*). Thus, in principle, SPSMs are provided for properly assessing health risks and reducing possible arbitrariness of decisions and encourages consistent decision-making (*ibid.*). In addition, SPSMs are also justified by the fact that given differences of geographical and climate conditions, imposing the same regulatory measures may not be appropriate.

Accordingly, this section examines the differences of provisions on SPSMs among India (I[d]JEPA), Malaysia (MJEPA), and Vietnam's (VJEPA) FTA with Japan and attempts to justify the absence or non-inclusion of SPS provisions in Brunei (BJEPA), Indonesia (I[n]JEPA), Singapore (SJEPA), Thailand (TJEPA), and the Philippines' (PJEPA) FTA with Japan.

B. Cross-country Provision Comparison of Japan Economic Partnership Agreements (JEPAs) with Sanitary and Phytosanitary Agreements ("SPS Agreement")

	PJEPA	BJEPA	I(d)JEPA	I(n)JEPA	MJEPA	SJEPA	TJEPA	VJEPA
Sanitary-Phyto-Sanitary Measures			•		•			•
Scope and Coverage			•		•			•

Reaffirmation of rights and obligations			•		•			•
Enquiry Points			•		•			•
Sub-committee on SPS Measures			•		•			•
Cooperation on Special Medicine			•					
Mutual Recognition			•					
Non-application of Dispute Settlement Procedure			•		•			•

Malaysia and Vietnam both provide a separate SPS Agreements in their FTAs, Chapter 6 and 5 respectively, with Japan while India integrates its SPSMs with the chapter on Technical Regulations, Standards, and Conformity Assessment Procedures. Among the three India has one of the most conspicuous SPS agreements because it has special provisions such as Cooperation on Special Medicine and Mutual Recognition, which the other two JEPAs clearly don't have.

B.1. Scope

Agreements	Provisions
I(d)JEPA	Chapter 5: Technical Regulations, Standards and Conformity Assessment Procedures, and Sanitary and Phytosanitary Measures, Article 50: "This Chapter shall apply to technical regulations, standards and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement (hereinafter referred to as "the TBT Agreement") and sanitary and phytosanitary (hereinafter referred to as "SPS") measures under the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "the SPS Agreement"), that may, directly or indirectly, affect trade in goods between the Parties."
MJEPA	Chapter 6: Sanitary and Phytosanitary Measures "This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to in this Chapter as "SPS") measures under the SPS Agreement, that may, directly or indirectly, affect trade in goods between the Countries."
VJEPA	Chapter 5: Sanitary and Phytosanitary Measures, Article: "This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to in this Chapter as "SPS") measures of the Parties under the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to in this Agreement as "SPS Agreement"), that may, directly or indirectly, affect trade in goods between the Parties."

The Sanitary Phytosanitary Measures provided by ASEAN JEPAs are applied in consideration of the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (referred to as "the SPS Agreement"), that may, directly or indirectly, affect

trade in goods between the parties involved. Hence, with this provision, the countries/parties explicitly appraise their rights and obligations under such agreement (see SPS Agreement in WTO, 2011). These provisions are unquestionably mandatory given the membership of the trading parties in the WTO.

Nevertheless, The Philippines would benefit from the inclusion of this provision as an additional safeguard to the application of Sanitary and Phytosanitary Measures. Stricter sanitary and phytosanitary measures would benefit the country. This will tie up the hands of Japan and it would then have to adhere to the provisions in the PJEPA as to sanitary and phytosanitary measures. It may serve as a hindrance on the part of Japan to issue additional domestic measures against the Philippines' agricultural exports.

B.2. Reaffirmation of Obligations and Rights

Agreements	Provisions
I(d)JEPA	Article 51 upholds rights enshrined in both TBT & SPS agreement: "The Parties reaffirm their rights and obligations relating to technical regulations, standards and conformity assessment procedures under the **TBT Agreement**, and their rights and obligations relating to SPS measures under the **SPS Agreement**."
MJEPA	Article 69: "The Countries reaffirm their rights and obligations relating to SPS measures under the **SPS Agreement**."
VJEPA	Article 46: **"**The Parties reaffirm their rights and obligations relating to SPS measures under the **SPS Agreement**."

India covers both TBT and SPS understandably as its chapter includes both Technical regulations and Sanitary and Phytosanitary measures. Malaysia and Vietnam on the contrary only espouses the rights preserved in the SPS agreement. Understandably, this is so as Malaysia and Vietnam's SPS chapters are solely devoted to SPS measures.

B.3. Enquiry points

Agreements	Provisions
I(d)JEPA	Article 52: "Each Party shall designate an enquiry point which is able to answer all reasonable enquiries from the other Party regarding technical regulations, standards and conformity assessment procedures, and SPS measures and, if appropriate, to provide their relevant information."
MJEPA	Article 71 uses "Government" instead of "Party": "Each **Government** shall designate an enquiry point to answer all reasonable enquiries from the other Government regarding SPS measures referred to in Article 68 and, if appropriate, provide the other Government with the relevant information."
VJEPA	Like I(d)JEPA, uses "Party" and not "Government":

	"Each **Party** shall designate an enquiry point which is able to answer all reasonable enquiries from the other Party regarding SPS measures and, if appropriate, to provide the relevant information."

All JEPAs provide the establishment of an enquiry point which will answer all reasonable enquiries from the other parties involved and to provide other relevant information for the enquiring parties. Malaysia uses Government instead of the generic Party, which India and Vietnam uses. Needless to say, the establishment of these enquiry points is done with the aim of enhancing transparency and predictability between the trading parties.

The Philippines would benefit in copying the provisions of the MJEPA or the VJEPA since this would already provide for a definite procedure on how to deal with enquiries from the other parties involved and how to provide other relevant information for the enquiring parties.

B.4. Sub-committee on SPS Measures

Agreements	Provisions
I(d)JEPA	Integrated with Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (Article 53): - Section a, par. 2 mandates the exchanging of information on technical regulations, standards and conformity assessment procedures, and SPS measures with special emphasis on generic medicine: "(a) **exchanging information** on technical regulations, standards and conformity assessment procedures, and SPS measures, and where necessary, coordinating the exchange of information on **generic medicine** provided for in Article 54" - Section b, par. 2 mandates consultations on issues relating to technical regulations, standards and conformity assessment procedures: "(b) undertaking **consultations** on issues related to technical regulations, standards and conformity assessment procedures" - Section e, par. 2 mandates the use or recognition of existing frameworks for mutual recognition in discussing technical regulations, standards and conformity procedures under prevailing international agreements: "(e) holding discussions on the participation of each Party in the **existing frameworks for mutual recognition** in technical regulations, standards and conformity assessment procedures under international agreements" - Section f, par. 2 saliently provides for discussion of Mutual Recognition Arrangements (MRAs): "(f) discussing **Mutual Recognition Arrangements** (hereinafter referred to in this Chapter as "MRAs") pursuant to Article 55 and other technical cooperation in relation to technical regulations, standards and conformity assessment procedures, and SPS measures" - Section i, par. 2 grants authority to carry out functions as may be delegated by the Joint Committee: "(i) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 14." - Par. 5 instructs the advanced determination of the meeting of the Sub-Committee, emphasizing on ensuring appropriate participation of relevant experts: "5. The Parties shall **determine in advance the agenda** for the individual meeting of the Sub-Committee, with a view to ensuring **appropriate participation of relevant experts**."
MJEPA	- Separate Sub-Committee; Par. 1 of Article 70 (pursuant to Article 14)

	- Section a, par. 1 mandates the exchange of information: "(a) exchanging information on such matters as **occurrences of SPS incidents** in the territories of the Countries and third States, and change or introduction of **SPS related regulations** and standards of the Countries, which may, **directly or indirectly, affect trade in goods** between the Countries" - Section b, par. 1 separately instructs notification of information: "(b) notifying to either Country of information on **potential SPS risks** recognised by the other Country" - Section c, par. 1 also mandates undertaking a science-based consultation**:** "(c) undertaking **science-based consultation** to identify and address specific issues that may arise from the application of SPS measures with the objective to achieve **mutually acceptable solutions**" - ***Par. 2*** provides for cooperation (without specifying the need for international fora) in areas of SPS measures: "2. Both Countries, through the Sub-Committee, shall cooperate in the areas of SPS measures including **capacity building, technical assistance and exchange of experts** subject to the **availability of appropriated funds** and the **applicable laws and regulations** of each Country." - Par. 3 specifically orders the convention of the Sub-committee's inaugural meeting one year after the agreement's entry into force: "3. The Sub-Committee shall convene its **inaugural meeting within one year after this Agreement enters into force** and subsequently meet at such times as may be agreed by the Countries. The Sub-Committee shall meet at such venues as may be agreed by the Countries." - Par. 4 specifies membership of the Sub-committee: "4. The Sub-Committee shall be: (a) composed of representatives of the **Governments**; and (b) **co-chaired** by **officials of the Governments**." - Par. 5 distinctly and explicitly allows establishing ad hoc technical working groups: "5. The Sub-Committee may, if necessary, establish *ad hoc* technical working groups as its subsidiary bodies."
VJEPA	- Section a, par. 2 is phrased similar to Section a, Par. 1, Art. 70 of MJEPA, except without the word "in the territories", with "Parties" in place of "Countries" and "non-Parties" in place of "third States": "(a) exchange of information on such matters as occurrences of SPS incidents in the Parties and non-Parties, and change or introduction of SPS-related regulations and standards of the Parties, which may, directly or indirectly, affect trade in goods between the Parties" - Like MJEPA, section d, par. 2 briefly provides for strengthened technical cooperation regarding: "(d) discussing technical cooperation between the Parties on SPS measures with **a view to strengthening it**" - Like MJEPA, par. 5 also explicitly allows establishment of ad hoc technical working groups as its subsidiary bodies, with conditional clause "if necessary": "5. The Sub-Committee may, if necessary, establish ad hoc technical working groups as its **subsidiary bodies** relating to a specific area of SPS measures."

India's Sub-committee on Sanitary and Phytosanitary measures is integrated with Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures (Article 53). Be that may, its functions are similar to other Sub-committees. Section a of the second paragraph instructs on the exchange of information on technical regulations, standards and conformity assessment procedures, and SPS measures and more noticeably places emphasis or

special mention of exchange of information on generic medicine (pursuant to Article 54). Section b of the same paragraph mentions consultations on issues relating to technical regulations, standards and conformity assessment procedures. The explicit designation of the information exchange and consultative functions of the Sub-committee is yet again indicative of India and Japan's commitment to the principles of transparency, predictability, and openness in trade. The exchange of information that ensues from such functions may also benefit the less developed country, in this case India, as information flows may bring with it best practices, tried and tested or effective regulatory measures, and better ways of coping with high levels of sanitary, phytosanitary, and similar technical standards. Thus, transparency in this case would facilitate better trade between the parties in the long run.

Section e on the other hand mandates the use or recognition of existing frameworks for mutual recognition in discussing technical regulations, standards and conformity procedures under prevailing international agreements**.** In relation to this, section f saliently provides for discussion of Mutual Recognition Arrangements (MRAs) pursuant to Article 55 regarding technical regulations, standards, and conformity assessments. Once again, by using international standards as the basis for the mutual recognition framework, the countries have at their disposal consistent and uniform standards or benchmark for assessment. This renders the mutual recognition agreement predictable and reliable. Hence, the provision mandating the use of existing frameworks of international agreements is in line with the aim of establishing a predictable and transparent trade regime.

Section i of the second paragraph grants authority to the Sub-committee to carry out functions as may be delegated by the Joint Committee pursuant to Article 14. Again, this terse provision ascribes flexibility in the Sub-committee as it allows the delegation of functions which may ensue from the contingencies of the SPS measures operations.

The fifth paragraph of India's provision on the SPS sub-committee instructs that the agenda be determined in advance for the individual meeting of the Sub-Committee, with the emphasis on ensuring appropriate participation of relevant experts. Although this may sound or appear pointlessly demanding at first glance, it may actually facilitate speedier negotiations, as early determination of agenda compels the party to prepare beforehand, thus avoiding gridlocks or that paralyzing tendency of on-the-spot negotiations. It is in this light that this provision may be seen as trade liberalizing as it is trade facilitating.

Unlike India, Malaysia provides a separate Sub-Committee on Sanitary and Phytosanitary Measures. But like India, section a of the second paragraph also mandates the exchange of information specifically on such matters as occurrences of SPS incidents in the territories of the (trading) Countries and (includes) third-party State. However, Malaysia's agreement differs from India's in specifying the notification of change or introduction of SPS related regulations and standards of countries, which may affect directly or indirectly trade in goods between the Countries. Firstly, expanding the stakeholder's coverage to include third-party states is a sign of greater prudence on the part of Malaysia as includes the possibility of violations that, although may be outside the trade relationship of the contracting countries, may actually indirectly affect the commitments of the two trading countries to their SPS measures operations. Secondly, the explicit provision for notification of amendments to the SPS regulations of one of the trading parties yet again urges transparency between the trading countries. This urge for transparency is

reinforced by section b of the same paragraph, which separately instructs notification of information on potential SPS risks identified by the other Country.

Moreover, section c of the second paragraph also mandates undertaking a science-based consultation to identify and address specific issues that may arise from applying SPS measures, with emphasis on the objective of achieving mutually acceptable solutions. Similarly, the second paragraph *also* provides for cooperation (without specifying the need for international fora) in areas of SPS measures including capacity building, technical assistance and exchange of experts subject to the availability of appropriated funds and the applicable laws and regulations of each Country. Once again, these provisions rightly substantiate Malaysia and Japan's commitment to establishing a trade relationship based on fair trade practices and transparent and predictable regulations. More so, the explicit call for capacity building, technical assistance and exchange of experts is a clear gesture of Japan's willingness to establish trade links that would allow the beneficial transfer of technology regarding SPS regulations to its less developed partner Malaysia, a mandate that exemplifies the WTO's principle of accruing "more beneficial trade for less developed countries" (WTO, 2012b).

The third paragraph specifically orders the convention of the Sub-committee's inaugural meeting one year after the agreement's entry into force while the fourth paragraph specifies membership of the Sub-committee as consisting of representatives of Government and adds that the Sub-committee be chaired by officials of the Governments.

Similar to the Joint Committee's delegation of functions to the SPS sub-committee in India's agreement, the fifth paragraph of Malaysia's provision on SPS Sub-committee distinctly and explicitly allows establishing ad hoc technical working groups as subsidiaries of the Sub-committee. This is again a provision that provides more flexibility for the Sub-committees of both Malaysia and Japan, in order to account for possible future contingencies in the operations of the Sub-committee. Vietnam shares this proactive consideration with its even more explicit conditional clause "if necessary" (par. 5, VJEPA).

Like Malaysia, Vietnam also mandates the exchange of information between Japan and itself. However, Vietnam more specifically uses "Parties" in place of "Countries" and "non-Parties" in place of "third States". This specificity again may be alluded to the historical propensity of Vietnam to be a centrally planned economy or heavy centralized government planning. Similar to Malaysia as well, Vietnam provides for technical cooperation regarding SPS measures with a more direct "…view to strengthen it" (§ d, par. 2, VJEPA). Clearly, these statements signify the same implications of fairer, more transparent, more predictable, and more beneficial trade deal with Japan.

There is the same observation that a specific provision on how to treat SPS measures would hinder Japan from adding additional SPS measures. The provisions provided in VJEPA and MJEPA are clear enough to address all the issues that may rise from SPS measures

B.5. Cooperation on Special Medicine

Agreements	Provisions
I(d)JEPA	- Article 54 contains a special provision exclusive to IJEPA among Asian countries with Economic Partnerships with Japan; - Par. 1 stresses the need to exchange information on regulatory measures on generic medicine with a view to promote cooperation between Parties on the field of Pharmaceuticals and building mutual confidence in the regulatory measures of each Party: "1. The Parties shall exchange information on their respective regulatory measures concerning generic medicine, with a view to promoting cooperation between the Parties in the field of pharmaceuticals and building **mutual confidence in the regulatory measures** of each Party." - Par. 2 defines "generic medicine" as drugs approved by competent authority of a Party under the laws and regulations of the Party as equivalent, in terms of active ingredients, dosages, usages and indications, to the drugs approved preceding the former drugs "2. For the purposes of this Article, the term "generic medicine" means drugs approved by the competent authority of a Party under the laws and regulations of the Party as equivalent, in terms of active ingredients, dosages, usages and indications, to the **drugs approved preceding the former drugs**." - Par. 3 pertains to the mandate of relevant authorities to consider the application of license to release generic medicine in the market; emphasizes equal or fair treatment of applications upon fulfilment of requirements; also qualifies that such application be completed within reasonable period of time for the date of application: "3. **Applications** by a person of a Party for **registration** and other approvals required for **release of a generic medicine in the market** of the other Party shall be considered by the relevant authorities of the other Party. Such applications shall be accorded, in the relevant procedure, treatment no less favourable than that accorded to like applications by its own person, where they fulfil all the requirements under the laws and regulations of the other Party. Such procedure shall be completed within a reasonable period of time from the date of such application."

Pursuant to section a of the second paragraph of India's provision on the SPS Sub-committee, the special emphasis on the cooperation on the generic medicine is another noteworthy aspect of the provision mandating the exchange information, for such emphasis signals India's willingness to subject one of its fastest growing industries to scrutiny. To illustrate the vast trade potentials of India's pharmaceutical industry, recent statistics shows that the drug and pharmaceutical industry in India meets around 70% of the country's demand for bulk drugs, drug intermediates, pharmaceutical formulations, chemicals, tablets, capsules, orals and injectibles (TradeIndia.com, 2008). There are about 250 large Pharmaceuticals manufacturers and suppliers and about 8000 Small Scale Pharmaceutical and Drug Units which form the core of the pharmaceutical industry in India (including 5 Central Public Sector Units)(*ibid.*). These bulk drugs and pharmaceuticals manufacturers produce the complete range of pharmaceutical formulations, i.e. medicines ready for consumption by patients, and about 350 bulk drugs, i.e. chemicals having therapeutic value and used for production of pharmaceutical formulations (*ibid.*). Owing to a significant increase in Pharmaceuticals exports, India's USD 3.1 billion pharmaceutical industry is growing at the rate of 14 percent per year (*ibid.*). From to 2008 to 2009 alone, India exported drugs worth around $8 billion in 2008-09, most of which to the US and Europe, followed by Central and

Eastern Europe, Latin America and Africa (Patnaik, 2010). Even the number of pharmaceuticals exporters, manufacturers and suppliers is increasing tremendously. It is one of the largest and most advanced among the developing countries. In fact, India tops the world in exporting generic medicines worth of Rs 50,000 crore and as of mid-2010, the Indian pharmaceutical industry is one of the world's largest and most developed, according to union minister of state for chemicals and fertilisers Srikanta Jena (*ibid.*). The country, today, exports to more than 200 countries around the globe including the highly regulated markets of US, Europe, Japan and Australia (*ibid.*).

However, certain criticisms are levied on the Indian pharmaceutical industry, particularly on the note of public health hazards. For instance, in US, some express concern that over the past seven years, amid explosive growth in exports of India, alongside China, the FDA conducted only about 200 inspections of plants in those countries, and a few were the kind that U.S. firms face regularly to ensure that the drugs they make are of high quality (Kaufman, 2007). This is alarming as India, along with China, has become a major supplier of low-cost drugs and drug ingredients to American consumers to the point that their products are becoming pervasive in the generic and over-the-counter marketplace (*ibid.*). The agency, which is responsible for ensuring the safety of drugs for Americans wherever they are manufactured, made 1,222 of these quality-assurance inspections in the United States last year. In India, which has more plants making drugs and drug ingredients for American consumers than any other foreign nation, it conducted only a handful. Although there is yet no strong evidence to suggest that the influx of India's generic medicine products poses severe and real threats such as substantial fatality on the ground, some warn that should lax quality control and limited government regulation continue to be exercised in India (and China), there remains reasonable cause for concern for the markets of these products (*ibid.*).

Given this, the provision subjecting the industry to a periodic monitor is born out of prudence from both countries. For India, knowing the regulatory standards of Japan can enable them to comply to the level of those standards and hence ensure that their generic medicine products pass those standards and eventually gain market access. On the part of Japan, consultations through the Sub-committee on SPS measures give its pertinent regulatory bodies vital information that will help craft policies that will control the surge and ensure the quality of generic medicine imports, given both the rapid growth rate or explosion of Indian pharmaceutical manufactures and export and the warranted concern for the effects of these low-cost products on public health. Possessing information on India's pharmaceutical industry and its generic medicine products will also help Japan discern the necessary course of action in cases of dumping or near occasions warranting preventive anti-dumping measures. In this way, the special emphasis on consultations for the generic medicine product highly exemplifies both India and Japan's commitment to ensuring a fair, transparent, predictable trade deal that also aims to protect public health and safety.

B.6. Mutual Recognition

Agreements	Provisions
I(d)JEPA	- Article 55 elaborates on the MRAs (set forth in *Section f, Par. 2, Article 53*) - Par. 1 discusses the feasibility of Mutual Recognition Arrangements in specific sectors as electrical products, telecommunications terminal equipment and radio equipment and other sectors as may be mutually agreed by the Parties; also distinctly requires the concrete confirmation of economic benefits and equivalence of technical regulations of such arrangements: "1. The Parties shall, through the Sub-Committee, discuss the feasibility of **MRAs** in such sectors as **electrical products, telecommunications terminal equipment and radio equipment** and other sectors as may be mutually agreed by the Parties. In elaborating MRAs, the Parties shall confirm the economic benefits of such arrangements and, where necessary, the equivalence of the technical regulations of both Parties." - Par. 2 specifically mandates meeting of Sub-Committee three months after entry into force of the agreement to discuss feasibility of aforementioned sectors; also specifies that the convening Parties must endeavour to reach a conclusion of MRAs within a reasonable period of time, not exceeding three years, from the date of such conclusion: "2. The Sub-Committee shall meet within three months from the date of entry into force of this Agreement, in order to discuss the feasibility of MRAs in sectors referred to in paragraph 1, and shall endeavour to arrive at a conclusion about such feasibility **within six months**. The Parties shall endeavour to reach a conclusion of MRAs under paragraph 1 within a reasonable period of time, normally **not exceeding three years**, from the date of such conclusion about the **feasibility**."

In connection to this call for cooperation, India provides another special provision on the establishment of a Mutual Recognition Arrangement. The first paragraph of which discusses the feasibility of Mutual Recognition Arrangements in specific sectors as electrical products, telecommunications terminal equipment and radio equipment and other sectors as may be mutually agreed by the Parties. The paragraph also distinctly requires the concrete confirmation of economic benefits and equivalence of technical regulations of such arrangements. The second paragraph specifically orders the meeting of Sub-Committee three months after entry into force of the agreement to discuss feasibility of mutual recognition in the aforementioned sectors. The paragraph also specifies that the convening Parties must endeavour to reach a conclusion of MRAs within a reasonable period of time, not exceeding three years, from the date of such conclusion.

It is important to note that the sectors abovementioned are capital-intensive and may require huge investments. Some of these sectors are emerging industries with rapid growth. For instance, the Indian telecommunication sector is the third largest sector across the globe and the second largest among the emerging economies of Asia (IBEF, 2010). A testament to this is the increasing market size of the industry. According to a research report from Gartner (in IBEF, 2010), the sale of mobile devices in India will show of rise of 8.5 per cent in 2012 by growing up to 231 million units from 213 million units last year. The research firm says that the Indian mobile handset market is expected to show steady growth through 2015 when end-user sales will

surpass 322 million units (IBEF, 2010). Smartphone sales in India made up 6 per cent of device sales in the first three quarters of 2011, and this share is expected to increase to 8 per cent in 2012 (*ibid.*). The Indian mobile device market is driven by the lowest call rates in the world and dominated by low-cost devices, which account for 75 per cent of sales in India in 2011 (*ibid.*). The Indian mobile device market is indeed very competitive with more than 150 manufacturers (*ibid.*). Research suggests that this rapid growth has been possible due to various proactive and positive decisions of the Government and contribution of both the public and the private sector. The rapid strides in the telecom sector have been facilitated by liberal policies of the Government providing the telecommunication equipment an easy access to the market and a fair regulatory framework for offering telecom services to the Indian consumers at affordable prices. One of which is the Telecom policy 2011, aims to make the country's telecommunications sector more transparent, relax merger and acquisition norms to encourage consolidation and also give more teeth to sector regulator Telecom Regulatory Authority of India (TRAI) (*ibid.*).

Given this, it is prudent and may prove favourable to India to establish a mutual recognition arrangement with Japan, since such will most definitely ease the constraints the flow of trade in goods and even investments between them. This is so as with a mutual recognition arrangement, India’s technical regulations are deemed as equivalent or at par with Japan’s hence relieving India of possible bottlenecks in the screening process of Japan’s regulatory bodies. In other words, under the mutual recognition arrangement, if telecommunication goods are certified as passing the regulations in India, then most likely the same goods are also deemed passing or qualified in Japan. It is in this sense that having a mutual recognition arrangement facilitates greater market access. Besides this, India may maximize such a mutually benefitting arrangement, given the fact that Japan’s has been known to be highly developed or sophisticated in the telecommunications, electronic products, and radio equipment sectors. The increased trade in goods or investment flows ensuing from such mutual recognition arrangement will surely bring with it beneficial technological transfers.

It is in this light that establishing a mutual recognition arrangement between countries incurs multiple benefits. Firstly, it promulgates more open trading by facilitating increased market access. Secondly, it increases transparency, predictability, and fairness of trade practices by equalizing levels of standards. Lastly and most importantly, it also caters to valuable benefits to less developed countries through allowing less or unrestrained transfer of technology.

C. Conclusion: Advantages and Disadvantages of Sanitary and Phytosanitary Measures (SPSMs)

Sanitary and Phytosanitary Measures are defined as “regulations and standards governing the sale of products into national markets that have as their objective the correction of market inefficiencies stemming from externalities associated with the production, distribution, and consumption of these products” (Iacovone, 2005). As such, it has three sources of calculating effects: survey, case studies, and computable general equilibrium models.

Surveys have been done mainly by USDA and OECD, the first in 1996 estimated that questionable technical barriers were reported in 62 countries constraining or blocking an estimated trade flow of $5.0 billion. The second survey in 1999 estimated that additional costs of complying with foreign standards range from zero to ten percent, with most of the firms falling in the lower tail of the distributions. The advantages of these surveys is that they tend to give us a

good overview of the issue but normally, as these are done only once, it is not possible to determine trends and dynamics (Iacovone, 2005).

Case Studies consists of in-depth analysis of specific cases where a sanitary and phytosanitary requirement constrains the export of one country, have been done. In general, these studies tend to focus on the compliance costs imposed by the sanitary requirements more than on the impact on trade (Iacovone, 2005).

To illustrate, Cato (in Iacovone, 2005) assessed the costs of upgrading sanitary conditions in the Bangladesh frozen shrimp industry in order to satisfy EU and US standards and estimated that US$ 17.6 million were spent to upgrade production with an average expenditure per plant of US$ 239,630, furthermore to maintain a system of control and monitoring in place he estimated that US$ 2.2 million are spent each year. Fisher and Schuler (1999) analysed the SPS-related projects supported by the World Bank as an indicator of the resources required for the development of SPS controls and estimated that the costs of achieving disease-free and pest-free status to enable Argentina to export meat, fruit and vegetables was about US$ 82.7 million over the period 1991-96 (Iacovone, 2005).

In similar manner, Wilson (in Iacovone, 2005) reported that the total World Bank funding in 1999 for projects directly or indirectly related to SPS amounted to US$ 412 million. Henson et al. (2000b) analysed the impact of EU hygiene requirements on Kenyan fish exports and found that the expected costs for modernising the basic infrastructure, such as landing sites, and upgrading laboratory facilities for chemical and microbiological analysis would be about US$ 6.9 million. Furthermore, they estimated that the inability of complying with these requirements had a serious negative impact on Kenyan exports of fresh fish to EU reducing it by about 69%.

Lastly, Herath (in Iacovone, 2005) analysed the impact of SPS requirements on beverages and spices in Sri Lanka, and found that due to the domestic standards being lower than the international ones, the direct loss of potential export due to non-compliance is about 34% of the total exports of spices and beverages yearly in the period 1990-2000. This is equal to US$ 2.9 million every year, about 7% of the total foreign exchange earnings from spices and beverage crops in 2000 (Herath in Iacovone, 2005).

General equilibrium model (CGE) has been estimated in order to quantify the impact of standards and regulation. In particular Gasiorek et al. (in Iacovone, 2005) modelled the effects of harmonisation in EU after 1992 assuming increasing and considering standards and regulations as “sand in the wheels” with their harmonisation reducing the trade costs by 2.5 percent. The outcome of harmonisation is, depending on the scenario and the parameters, either a fully integrated market or still a segmented market and in the first case the welfare gains are particularly relevant: about one percent of GDP in the short run and more in the long run when inefficient firms leave the market. Harrison et al. (in Iacovone, 2005) extended the work of Gasiorek et al. (1992) asserting that harmonisation of standards and increased information about foreign products raises the elasticity of substitution between domestic and EU goods, this extra effect imply that they are able to estimate larger welfare gains of harmonisation that in the long run these can reach 2.4 percent of GDP (Iacovone, 2005). Computable general equilibrium models (CGE) are useful to analyse the effect of change in standards and regulations in various market settings. The main drawback of these studies is that their measures of standards are

heavily aggregated and use very crude specifications of standards which are unable to capture the complexities of specific and heterogeneous standards (*ibid*.).

- - *In conclusion*

SPSMs are highly significant regulatory measures for two main reasons. First, they are understandably relevant because they aim to protect citizens from daily food hazards. Second, their establishment assures the trading parties that the products are certified to comply with health, environmental, and safety standards. Hence, its proper management or implementation boosts trade in goods, especially the sensitive agricultural goods.

As shown by the surveys, case studies, and computations of general equilibrium models, the non-establishment or lack of proper implementation of SPS results into significant losses of trade potential that ranges from 30% to almost 70%. Besides the obvious boosting effect to trade output, the adoption of SPS measures also enhances trade liberalization in multiple levels. Firstly, it promulgates more open trading by facilitating increased market access. Secondly, it increases transparency, predictability, and fairness of trade practices by equalizing levels of standards. Lastly and most importantly, it safeguards environmental protection, public (including animal and plant) health and safety by ensuring quality control of goods being traded.

However, the SPS Agreement, along with other modalities included in the WTO agreement, are potential sources of trade disputes given the scrupulous, complex nature of its details. Although the cases presented have similar environmental, socio-cultural conditions, and political institutions, a study that substantially examines the effects of SPS measures between Philippines and Japan under PJEPA is still yet to be undertaken. For now, SPS measures seem to serve as trade boosting instrument, provided it is given importance and implemented properly.

VI. EFFECT OF PHILIPPINE-JAPAN ECONOMIC PARTNERSHIP AGREEMENT

Many of the economic gains have yet to be realized under PJEPA. The seemingly slow progress, especially on the movement of natural persons, has made it appear a failure after two years. There was an increase in value of Philippine exports to Japan in 2010 (as shown in Table 1) but further studies are needed to conclude the impact of the agreement to Philippine bilateral trade with Japan, especially in the area of services. Since the general review of the agreement is scheduled in December 2011, a comparative study on the textual provision is timely since this would help identify the advantages and disadvantages that the Philippine agreement has with Japan and can recommend more effective measures that can maximize the potential benefits. The Department of Trade and Industry (DTI) has already initiated the creation of an inter-agency team to form part of the review process of PJEPA.

Table 1. Philippine Imports and Exports to Japan (in US Dollar)

Philippines's exports to Japan							
Value in 2003	**Value in 2004**	**Value in 2005**	**Value in 2006**	**Value in 2007**	**Value in 2008**	**Value in 2009**	**Value in 2010**
5,768,938	7,983,390	7,206,100	7,918,337	7,304,148	7,707,063	6,208,401	7,827,498
Philippines's imports from Japan							
8,295,476	8,050,849	8,464,166	7,676,911	7,219,107	7,121,851	5,764,923	7,304,746

Source: International Trade Centre calculations based on National Statistics Office, Republic of the Philippines statistics

In House Resolution 828, Liberal Party Rep. Ben Evardone of Eastern Samar cited the criticisms by the international community, such as the United States and the European Union, that Jpepa contain iniquitous provisions unduly favoring Japan at the expense of the Philippines.

Evardone said in the “trade in goods and services” chapter of the Jpepa, Japan was able to exclude 651 tariff lines, 238 of which are agricultural products, while the Philippines excluded only six tariff lines.

One of the effect of JPEPA was the hiring of 1,000 Filipino health professionals (400 nurses and 600 care workers) to work in Japan, which, despite efforts of both the government and nongovernment sectors to maintain the international standards demanded of professional health workers like nurses, the Jpepa makes a registered Filipino nurse inferior to a Japanese nurse as the former will enter Japan not as professional nurses but as trainees.

However, it may be important to take note that trade volume between the two countries increased last year as compared to 2010 with Japan being the largest importer of Philippines' export amounting to $8.9 billion against the $7.8 billion reflected in 2010.

Philippines' import from Japan, on the other hand, accounted for the largest share among other trading partners despite slight decrease to $6.5 billion in 2011 from $6.75 billion in 2010, the department said.

Also, Japan remains the biggest investor to the Philippines in terms of investments approved by the Investment Promotion Agencies (IPAs) with the value of P77.4 billion in 2011.

Effect of the Other JEPAs

Viet Nam-Japan Economic Partnership Agreement (VJEPA)

The mere signing of the Agreement with no follow-up action is cold comfort to existing investors in Vietnam, especially those from Japan, who have been adversely affected by changes in policies which were as abrupt as they were debilitating.

The Vietnam-Japan Economic Partnership Agreement (VJEPA) has come into official effect on October 1 2009, thus import duty rates will be cut in accordance with the agreed roadmap.

Specifically, right from October 1 2009, Vietnam commits to cutting 2,586 tax lines while Japan pledges to cut 7,220 tax lines.

Major Vietnam-made exports to Japan enjoy import duty rates of 0% from October 1 include garments and textiles, furniture, shrimps and products made from shrimps, electric cables, computers, durians and flowers and so on.

At present, aquatic, textile and garment, and leather shoes products are three main Vietnam-made exports to Japan.

According to the Vietnam Textile and Garment Association, it is predicted that if Vietnamese enterprises still keep export growth rate to Japan as they do today, the Vietnam-made textile and garment export turnover to the country will be up 18% – 20% this year to reach between US$900 million and US$1 billion.The Vietnam - Japan trade turnover is expected to attain around US$18 billion in 2010.

Table 8. Vietnam's Imports and Exports to Japan (in US Dollar)

Viet Nam's exports to Japan							
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009
2,436,958	2,908,600	3,542,130	4,340,272	5,240,087	6,089,978	8,467,750	6,335,602
Viet Nam's imports from Japan							
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009
2,504,652	2,982,059	3,552,593	4,074,117	4,702,120	6,188,907	8,240,307	7,468,092

Source: International Trade Centre based on UN COMTRADE statistics

In US million dollar		
Year	**Export Value**	**Import Value**
2010	7.728	9.016
Jan- Sep 2011	7.481	7.422

Thailand-Japan Economic Partnership Agreement (TJEPA)

In 2007, the agreement was signed after negotiations which started in 2004. It came into force on November 2, 2007 and includes provisions on trade in goods, rules of origin of products, trade in services, investment, and the movement of natural persons, as well as cooperation in 9 areas and 7 joint projects. There are five significant features of the agreement. First, tariffs on 99.51% of Japanese goods have been reduced or eliminated and tariffs on 92.5% of Thai goods have also been reduced or eliminated. Thai goods bound for tariff elimination include gemstones and jewelry, textiles and apparel, petrochemical goods, and plastic products, and foodstuffs, including shrimp and prawn prepared, preserved and frozen, or boiled shrimps and prawn, legumes, vegetables (okra, olives, fresh potatoes, asparagus); fresh chilled and frozen fruit (durian, papaya, mangoes, mangosteen, coconuts), manioc starch, and potatoes, either sliced or in the form of pellets. Japanese goods for tariff elimination include foodstuffs, including some fresh chilled or frozen fish, crabs, fresh shrimp and prawn prepared, preserved and frozen, or boiled shrimp and prawn, temperate climate fruits such as apples, peaches, pears, prunes, and various berries; gems and jewelry, textiles and apparel; and steel and steel products (DTN).

Table 7. Thailand's Imports and Exports to Japan (in US Dollar)

Thailand's exports to Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
9,946,776	11,399,102	13,457,061	15,029,432	16,542,485	18,133,187	19,878,818	15,731,838	20,415,711
Thailand's imports from Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
14,889,174	18,260,388	22,381,170	26,049,684	25,842,606	30,032,903	33,420,401	25,023,287	37,856,129

Source: International Trade Centre based on UN COMTRADE statistics

Singapore-Japan Economic Partnership Agreement

Japan-Singapore Free Trade Agreement leads to higher rates of return on investment in Singapore. The tariff cuts boost the demand for Singaporean products, thereby raising returns to capital in that economy.

The reduction in barriers to Singapore's direct exports of services to Japan has a similar effect to that of tariffs on the rate of return. Unlike the one-sided trade liberalization measures, the e-commerce and customs automization shocks affect both the demand for Singaporean products in Japan, as well as the cost of Japanese imports in Singapore. By lowering the cost of investment goods in Singapore, there is an added boost to the rate of return. Not only has the rental rate on capital risen- due to increased decrease for Singaporean products in Japan- but also the cost of investing in Singapore has fallen. This is particularly true of customs automization, which lowers the effective price of Japanese machinery and equipment in Singapore. As a consequence, these "new ages" features of the Free Trade Agreement contribute the majority of the change in the rate of return in Singapore.

The increased investment in Singapore, due to the higher rates of return over the 2006-2010 period, dominates the increase in national savings as a result of higher incomes. Therefore Singapore's trade balance deteriorates, relative to the baseline simulation. This reflects the fact that rates of return fall back to their baseline levels and the increase in foreign wealth invested in Singapore gives rise to larger foreign income payments-thereby requiring higher levels of exports, relatives to the baseline.

The impacts of Free Trade Agreement on Japan have a distinctly different character than those for Singapore. Japan's exports to Singapore represent only a small portion of total trade. Therefore, the strictly bilateral measures, including: tariff cuts, reduced services trade barriers and e-commerce regulations, have a relatively minor impact on aggregate output, trade, investment and gross domestic product. Rather, the impacts of the Free Trade Agreement on

Japan are driven largely by the customs automization process, which affects the cost of trading with all partners.

The automization of custom's procedures increase trade throughout the Asia-Pacific region and the rest of world, thus boosting real gross domestic production in all regions excepting for Canada, Western Europe.

All of the Asian economies gain in terms of real gross domestic product- with the largest impact felt in Thailand and Malaysia- two economies that trade a great deal with Singapore and Japan. These increases in real Gross Domestic Product also fuel increased foreign investment, with the stock of foreign-owned equity in Thailand rising as a result of Free Trade Agreement. The increase in foreign ownership in Singapore, Japan and Thailand is financed by a modest increase in outward foreign direct investment by the United States, Canada and other countries. Many of the other Asian economies reduce their foreign ownership in order to increase investment in their domestic economies.

Table 6. Singapore's Imports and Exports to Japan (in US Dollar)

Singapore's exports to Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
8,939,660	9,690,096	11,560,622	12,531,722	14,857,375	14,387,841	16,659,803	12,283,093	16,410,345
Singapore's imports from Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
14,577,958	15,393,002	19,093,622	19,233,286	19,932,136	21,547,450	25,942,796	18,727,159	24,425,410

Source: International Trade Centre based on UN COMTRADE statistics

Malaysia-Japan Economic Partnership Agreement

Bilateral trade had expanded significantly during the past decades. In 2002, Japan was the 3rd largest export destination for Malaysia (10.4 billion US Dollar, accounting for 11.2% of total exports) and largest source of import (14.2 billion US Dollar, accounting for 17.8% of total imports). For Japan, Malaysia ranked the 10th largest trade partner for export (1.38 trillion Japanese Yen, 2.6%) and 10th largest trade partner for import (1.40 trillion Japanese Yen, 3.3%). In 2002, 86.6 percent of export from Malaysia to Japan consisted of industrial goods, while the remaining 13.4 percent being agriculture, forestry and fishery items. Almost all the exports from Japan to Malaysia are industrial goods.

For Malaysia, for the period from January to September 2003, Japan was the 2nd largest investor in terms of the number of investors as well as the amount of investment approved. During this period, according to the Ministry of International Trade and Industry, Malaysia, the number of investors (project approval basis) from Japan to Malaysia amounted to 92 accounting for 12

percent of total investors. The value of investment (project approval basis) from Japan to Malaysia amounted to 339 million US Dollar which accounted for 13 percent of the total value of projects approved.

The number of companies with Japanese capital participation is 1,337 (according to the statistics of JETRO), of which 554 companies are members of the Japanese Chamber of Trade and Industry, Malaysia (JACTIM) employing approximately 220,000 people occupying 10 percent of the total workforce in manufacturing sector in Malaysia, according to the statistics of JACTIM. The inflow of investment from Malaysia to Japan isrelatively small occupying only 0.2 percent of total foreign direct investment in Japan.

For the first five months of 2007, exports under preferential tariffs of the FTA reached US$1 billion. A total of 21,471 COOs with total export value of US$0.84 billion was issued in 2006. Outward investment to Japan in 2007 increased to US$57.5 million compared with US$43.3 million in 2006, while approved Japanese investment in the manufacturing sector in Malaysia increased from US$1.2 billion in 2006 to US$1.9 billion in 2007.

Table 5. Malaysia's Imports and Exports to Japan (in US Dollar)

Malaysia's exports to Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
10,449,115	11,186,038	12,762,911	13,340,230	14,244,768	16,203,924	21,186,469	15,462,309	20,611,236
Malaysia's imports from Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
14,184,657	14,220,769	16,944,509	16,578,957	17,341,034	18,866,751	19,453,713	15,430,301	20,704,520

Source: International Trade Centre based on UN COMTRADE statistics

Indonesia-Japan Economic Partnership Agreement

For Indonesia, Japan is the largest trading partner and is the number 1 destination for Indonesia's exports (appx. 20%) and the largest source of Indonesia's imports (appx. 14%) of goods. Japan is also a major source of investment and development loans and assistance for Indonesia. While for Japan, Indonesia is one of the largest source of imports of Japan (ranks the 5th largest) and is also a significant export market for Japanese goods. IJEPA covers over 90% of goods (agriculture & industrial products) that Indonesia exports to Japan. IJEPA provides greater certainty of market access for Indonesian products and puts Indonesia on equal footing with competing countries that have concluded agreements with Japan. Under IJEPA the business environment for Japanese firms investing in Indonesia will be improved, including those already present in the Indonesian domestic market.

Table 4. Indonesia's Imports and Exports to Japan (in US Dollar)

Indonesia's exports to Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
12,045,115	13,603,494	15,962,109	18,049,140	21,732,123	23,632,790	27,743,856	18,574,730	25,781,814
Indonesia's imports from Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
4,409,307	4,228,257	6,081,608	6,906,255	5,515,773	6,526,674	15,129,173	9,843,729	16,965,801

Source: International Trade Centre based on UN COMTRADE statistics

Brunei-Japan Economic Agreement

The BJEPA is aimed at increasing new market opportunities for Brunei in Goods and Services and attracting more investment into Brunei. Amongst the other benefits of the Agreement are:

- Enhancing the investment climate and encouraging foreign direct investments (FDI) through greater predictability and transparency;

- Improved market access for Brunei Darussalam goods and suppliers of services;

- The reduction of import duties on the products of both countries will result in an increase in imports of products of high quality as well as cheaper imports of Japanese manufactured products for Brunei Darussalam consumers and vice versa;

- Japan's expertise and assistance in enhancing Brunei Darussalam's capacity and capabilities in areas such as human resource development, the environment, education and industry;

- Improved people to people contacts.

Consistent with its view to maximise the potentials of free and open trade for its people in an ever-globalising world, Brunei Darussalam views Free Trade Agreements (FTAs) as a vital part of its foreign trade policy. As stated by its Ministry of Foreign Affairs and Trade (MOFAT, 2011), with a relatively free and open trading regime, as well as a small but highly educated workforce, Brunei Darussalam sees engagement on FTAs as an important step in ensuring that its people, goods, services and investments have continued access to wider markets around the world. Accordingly, being largely regarded in the international community as a producer of oil and gas, Brunei Darussalam is currently undertaking a number of projects in a bid to further diversify its economy (MOFAT, 2011). In this regard, the Government of Brunei Darussalam explicitly pronounces that active engagement of FTAs with a number of key strategic partners will open up markets for Brunei's exports and services as well as help facilitate the flow of foreign direct investment into Brunei Darussalam (MOFAT, 2011). Given this, Brunei Darussalam has been actively engaged in FTAs through its membership in ASEAN as well as on

a bilateral basis. To date, Brunei Darussalam, through ASEAN, has concluded FTAs with Australia and New Zealand, China, India, Japan and South Korea, with a plurilateral agreement with Chile, New Zealand and Singapore, the Trans Pacific Strategic Economic Partnership or more commonly referred to as the "P4" (MOFAT, 2011). Bilaterally, the Brunei-Japan Economic Partnership Agreement (BJEPA) is Brunei Darussalam's first bilateral free trade agreement. The Agreement was signed by Sultan and Yang Di-Pertuan Hassanal Bolkiah of Brunei Darussalam and Prime Minister Yasuo Fukuda of Japan on 18 June 2007, and entered into force on 31 July 2008. It is hoped to enhance Brunei Darussalam's investment climate and encourage foreign direct investments (FDI) through greater predictability and transparency, as market access between Brunei Darussalam and Japan is also deemed to improve in terms of goods (through the reduction of import duties) and services (MOFAT, 2011). More specifically, the Agreement also has chapters on Energy, Improvement of Business Environment and Cooperation which will help further strengthen bilateral ties to a higher level of partnership (MOFAT, 2011).

Japan's Exports to Brunei Darussalam	
Period	Value in USD
Value in 2006	101, 295, 763
Value in 2007	123, 048, 125
Value in 2008	180, 725, 214
Value in 2009	162, 767, 495
Value in 2010	149, 665, 089

VII. PROBABLE FACTORS INFLUENCING TEXTUAL DIFFERENCES

Given the differences in provisions, as mentioned in the previous chapters, the assumption states that these would either directly or indirectly affect the flow of trade of Japan and ASEAN countries. The tables in Part VI above showed the trade flows between Japan and its partner ASEAN member country, except India since the agreement was only signed in 2011. Different factors are presented that probably influenced the differences in the agreements. This paper cites three factors.

A. Cooperation between Executive and Legislative Branches

One possible factor accounting for the differences in the quality of provisions or the textual difference lies in the very structural dynamics between the executive and legislative branches of the government. This is based on the premise that bilateral agreements are treaties that need the concurrence of the legislative assembly or parliament for its final ratification. Hence the cooperation between the executive and legislative may in fact provide insights to the differences in the agreement outputs of the bilateral agreements under study. This differential in the cooperation between the executive and the legislative branches of the government vis-à-vis the matter of trade is demonstrated or is underpinned by the classic debate between the parliamentary versus the presidential form of government.

The Philippines follows a constitutional republic with a presidential system of government. This is tantamount to saying that in a presidential system of government, the structure of democratic government is deliberately created in such a way that the three branches of the government would counterbalance or serve as a check and a balance to one another. In terms of the executive-legislative dynamics, this is institutionally translated into the President having veto power over the statutes and other legislative initiatives promulgated by the Congress and the Congress having the power to override presidential veto through the 2/3rd-vote rule. In this kind of institutional set-up, there is clearly greater incentive for the executive and the legislative to diverge in crucial national agenda or interests, such as trade. Hence, there may be lesser structural incentives for both the executive and the legislative branches to arrive at a consensus or an agreement, as compared to the parliamentary form of government.

On the contrary, most, if not all, of the other Asian countries adopts various models of the parliamentary form of government. In Brunei Darussalam, the form of government is a Constitutional Sultanate (Malay Islamic Monarchy), in which the Sultan exercises relatively supreme power. Under the 1959 constitution there was an elected Legislative Council, but only one election has ever been held, in 1962. Soon after that election, the assembly was dissolved following the declaration of a state of emergency, which saw the banning of the Brunei People's Party. In 1970 the Council was changed to an appointed body by decree of the Sultan. In 2004 the Sultan announced that for the next parliament, fifteen of the 20 seats would be elected.

However, no date for the election has been set. The fact that the legislative council is composed of the appointees of the Sultan strongly suggests that the level of cooperation between the executive branch as headed by the Sultan and the legislative council, most of which is appointed by the Sultan, would be high. India is a federal constitutional republic under a parliamentary system. Malaysia too is a Federal Constitutional Monarchy, with a Federal Parliament for its legislature. 44 of the Senate members are appointed by the king while 26 are elected by 13 state assemblies. Once again, the fact that majority of the Senate is appointed by the king suggests that decisions regarding trade tends to lean towards supporting the decision of the king. Singapore on the other hand is a Parliamentary Republic, whose opposition party is said to be weak, numbering to 1 or 2, having a nominal voice in issues such as trade, hence observations that Singapore is a de facto one-party state. These facts all the more suggest that the level of cooperation or agreement/consensus between the prime minister and the members of the parliament is high. And the president's role is deemed rather largely ceremonial. Thailand is yet another constitutional monarchy under a parliamentary system. Vietnam is a Socialist Republic, a single-party state, Vietnam's socialist orientation and single-party states almost readily ascribes it advantage in legislative-executive cooperation or agreement.

Indonesia seems to diverge from the rest of the ASEAN countries with bilateral agreements with Japan, as it adopts a Unitary Presidential Republic. Yet, even this is contentious as structurally, it has characteristics of both presidential and parliamentary systems. For instance, even if the government has three branches, these three have minimum amount of separation, as enshrined in Indonesia's 1945 Constitution.

Given this, the relative merit of the parliamentary system over the presidential system in trade is supported by a number of empirical researches, one of which is the study of Gerring, Thacker, and Moreno (2008), which tackles the classic debate on the competitive merits of the parliamentary and the presidential systems of government. In this study, the authors (Gerring, Thacker, and Moreno, 2008) used two determinants for comparison of the merits: (1) import duties as a percentage of imports, which serves as an indicator of trade protection, and the ratio of total trade value to GDP, which serves as an outcome-based indicator of country's trade policy. The authors found that parliamentarism (or 50 years of parliamentary rule) is associated with lower (5%) import duties and greater (30%) trade openness, among other economic indicators (Gerring, Thacker, & Moreno, 2008). These findings led to the conclusion that parliamentary governments, in which the executive is in close conjunction with legislature, do indeed offer significant advantages in terms of trade. This is so as parliaments provide good coordination device (*ibid.*). That is, parliaments integrate a diversity of views while still providing greater incentives for agreement, as the debate therein is highly institutionalized to the point of upholding the natural or inherent end view or goal of appraising the arguments with the greatest merits (i.e. the argument that wins is the policy adopted by the body). Presidential systems on the other hand have units with greater independence (e.g. legislature), and those without independence (e.g. Cabinet) have very little power. That is, those players who matter in

the discussions have the capacity or incentive to say no, or if not, insist on side payments in exchange for support (*ibid.*).

In the case of the PJEPA experience, besides the given structural relations of the President and the Congress, the tug of war or the push-and-pull forces between the executive and legislative branches were reinforced by the fact that the PJEPA is the first bilateral trade undertaking of the country and hence the Congress were naturally wary or vigilant of possible inequities or unfair arrangements that may arise in the formulation of the agreement itself. It is not only the legislative, which have reservations to the PJEPA. Other groups also expressed their opposition to the PJEPAThus, there were publicized reservations, if not outright opposition, against the said FTA.

In a letter addressed to the Senator Miriam Defensor-Santiago, then Chair of Committee on Foreign Relations, and dated October 23, 2007, a certain group of Japanese citizens called Citizens Against Chemical Pollution "sympathize with the concern of the Philippines citizens and agree with their arguments about the problems of the PJEPA" (Takeshi Yasuma, personal communication, October 23, 2007). This Japanese group professes to work on environmental, human health, human rights, agriculture, trade, and consumers' issues and also placed emphasis on warning against possible consequences of the ratification of the JPEPA, which lists hazardous wastes as zero tariff products. The group claimed that since November 2006, they have urged the Japanese government to do three crucial things: (a) to remove all the hazardous waste trade liberalization provisions from the JPEPA, to make the negotiation process of the JPEPA public, (b) to immediately ratify the Basel Ban Amendment, and (c) to achieve national self-sufficiency in the management of wastes instead of relying on developing countries to take care of wastes (Takeshi Yasuma, personal communication, October 23, 2007).

The problems with PJEPA that the group listed include the following:

First, the group finds it problematic that the negotiation concerning the JPEPA has been done behind closed doors, noticing even that it is exclusive of several stake holders including lawmakers. The group noticed that consequently, information regarding the negotiation process has never been disclosed to the public, urging the Government of the Philippines to exercise the right of its citizens to participate in public matters, a right guaranteed in the Philippine constitution.

Secondly, despite the national laws and international agreements that control trades in toxic/hazardous waste, the JPEPA include toxic and hazardous wastes as products for which tariffs will be eliminated (Takeshi Yasuma, personal communication, October 23, 2007). This position appears to be corroborated by environmental health and justice advocates, such as EcoWaste Coalition (2007), who reminded the Senators that while Japan and the Philippines are parties to the Basel Convention, neither has ratified the Basel Ban Amendment, which prohibits the export of hazardous wastes from developed to poorer countries for all intents and purposes,

including recycling and disposal. Concerned civil society groups conjectured that this fact implied doubts on the commitment of the governments of Japan and the Philippines to enact safeguard measures against possible ecological costs associated/attached to toxic waste trading and consequently pressed the Senate to first ratify the Basel Ban Amendment as it provides a strong first line of defense for the Philippines and other developing countries. As Atty. Tanya Lat of the Magkaisa Junk JPEPA Coalition puts it:

> "The fact that the Philippine government specifically offered to accept Japan's waste and actually formalized this in the JPEPA puts into serious question its commitment to uphold the national interest and the right of all Filipinos to a balanced and healthy ecology under the Constitution. Before even considering the JPEPA, the government must ratify the Basel Ban Amendment, and plug the loopholes in our environmental laws and customs enforcement. Anything less than this would be utter irresponsibility." (EcoWaste Coalition, 2007)

Although then Foreign Affairs Secretary Alberto Romulo and his Japanese counterpart Taro Aso exchanged diplomatic notes, civil society groups insisted that such is inadequate to appease the critical public and dispel doubts that Japan will not send toxic waste into the country as defined and prohibited under the laws of the two countries and in keeping with the Basel Convention. Indeed, such soft-strategy falls short of concretizing the GOP's commitment to ensure no toxic waste will be traded, given that the country is already struggling to manage the waste it generates (EcoWaste Coalition, 2008). Given this, Sen. Pia Cayetano, then chair of the Senate Environment Committee, stated that Japan and the Philippines need to do something that is "more definite and legally binding" than an exchange of diplomatic notes (EcoWaste Coalition, 2007). Thus, as Cayetano proposed (in EcoWaste Coalition, 2007), "Ratifying the Basel Ban Amendment would provide greater protection to the Philippines from becoming a dumping ground for toxic wastes, not only from Japan, but also from other industrial countries."

The third point touches on a more serious matter of national sovereignty. Again, in the memorandum addressed by Takeshi Yasuma (personal communication, October 23, 2007) to Hon. Miriam Defensor-Santiago, the Citizens Against Chemical Pollution explicitly stated their observation that "Contrary to repeated media statements, the actual text of the JPEPA reveals that the Philippine government exempted Japanese investors from the obligation to transfer technologies to support the Filipino partners" (Takeshi Yasuma, personal communication, October 23, 2007). More notably, the group expressed great concern that among those countries which have negotiated with Japan to establish Economic Partnership Agreements, the Philippines is the only one who voluntarily relinquished the right to require Japanese investors to hire a certain number of Filipinos. Malaysia, Indonesia and Thailand did not voluntarily abandon this right. In addition, the Article 4 of the JPEPA, which allows each country to "examine the

possibility of amending or repealing laws and regulations that pertain to or affect the implementation and operation of this Agreement, if the circumstances or objectives giving rise to their adoption no longer exist or if such circumstances or objectives can be addressed in a less trade-restrictive manner," does not exist in the EPAs that Japan has signed with Malaysia, Indonesia, and Thailand. Such agreements and articles, which force a country to abandon its rights and put one country in a position less advantaged than others, should be eliminated, as the group demanded themselves (Takeshi Yasuma, personal communication, October 23, 2007).

Lastly, the group tackled the most relevant issue of market access. JPEPA, as the group sees it, is "clearly lopsided in favor of Japanese agricultural and industrial products" (Takeshi Yasuma, personal communication, October 23, 2007). The group considers it problematic that the Philippines will drastically eliminate tariffs on agricultural products except for rice (5 tariff lines) and salt while Japan was able to exclude 238 tariff lines, which include a wide range of fish and marine products, vegetables, fruits, seaweed, sugar and related products, and footwear. For them, such a disparity raises doubt about market access claims raised by the negotiators.

The group also cited the controversy fomented by the Article 27 of the JPEPA addresses cooperation in relation to export of used four-wheel motor vehicles. It is obviously in violation of the Executive Order (EO) Number 156, which prohibits the very cooperation and ignores the effectiveness of the EO supported by the Philippine Supreme Court. The negotiators of the JPEPA repeatedly stated at several discussion tables that national laws would be respected by JPEPA. However, the Annex 1 of the JPEPA [Part 3, Section 1, 3 (c)] clearly states that "On the request of either Party, the Parties shall negotiate on issue such as market access conditions on used motor vehicles." Again, the group perceived this commitment as "a serious threat to the [then] 77,000 workers of the automotive industry" [emphasis added](Takeshi Yasuma, personal communication, October 23, 2007. As the group also observed, the EPAs Japan signed with Malaysia, Indonesia, and Thailand didn't contain such article.

Whether the issues abovementioned are warranted or not, the group nonetheless raised a good, valid point regarding their concerns on the ratification of PJEPA. As the memo cited:

> "The JPEPA was the first among the series of free trade agreements and economic partnership agreements that the Philippine is currently negotiating. Thus the JPEPA sets a precedent for agreements on trade and investments that the Philippines would sign with other countries in future years. That is why it is critical to address all the issues weighed against the Philippines in the JPEPA and revise them for the sake of the Filipino people." (Takeshi Yasuma, personal communication, October 23, 2007).

Given this, the group recommended that a re-negotiation on PJEPA (then called JPEPA) is definitely needed to tackle what the group dubs as "the economic inequality between the Philippines and Japan" (*ibid.*). So, the group finally expressed their real intention:

> "…wish to advance [as Japanese citizens] the mutually beneficial and friendly relationship between the Philippines and Japan, strongly urge, together with the Philippine citizens for the Philippine Senate to decline the ratification of the currently-proposed JPEPA, and renegotiation between the Philippine and Japanese governments in order to solve the issues discussed above." (Takeshi Yasuma, personal communication, October 23, 2007).

Although its authenticity can be re-examined, the memorandum appears to have been signed by 22 non-government organizations, mostly from Japan and some from the Philippines (Takeshi Yasuma, personal communication, October 23, 2007). This campaign against an unexamined ratification of PJEPA was also supported by NGO Leaders from 30 countries on the main ground of Chemical Trespassing via Toxic Waste Trade (EcoWaste Coalition, 2008). More importantly, regardless if the issues above have been resolved or not as of writing, at the time it was being processed or sent to the Senate, memorandums such as this would have certainly at some point roused up the consideration of certain members of the Congress or triggered deliberation on their part. And if this kind of memorandum indeed reached the doors of Congress, the environment of outright opposition out of which this memorandum took form and more so allegations of closed-door negotiation, which as the memorandum reported (Takeshi Yasuma, personal communication, October 23, 2007) excludes even the lawmakers themselves, most plausibly have incited or engendered/fostered a certain sense/level of distrust between the executive and the legislative branch, straining a cooperative interaction that might have facilitated due examination, necessary modifications, or justified amendments that might have improved the standing of PJEPA in the eyes of the Congress and its constituent public and hence even might have helped catalysed a less frictional ratification of PJEPA. This rift between the executive and the legislative branch of the government must have been reinforced further by the official decision of the Supreme Court to uphold the privilege information of the PJEPA negotiations, thereby invalidating the plea of the petitioners, who included lawmakers (Torres, 2008).

Besides the novelty of the FTA at that time, a more political factor reinforces the reason explain such reservations of its members. That is, the fact that the Congress is the representative body of the people means that its members are elected officials proclaiming to represent and are indeed mindful of certain constituencies (for various reasons, may it be political, personal, or formal in nature). These constituencies happen to cover stakeholders who may potentially be injured by and who are openly expressing opposition to increased liberalized trade between Japan and the Philippines. As such, it might have been prudent for the members of the Congress to be cautious

in ratifying widely publicized policies such as a new trade agreement as PJEPA because their votes on the matter might affect the political mandate/representativeness or the degree of political support they get from these concerned stakeholders. Moreover, the FTA, besides being the first and hence inciting caution from people, was colored with controversial provisions such as trade of toxic wastes, which have become magnified in the public. This and other issues related to it most likely would place the legislative branch in a rather lock-in caution regarding their decision to ratify or even plainly dignify PJEPA. This factor is not necessarily the most definitive determinant but such is a high, if not more sensible, plausibility.

B. Centralization of Trade Functions

One of the possible factors that may most likely influence the kind of inconsistent quality of provisions across the various chapters of PJEPA is the institutional structure in which the negotiations transpired. Based on the current set-up, the Philippines has a rather decentralized trade affairs management structure (Pasadilla & Liao, 2005; WTO, 2005). While the Department of Trade and Industry (DTI) is the de-facto lead agency in most international trade negotiations, it has no *de jure* veto power over positions taken by other agencies (*ibid.*). Rather, trade policymaking is done by consensus under the Tariff and Related Matters (TRM) Committee apparatus, and individual departments and agencies bring their own initiatives, research, and trade positions to the Committee.

The Tariff and Related Matters (TRM) Committee was organized by virtue of Executive Order No. 230 (Reorganizing the National Economic and Development Authority [Annex A]) in 19872 with the following functions and responsibilities:

- To advise the President and the NEDA Board3 on tariff and related matters and on the effects on the country of various international developments;
- To coordinate agency positions and recommend national positions for international economic negotiations; and
- To recommend to the President a continuous rationalization program for the country's tariff structure.

It was decided upon by the NEDA and the DTI that "related matters" under the purview of the TRM would include trade and investment agreements and shipping matters. There are three levels to the TRM: 1) the Committee Proper, which is at the Cabinet level and is theoretically composed of the different Department Secretaries; 2) the Technical Committee, traditionally populated by Undersecretaries and Directors; and 3) the four Sub-Committees on a) Trade and Investment Agreements, b) Economic and Technical Cooperation Agreements, c) Shipping, and d) Tariff and Non-tariff Measures, also known as the Technical Working Group on Tariff

Review. The TRM Committee is chaired by the Department of Trade and Industry (DTI) and co-chaired by NEDA. The agencies that have seats in the Cabinet Level of the TRM are:

- Department of Foreign Affairs
- Department of Agriculture
- Department of Finance
- Department of Environment and Natural Resources

There are several other agencies that handle trade policy depending upon the international body or trading partner with which the Philippines is negotiating. When it comes to ASEAN and APEC matters, for example, a separate committee called the Philippine Council on ASEAN and APEC Cooperation (PCAAC) that also has a Cabinet committee level and also falls under the NEDA, takes charge. For the Japan-Philippines Economic Partnership Agreement (JPEPA), meanwhile, the Philippine Coordinating Committee (PCC), created in May 2003 by an executive order, is the lead working group. The PCC Secretariat falls under the Bureau of International Trade Relations (BITR) of the DTI (Pasadilla & Liao, 2005).

Unlike interactions in the area of trade in goods, which have a common venue and a dedicated agency (TC), when it comes to trade in services, the consultation process is even more decentralized. Be that as it may, the NEDA, as the head of the TCWM's Subcommittee on Services, acts as the main coordinator, while the line agencies themselves, such as the Departments of Environment and Natural Resources, Transportation and Communication, Trade and Industry, Tourism, Labor and Employment, and Energy, as well as the Central Bank, the Professional Regulatory Commission, and the Commission on Higher Education, all handle trade issues affecting their particular industries (Pasadilla & Liao, 2005). The primary difficulty of this set-up proves to be the degree of integration and consolidation of negotiation efforts.

On the contrary, other Asian countries with bilateral agreements appear to adopt a more centralized negotiation structure. In Brunei Darussalam, trade policy formulation and implementation was transferred from the Ministry of Industry and Primary Resources to the Ministry of Foreign Affairs and Trade, which works in cooperation with other agencies, notably the Ministry of Finance (WTO, 2008a). India on the other hand, Trade policy is formulated and implemented mainly by the Ministry of Commerce and Industry, along with other ministries and agencies including the Ministry of Finance, the Ministry of Agriculture, and the Reserve Bank of India (WTO, 2007a). Indonesia for its part exhibits one of the clearest trade centralization process, as the final responsibility for the formulation and implementation of trade and other economic policies remains largely with the President and Cabinet. The President continues to chair the Economic Stabilization Council and the Cabinet on Economic Affairs still considers policies before submission to Council (WTO, 2007b). The President also continues to chair the National Economic and Financial Resilience Council, which supervises the implementation of

the IMF programme (*ibid.*). The Minister of Industry and Trade has retained ministerial responsibility for trade and industrial policy formulation (*ibid.*). Yet, among the ASEAN JEPAs, Malaysia has the clearest mandate on centralized trading functions as Malaysia provides another alternative. While its Ministry of International Trade and Industry (MITI) does not have the USTR and ITCan's special nature of being focused solely on trade, MITI nevertheless remains clearly and authoritatively the point agency when it comes to the country's international trade affairs. In Malaysia, even more than in Canada or Japan, it can be seen that the trade ministry truly has jurisdiction over the myriad aspects of trade. From the initial choice of the sectors in which liberalization ought to be pursued, to the implementation of trade agreements and the monitoring of compliance, to the handling of disputes, the MITI is able to exercise its power and deliver cohesion to the process (Pasadilla & Liao, 2005; WTO, 2010). A virtuous cycle occurs, for as the Ministry is able to gain more experience and knowledge from all the trade-related activities it pursues, it is better able to deal with the ever-changing conditions in the trade arena (*ibid.*). Singapore is another country that exhibits a centralized trading function feature, as the main responsibility for trade policy formulation and implementation in Singapore continues to be with the Ministry of Trade and Industry (MTI) (WTO, 2008b). The Trade Division deals with Singapore's external ties, organized around directorates focusing on WTO issues and international trade negotiations, Singapore's participation in ASEAN and APEC, and bilateral relations (*ibid.*). It oversees 10 statutory boards, which are semi-independent agencies that carry out specific plans and policies of the Ministry (*ibid.*). Thailand is also another country whose trade functions are centralized under the executive branch of the government. At time of writing, the executive branch's role in trade policy is largely unchanged since the previous WTO Trade Policy Review of Thailand (WTO, 2007c). No major changes have occurred since 2003. Final responsibility for formulating trade and other economic policies remains largely with the Prime Minister and his Cabinet (*ibid.*). The Commerce and Finance ministries have the main responsibility for trade and investment policies, although some authority extends to the Agriculture and Cooperatives, Industry, Public Health, Energy, Information Technology and Communications, and Transport ministries, and the Bank of Thailand (the central bank). The Department of Trade Negotiations in the Ministry of Commerce is mainly responsible for bilateral and multilateral trade negotiations. It consults widely with other government and non-government agencies. Vietnam's Ministry of Trade on the other hand oversees coordination of trade functions with the Ministry of Finance, the Ministry of Planning and Investment, and other line ministries.

Although the institutional framework for undertaking trade affairs in the Philippines has relative semblance of centralization, as illustrated for instance by the fact that the BITR is the lead negotiator for TRMs, it still lacks the solid clarity of a centralized trade negotiation mechanism that is formalized in hard law or legal statute. For example, as Padilla and Liao (2005) observes in their work aptly entitled *Does the Philippines Need a Trade Representative Office?*, the BITR has a lead role in the TRM committee. So while all other agencies in the committee can propose recommendations, the BITR has the authority to clarify the country's general policy orientation,

if not harmonize inter-agency output to a main goal. But as Padilla and Liao (2005) assert, because BITR's authority or prerogatives rested on "tradition" rather than cemented legal mandate, there still remains that lingering, daunting possibility of deflection by other agencies from BITR's initiative to centralize trade negotiation efforts as its authority can be legally contested, especially in highly probable cases wherein inter-agency competition, tension, or friction exists or surface. More significantly, assigning different interagency consultation mechanisms for handling different trade negotiations (e.g. TRM for WTO, PCAAC for APEC) and the fact that the Philippine government has to occasionally create ad hoc committees when entering into bilateral talks demonstrates that the Philippine set-up is institutionally costly (Padilla & Liao, 2005). This fragmented or segmented nature of handling trade affairs poses potential systemic problems as it not only tends to lead to loss of institutional memory and a less binding scheme of accountability but it also reflects or implies a rather unclear unified national trade goal or direction. Needless to say, although some may argue that the collegial nature of a decentralized, ad hoc, or international organization-specific trade consultation mechanism retains the merit of democratic debate, such value may nevertheless prove futile in cases where gridlock happens and decision on a hotly contested issue needs to be made. Certainly, in a centralized trade consultation and negotiation mechanism, such a predicament can be addressed by an overarching institution that aligns its activities to a unified national trade policy orientation. As Padilla and Liao (2005) illustrates, in US, the system of trade consultation emphasizes interdepartmental consultations, however if issues remain unresolved and a consensus is not reached, the US Trade Representative Office is authorized by law to overrule objections by specific line agencies. Such is the advantage of a more centralized trade consultation and negotiation mechanism.

C. Coordination with Private Sector

The agreement has already mandated a structure for decision- making and is being implemented. This includes the creation of certain committees for certain issues. However, during the negotiations and before the implementation, the structure was not as established. One issue that was raised by during the crafting of the agreement was the lack of coordination with the private sector. This can also be a factor in the differences in texts of the provision. This was caused by the lack of structure by the agencies when entering into bilateral trade agreements. When PJEPA was implemented, committees and sub- committees were created to ensure that the different commitments are observed by the Philippine government. However, pre- PJEPA and during the consultations with the private sector, there were no committees in place to coordinate with the corresponding members of the private sector. With PJEPA, the following sub-committees were created to monitor and support the work of the Joint Committee:

- Trade in Goods
- Trade in Services
- Rules of Origin

- Customs Procedures
- Mutual Recognition
- Investment
- Movement of Natural Persons
- Intellectual Property
- Government Procurement
- Improvement of the Business Environment
- Cooperation

This is not to say that the private sector was not consulted. A series of public consultations and hearings were made by the government agencies involved with the participation of the relevant firms, especially after the PJEPA. However, the lack of a specialized committee on certain themes limited the consultations and the issues that were tackled. Consultations were also issue-oriented. As in the case of the automotive industry, the private sector was consulted although the terms were already defined and the direction of the negotiations was guided, also because of factors such as the pressure coming from Japan and by the very fact that the starting point is free trade. Since the group was well- organized, it was easier to consolidate the positions and negotiate. This is not the case for other sectors, especially for workers who felt that they were deceived.

One such sector where expectations appeared greater than their realization and where dismay has been more publicly pronounced is in the Health Care profession, particularly the Nurses. Again, in the memorandum sent by The Citizens Against Chemical Pollution to then Senate Foreign Relations Committee Chair Hon. Miriam Defensor-Santiago (Takeshi Yasuma, personal communication, October 23, 2007), the group observed that

> "Contrary to the promising outlook of the JPEPA that the Philippine government provided for the Filipino nurses, JPEPA makes strenuous demands on the Filipino nurses when it comes to entry to Japan and employment in Japan, making it impossible for them to participate in the Japanese market." (*ibid*.).

The crux of the matter seems to lie in the number of full-fledged nurses out of those hired under the agreement. As of March 2012, the Department of Labor and Employment announced that 13 Filipinos Nurses from the aggregate 160 Filipino candidate-nurses (from the total 200 nurses recruited since 2009) who took the licensure exam had just passed Japan national licensure exam (GMA News, 2012**).** Although this is already a mean feat considering claims of resource constraints and the noted notoriety of the level of difficulty of the examination, the discrepancy somehow instigates whether the requirements or qualifications are indeed unduly or unjustifiably restrictive in themselves.

In any case, underlying all the public commotion is the issue of transparency upon the time the agreement was crafted. Aside from the firms, other members of the society, such as unions and non- governmental organizations (NGOs) were not informed of the said agreement. Following the case of the automotive industry, the workers said that they have been denied information during the negotiations. However, in the case of PJEPA, the Supreme Court has upheld the executive privilege invoked by the executive branch of the Philippine government in refusing to accede to a request by several lawmakers, and partylist and militant groups for a full disclosure of its negotiations on PJEPA (Torres, 2008). With a 10-4 vote, the SC explained that diplomatic negotiations have been recognized as privileged and hence is exempted from full public disclosure in this jurisdiction, as the petitioners-both private citizens and members of the House of Representatives have failed to present a sufficient argument for the need to overcome the claim of privilege (Torres, 2008). Applying the principles in *People's Movement for Press Freedom (PMPF) v. Manglapus, En Banc* Res., GR No. 84642, September 13, 1998 in ruling that the offers are privileged communications that are confidential in character, the high court furthered argued:

> "It is reasonable to conclude that the Japanese representatives submitted their offers with the understanding that 'historic confidentiality' would govern the same. Disclosing these offers could impair the ability of the Philippines to deal not only with Japan but with other foreign governments in future negotiations. A ruling that Philippine offers in treaty negotiations should now be open to public scrutiny would discourage future Philippine representatives from frankly expressing their views during negotiations." (Guerra, 2008)

CONCLUSIONS AND RECOMMENDATIONS

In terms of Trade in Goods provisions, all of the JEPAs appear to comply with WTO standards of bilateral Free Trade Agreements, as evidenced by their universal adherence to the international system of Classification and National Treatment of Goods being traded. Most importantly, all JEPAs contain crucial provisions on emergency measures but these provisions vary widely among JEPAs. These differences in emergency measure provisions appear to signal the policy inclinations of countries, i.e. whether they are prudent in trading arrangement with or willing to open markets for Japan's goods and services. Understandably, the more prudent parties are developing countries, as evidenced by the greater degree of specifications and conditionality inherent in their emergency measure provisions. Moreover, this prudence or willingness is seen in conspicuous provision or non-provision of prohibitions of Export Duties, Export Subsidies and Non-Tariff measures. Logically, prohibiting export taxes signals the country's commitment (at least in principle) towards genuine trade liberalization by preventing conferring unfair advantage to domestic players, which these export duties, subsidies, and non-tariff measures apparently aim to favour.

The provisions on the liberalization of trade in services are generally the same with other agreements of Japan with other Asian countries. Minor textual differences can be found and articles not seen in PJEPA are included and mentioned in the previous chapters in the agreement such as in the case of General Principles, Modification of Schedule, Subsidies, Review of Commitments, Domestic Regulation, etc. A further study can be done to look at the differences of the concessions of the agreements on trade in services as specified in the Schedule of each agreement.

Lastly, since its first usage, SPSMs are highly significant regulatory measures for two main reasons. First, they are understandably relevant because they aim to protect citizens from daily food hazards. Second, their establishment assures the trading parties that the products are certified to comply with health, environmental, and safety standards. Hence, its proper management or implementation boosts trade in goods, especially the sensitive agricultural goods.

As shown by the surveys, case studies, and computations of general equilibrium models, the non-establishment or lack of proper implementation of SPS results into significant losses of trade potential, ranging from 30% to almost 70%. However, the SPS Agreement, along with other modalities included in the WTO agreement. Although the cases presented have similar environmental, socio-cultural conditions, and political institutions, a study that substantially examines the effects of SPS measures between Philippines and Japan under PJEPA is still yet to be undertaken. For now, SPS measures seem to serve as trade boosting instrument, provided it is given importance and implemented properly.

Given all these, PJEPA may well in fact be considered as a “best-effort” argument. That is, given the constraints and capacities upon which the provisions were negotiated, the final output might have been the best that the Philippines could hope for. Institutionally, as illustrated earlier, the Philippines’ framework for trade consultations and negotiations has been rather less conducive for a strongly united trade representation front.

Internationally, as the Philippine Center for Investigative Journalism (2006) contextualizes, PJEPA complies with WTO standards. However, a number of these areas, particularly dealing with investment, competition policy, and government procurement, fall under the so-called “Singapore issues,” which have not made any substantial progress in the WTO rounds of negotiations (e.g. the stalled Doha round), as developing-country members insist on first resolving the more fundamental and developmental issues (such as subsidies in agriculture and non-agricultural market access). Since these issues have been temporarily shelved within the WTO multilateral trading system, a number of developed countries, including Japan, decided to pursue the said issues bilaterally, through preferential trading arrangements such as the PJEPA. Indeed, as another study of the PJEPA negotiation process (cited in Global South, 2011) affirms, Japan’s aggressive stance on trading with its ASEAN countries is part of Japan’s ASEAN Outlook. That is, Japan had a clearer perspective of its goals and intentions in pursuing the FTA negotiations. In his speech in Malacañang, then Japanese Prime Minister Junichiro Koizumi highlighted the strategic and historic relationship between Japan and ASEAN and defined what he called his “new diplomatic vision” for East Asia where he referred to ASEAN as the “core of the region” (Global South, 2011). The main agenda of Japan was clearly to have a deal with

ASEAN. Even the reference to the Japan-Philippines Partnership Program, a framework for improved economic and political relations between the two countries that encompassed JPEPA, was made in the context of strengthening coordinated efforts for greater regional stability. Thus, by 2002, following a visit by then President Gloria Macapagal Arroyo to Japan, her first since expressing support to Japan's proposal for an ASEAN-wide economic agreement, a working group on JPEPA composed of representatives from concerned government agencies of both parties was formed. Its task was to study the possible content, substance, and the coverage of a mutually beneficial economic partnership between the two countries, including the possibility of forming a free trade agreement (Global South, 2011).

It is in this light, that the Executive branch of the Philippine government must have seen a glinting opportunity to maximize Japan's trade policy orientation, given the country's already historically steady, high trading volumes with Japan. It is probably this strategic opportunism that led the Executive branch of the government to initiate negotiations with the Japanese government, without undergoing preliminary Congressional consultations. Again, whether such an action is deliberate bypassing or unintentional reaction to the lucrative circumstances present at that time, the Executive's rather clandestine or "privileged" negotiations might have been strategically favourable if the Philippines were to nail a bilateral agreement with Japan, for subjecting the bilateral agreement initiative to legislative scrutiny would have most likely stalled or protracted the settlement/finalization of the agreement, given the cumbersome nature of Congressional debate (More so, it is the first bilateral trade undertaking of the country).

However, such an historical fact does not and must not escape due critique for well-desired improvement of future bilateral agreements. Therefore, the following recommendations are put forth: a) centralized trade office (not necessarily creating a new office but have the trade discussions centralized in one), b) closer coordination between legislative and executive branch, c) creation of a legal office dealing specifically on trade issues, d) continued education and develop feedback mechanism from private sector and academe.

Centralized Trade Office/Mechanism

Considering the budgetary and fiscal constraints of the current government, notwithstanding political preoccupations and other socio-cultural contingency, it may not be feasible or practical to create a wholly new or separate office. It is at this juncture where the historical leadership of BITR comes in. That is, a viable alternative to creating an independent trade representative office is strengthening the current TRM system/mechanism. As Padilla and Liao (2005) already suggested, such entails legally (and hence more bindingly) bestowing greater authority upon BITR to head all subcommittees and proactively consolidate positions of various government agencies relevant to the trade undertaking. In addition, should the pertinent government agencies fail to forward or respond to calls for proposal, the TRM must be mandated to accept the default trade position or strategy of BITR.

Closer Coordination Between Legislative and Executive Branch

The experience of PJEPA with legislative and executive government interaction was considerably conflictual or "messy" so to speak. Claims of exclusionary negotiations and publicized reservations on the FTA have fuelled a sort of disconnect/discord in trade policy harmonization efforts between the legislative and the executive. So, the PJEPA experience not only sheds light on the relative weakness of a Presidential system in creating a harmonized/unified trade policy, it also serves as a cautionary tale that exhibits how a less coordinated interaction between the Executive and the Legislative branches unfortunately puts a potentially beneficial FTA such as PJEPA in a bad light. Therefore, the PJEPA experience heeds the need for a closer coordination between the legislative and executive branch and by coordination, this means inclusion of the legislative branch in the preliminary consultations of negotiations. Although this proposition again warrants further study to strengthen its hypothetical merit, a closer coordination between the legislative and executive branch indeed facilitate a more effective bilateral agreement, one that is less mired by costly controversies such as those tainting PJEPA.

Creation of a Legal Office Dealing Specifically on Trade Issues

The experience in PJEPA once again is very telling/revealing, as it is one surrounded by a lot of issues. These issues are not merely unfounded disgruntlement from concerned stakeholders. Rather, they cut through the core of the institutional framework or the structure underpinning bilateral negotiations of the Philippine government. Needless to say, the issues raised in PJEPA are significant trade issues, whose resolution or resolve may enhance greater trade relations prospects with other countries, which are considering the Philippines as a destination of investment and trade deals. Hence, it is but high time for the Philippines to create a legal office with a clear mandate to handle trade issues. Possibilities abound as to its exact structure. It may be subsumed under the BITR of the DTI or it may be incorporated as a reinforced mechanism in the workings of institutions with investigative and litigative functions like the Tariff Commission for example or other similar bureaus.

Continued Education and Develop Feedback Mechanism from Private Sector and Academe.

As highlighted by Padilla and Liao (2005), "given the knowledge-intensive nature of trade negotiations, technical analysis is the backbone of successful negotiation and can therefore not afford to be left in the hands of the unskilled". As such, timely, well-crafted and substantial research can well aid negotiators with the know-how necessary to come up with effective trade strategy. Nonetheless, as such an undertaking requires expanding or increasing budgetary allocations (and hence may be stifled by shortage of fiscal resources), it may be advantageous to encourage the active involvement of education institutions and research tanks with well-known expertise in industry particulars to conduct studies that specially gives the negotiators an accurate picture of the reality on the ground. The evaluative merit of such studies will not only confer to the negotiators a better understanding of the country's trade affairs, it may consequently place them at a better bargaining position.

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Appendix B-I. Provision Comparison of Trade in Services (PJEPA, BJEPA, Indo- JEPA, India- JEPA)

	PJEPA	BJEPA	Indo-JEPA	India- JEPA
General Principles	--	--	--	--
Scope and Coverage	*no paragraph stating: "This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment. Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment."	*Additional provision: "2. This Chapter shall not apply to: (b) laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale"	*no paragraph stating: "This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment. Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment."	*no paragraph stating that the chapter "shall not apply to subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance" *additional paragraph: "6. Annex 5 provides supplementary provisions to this Chapter on telecommunications services, including scope and definitions"
Definitions	*no definition of a juridical person as follows: "(d) "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,	*specified further the definition of "natural person of the other Party": "(k) "natural person of the other Party" means a natural person who under the law of the other Party: **(i) in respect of Brunei Darussalam, is a national of Brunei Darussalam or is a permanent resident in Brunei**	*no definition of a sector *no definition of a service supplier of the other Party *specifically mentioned: "(r) the term "state enterprise" means an enterprise owned or controlled by the **Government** of a Party"	*no definition of the **juridical person, juridical person of the other Party, natural person of the other Party** *no definition of a sector *no definition of service *no definition of a service supplier *no definition of a service supplier of the other Party

	partnership, joint venture, sole proprietorship or association" *no definition of a measure *no definition of a person	**Darussalam; and** **(ii) in respect of Japan, is a national of Japan;**		*no definition of a state enterprise *no definition of a person
Market Access	---	---	---	*additional paragraph "3. Each Party shall endeavour to reduce the requirements for a service supplier of the other Party to establish or maintain a representative office or any form of enterprise or to be resident in its Area, as a condition for the cross-border supply of a service."
National Treatment	*lacking one paragraph: "4. A Party may not invoke paragraphs 1, 2 and 3 above under Chapter 21 with respect to a measure of the other Party that falls within the scope of an international agreement between them relating to the avoidance of double taxation."	*lacking one paragraph: "4. A Party may not invoke paragraphs 1, 2 and 3 above under Chapter 21 with respect to a measure of the other Party that falls within the scope of an international agreement between them relating to the avoidance of double taxation."	---	--
Additional Commitments	---	---	---	---
Schedule of Specific Commitments		*no paragraph stating: "3. With respect to sectors or subsectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) above, shall be limited to existing non-conforming measures."	*no paragraph stating that each Party shall set out in a schedule the specific commitments it undertakes under certain articles *additional phrase in bold: 3. With respect to sectors or sub-sectors where specific commitments are undertaken in Annex 8 and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 1(a) and (b), shall be	*no paragraph stating that each Party shall set out in a schedule the specific commitments it undertakes under certain articles *no paragraph stating: "3. With respect to sectors or subsectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) above, shall be

			limited to those based on non-conforming measures, **which are in effect on the date of entry into force of this Agreement."** *additional paragraph" 4. With respect to sectors or sub-sectors where specific commitments are undertaken by a Party in Annex 8 and which are indicated with "S", any terms, limitations, conditions and qualifications on market access or national treatment, applied to a service supplier of the other Party on the date of entry into force of this Agreement, shall not be changed or modified so as to become more restrictive to such a service supplier. Note: With regard to the rights given to the service supplier under the above mentioned terms, limitations, conditions and qualifications, this paragraph shall apply to the same extent as the rights that the service supplier has already exercised.	limited to existing non-conforming measures."
Most-Favored Nation Treatment	1. Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of any non-Party. 2. The provision of paragraph 1	Number 1 is the same as PJEPA Number 2 is the same as PJEPA except for the last 2 lines. In BJEPA, it's *Schedule in Annex 8* instead of Schedule to Part 2 of Annex 6.	Number 1 same as PJEPA 2. Same as PJEPA except that it's *Schedule in Annex 9* instead of Schedule to Part 2 of Annex 6.	If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non- Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former

	above shall not apply to any measure by a Party with respect to sectors, subsectors or activities, as set out in its Schedule to Part 2 of Annex 6.	Additional: 3. If a Party has entered into an agreement on trade in services with a non-Party, or enters into such an agreement after this Agreement comes into force, with respect to sectors, sub-sectors or activities included in its Schedule in Annex 8, it shall, upon the request of the other Party, consider according to services and service suppliers of the other Party, treatment no less favourable than that it accords to like services and service suppliers of that non-Party pursuant to such an agreement.		agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.
Modification of Schedules	*no article	*no article	*no article	*no article
Service Suppliers of any non- Party	*no article	*no article	*no article	*no article
Qualifications, Technical Standards and Licensing	*entitled Authorization, Licensing or Qualification With a view to ensuring that any measure by a Party relating to the **authorization, licensing or qualification of service suppliers of the other Party** does not constitute an unnecessary barrier to trade in services, each Party shall endeavor to ensure that such measure: (a) is based on objective and transparent criteria, such as competence and the ability to supply the service; (b) is not more burdensome than necessary to ensure the quality of the service; and	With a view to ensuring that measures by a Party relating to **qualification requirements and procedures, technical standards and licensing requirements** do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure that such measures: (a) are based on objective and transparent criteria, such as competence and the ability to supply the service; (b) are not more burdensome than necessary to ensure the quality of the service; and (c) in the case of licensing procedures, are not in themselves a	*entitled Authorization, Licensing or Qualification *same as PJEPA	*no article

	(c) **does not constitute a disguised restriction on the supply of the services.**	restriction on the supply of the service.		
Domestic Regulation	*no article	*no article	*no article	1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 6, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. 2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review. 3. The provisions of paragraph 2 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

				4. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. 5. The Parties shall jointly discuss disciplines on domestic regulation including measures relating to qualification requirements and procedures, technical standards and licensing requirements developed pursuant to paragraph 4 of Article VI of the GATS, with a view to incorporating such disciplines into this Chapter and thereby ensuring that such domestic regulation does not constitute unnecessary barriers to trade in services. The Parties note that such disciplines aim to ensure that such requirements are inter alia: (a) based on objective and transparent criteria, such as competence and the ability to supply the service;

				(b) not more burdensome than necessary to ensure the quality of the service; and (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service. 6. Pending the incorporation of disciplines developed under the GATS as referred to in paragraph 5, in the sectors inscribed in its Schedule of Specific Commitments in Annex 6 and subject to any terms, limitations, conditions or qualifications set out therein, each Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its specific commitments in a manner which: (a) does not comply with the criteria outlined in subparagraph (a), (b) or (c) of paragraph 5; and (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made. 7. In determining whether a Party is in conformity with the obligation under paragraph 6, account shall be taken of international standards of relevant international organisations applied by that Party.

				Note: The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties. 8. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.
Business Practices	*no article	*no article	*no article	*no article
Transparency	1. The competent authorities referred to in paragraph 2 of Article 3 shall, upon request by service suppliers of the other Party, promptly respond to specific questions from, and provide information to, the service suppliers with respect to matters referred to in paragraph 1 of Article 3, including requirements and procedures for licensing and qualification, through enquiry points. The enquiry points shall be notified to the other Party by diplomatic note on the date of entry into force of this Agreement. 2. Each Party shall prepare, forward to the other Party and make public a list providing all existing measures, within the scope of this Chapter, at the central governmental level and, in the case of Japan, prefectural governmental level, and in the case of the Philippines, provincial governmental level, which are	*No. 1 same with PJEPA but lacks "including requirements and procedures for licensing and qualification, through enquiry points. The enquiry points shall be notified to the other Party by diplomatic note on the date of entry into force of this Agreement." ***bold are additional phrases** **italicised characters are different from PJEPA* 2. **Within two years from the date of entry into force of this Agreement,** each Party shall prepare, forward to the other Party and make public a list providing all existing measures, within the scope of this Chapter, which are inconsistent with *Article 75 and/or 76, whether or not these measures are included in its specific commitments in Annex 7*. The list shall include the following elements	The competent authorities referred to in paragraph 2 of Article 3 shall, upon request by service suppliers of the other Party, promptly respond to specific questions from, and provide information to, the service suppliers with respect to matters referred to in paragraph 1 of Article 3 through the contact points referred to in Article 16. Note: The information provided by the Parties under this Article will be supplied solely for the purposes of transparency and shall not be construed to affect any rights and obligations of the Parties under this Chapter.	*first 2, same with PJEPA but with additional: 3. The dispute settlement procedures provided for in Chapter 14 shall not apply to disputes arising out of paragraphs 1 and 2.

	inconsistent with Articles 72 and/or 73, whether or not these measures are included in its specific commitments in Part 1 of Annex 6. The list shall include the following elements and shall be reviewed annually and revised as necessary: (a) sector and subsector or matter; (b) type of inconsistency (i.e. Market Access and/or National Treatment); (c) legal source or authority of the measure; and (d) succinct description of the measure. Note: The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of a Party under this Chapter	and shall be reviewed every three years and revised as necessary: (a) sector and sub-sector; (b) type of inconsistency (i.e. Market Access and/or National Treatment); (c) legal source or authority of the measure; and (d) succinct description of the measure. Note: The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of a Party under this Chapter.		
Mutual Recognition	1. A Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party for the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of service suppliers of the other Party. 2. Recognition referred to in paragraph 1 above, which may be	*same as PJEPA	*same as PJEPA	1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the other Party. 2. The Parties shall enter into negotiations regarding the

	achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally. 3. Where a Party recognizes, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met or licenses or certifications granted in the non-Party; (a) nothing in Article 76 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licenses or certifications granted in the other Party; and (b) the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the other Party should also be recognized.			possibility of recognition of the education or experience obtained, requirements met, or licences or certifications granted on specific services sectors with a view to reaching a conclusion within three years after the entry into force of this Agreement. 3. Upon request being made in writing by a Party to the other Party, the Parties shall encourage that their respective professional bodies in any regulated service sector negotiate and conclude, within 12 months, any arrangement for mutual recognition of education or experience obtained, requirements met, or licences or certifications granted in that service sector, with a view to the achievement of early outcomes. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such arrangements shall not be regarded as a breach of a Party's obligations under this paragraph and shall not be subject to Chapter 14. Progress in this regard shall be periodically reviewed by the Parties in the Joint Committee established under Article 4. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in any non-Party, the Party shall afford the

				other Party, upon request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford the other Party adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Party should also be recognised.
Monopolies and Exclusive Service Suppliers	1. Each Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's specific commitments. 2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its Area in a manner inconsistent with such commitments. 3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a	*same as PJEPA	.*same as PJEPA	*pars 1,2 &4 of PJEPA found in India- JEPA, but additional: 3. If a Party has a reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2, the Party may request the other Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

	Party, formally or in effect: (a) authorizes or establishes a small number of service suppliers; and (b) substantially prevents competition among those suppliers in its Area.			
Payments and Transfers	1. Except under the circumstances envisaged in Article 82, a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services. 2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 82, or at the request of the International Monetary Fund.	*same as PJEPA	*same as PJEPA	*same as PJEPA
Emergency Safeguard Measures	*no article	*no article	1. The Parties shall take note of the multilateral negotiations on the question of emergency safeguard measures based on the principle of	*no article

			non-discrimination pursuant to Article X of the GATS. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement based on the results of such multilateral negotiations. 2. In the event that the implementation of this Agreement causes substantial adverse impact to a Party in a specific service sector prior to the conclusion of the multilateral negotiations referred to in paragraph 1, the Party may request consultations with the other Party for the purposes of taking appropriate measures to address such adverse impact. The Parties shall take into account the circumstances of the particular case in such consultations.	
Restrictions to Safeguard the Balance of Payments	1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions. 2. The restrictions referred to in paragraph 1 above: (a) shall ensure that the other Party is treated as favorably as any non-Party;	1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party **may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.** *2-4, same with PJEPA 5. Where a Party has adopted	*same as PJEPA	1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions relating to such **commitments. It is recognised that particular pressure on the balance of payments of a Party in the process of**

	(b) shall be consistent with the Articles of Agreement of the International Monetary Fund; (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party; (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1 above; and (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 above improves. 3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to their economic or development programs. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector. 4. Any restrictions adopted or maintained under paragraph 1 above, or any changes therein, shall be promptly notified to the other Party.	restrictions pursuant to paragraph 1, that Party shall, upon request, commence consultations with the other Party promptly in order to review the restrictions adopted by the former Party.		**economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.** 2. The restrictions referred to in paragraph 1: (a) shall be applied by a Party on a national treatment basis and such that the other Party is treated no less favourably than any non-Party; (b) shall be consistent with the Articles of Agreement of the International Monetary Fund; (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party; (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and (e) shall be temporary and be phased out

				progressively as the situation specified in paragraph 1 improves. 72 3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector. 4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to

Denial of Benefits *	1. A Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party, and that denying Party: (a) does not maintain diplomatic relations with the non-Party; or (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person. 2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and that has no substantial business activities in the Area of that other Party. This paragraph shall not apply to maritime transport services supplied by a vessel registered under the laws of the other Party.	* Same with PJEPA but lacks ”This paragraph shall not apply to maritime transport services supplied by a vessel registered under the laws of the other Party“ in the end	* Same with PJEPA but lacks ”This paragraph shall not apply to maritime transport services supplied by a vessel registered under the laws of the other Party“ in the end	

Sub-Committee on Trade in Services	1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13. 2. The functions of the Sub-Committee shall be: (a) reviewing commitments, including the scope of commitments to be indicated with "SS" pursuant to paragraph 3 of Article 75, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalization on a mutually advantageous basis and securing an overall balance of rights and obligations; (b) reviewing the implementation and operation of this Chapter; (c) exchanging information on domestic laws and regulations; (d) discussing any issues related to this Chapter, including deadlines for preparing, forwarding to the other Party and making public the list referred to in Article 79; (e) reporting the findings of the Sub-Committee to the Joint Committee; and (f) performing other functions as	1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement. 2. The functions of the Sub-Committee shall be: (a) reviewing commitments, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalization on a mutually advantageous basis and securing an overall balance of rights and obligations; (b) reviewing the implementation and operation of this Chapter; (c) reporting the outcome of discussions of the Sub- Committee to the Joint Committee; and (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11. 3. The Sub-Committee shall be: (a) composed of representatives of the Governments of the Parties; and (b) co-chaired by officials of the	For the purposes of effective implementation and operation of this Chapter, the functions of the Sub- Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be: (a) reviewing and monitoring the implementation and operation of this Chapter; (b) discussing any issues related to this Chapter; (c) reporting the findings of the Sub-Committee to the Joint Committee; and (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.	1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established on the date of entry into force of this Agreement. 2. The functions of the Sub-Committee shall be: (a) reviewing the implementation and operation of this Chapter; (b) exchanging information on domestic laws and regulations; (c) discussing any issue related to this Chapter as may be agreed upon; (d) reporting the findings of the Sub-Committee to the Joint Committee; and (e) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 14.

	may be delegated by the Joint Committee pursuant to Article 13.	Governments of the Parties. 4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed. 5. The Sub-Committee may hold its inaugural meeting within two years from the date of entry into force of this Agreement. The subsequent meeting of the Sub-Committee shall be held at such frequency as the Parties may agree upon.		
Subsidies	*no article	*no article	*no article	1. Each Party shall review the treatment of subsidies related to trade in services taking into account the development of the multilateral disciplines pursuant to paragraph 1 of Article XV of the GATS. 2. In the event that either Party considers that its interests have been adversely affected by a subsidy of the other Party, the Parties shall, upon request by the former Party, enter into consultations with a view to resolving the matter. 3. During the consultations referred to in paragraph 2, the Party granting a subsidy shall, if it deems fit, consider a request of the other Party for information relating to the subsidy programme such as:

				(a) domestic laws and regulations under which the subsidy is granted; (b) form of the subsidy (e.g. grant, loan, tax concession); (c) policy objective and/or purpose of the subsidy; (d) dates and duration of the subsidy and any other time limits attached to it; and (e) eligibility requirements of the subsidy including those with respect to potential beneficiaries. 4. The dispute settlement procedures provided for in Chapter 14 shall not apply to this Article.
Review of Commitments	*no article	1. The Parties shall review commitments on trade in services with the first review within two years from the date of entry into force of this Agreement, with the aim of improving the overall commitments undertaken by the Parties under this Agreement. 2. In reviewing the commitments in accordance with paragraph 1, the Parties shall take into account paragraph 1 of Article IV of the GATS.	*no article	1. The Parties shall review commitments on trade in services with the first review within three years from the date of entry into force of this Agreement, with the aim of improving the overall commitments undertaken by the Parties under this Agreement. 2. In reviewing the commitments in accordance with paragraph 1, the Parties shall take into account paragraph 1 of Article IV of the GATS.
General Exceptions	Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other	*no article	*no article	*no article

	Party, or a disguised restriction on trade in services between the Parties, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures: (a) necessary to protect public morals or to maintain public order; Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society. (b) necessary to protect human, animal or plant life or health; (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to: (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts; (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; (iii) safety.			
Security Exceptions	1. Nothing in this Chapter shall be			

	construed: (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests: (i) relating to the supply of services as carried out directly or indirectly for the purposes of provisioning a military establishment; (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons, or relating to fissionable and fusionable materials or the materials from which they are derived; (iii) taken in time of war or other emergency in international relations; or (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security. 2. Each Party shall be informed to the fullest extent possible of measures taken by the other Party			

	under subparagraphs 1(b) and (c) and of their termination.			

Appendix B-II. Provision Comparison of Trade in Services of SJEPA, TJEPA, VJEPA and MJEPA

	SJEPA	TJEPA	VJEPA	MJEPA
General Principles	--	*only TJEPA has this article "The general principles of this Chapter are: (a) to liberalise trade in services between the Parties, in accordance with third paragraph of the preamble and Article V of the GATS; and (b) to provide a framework for the Parties to improve the efficiency, competitiveness and diversity of services and service suppliers."	--	--
Scope and Coverage	*no paragraph stating that "this chapter shall not apply to subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance" *no paragraph stating that this chapter shall not apply to "measures affecting natural persons of a Party seeking access to employment market of the other Party, nor measures regarding nationality, or residence or employment on a permanent basis." *no paragraph stating that this chapter does not apply to "measures pursuant to immigration laws and regulations"	* additional phrase to: "2. This Chapter shall not apply to: (c) subsidies or grants provided by a Party or a state enterprise thereof, including government-supported loans, guarantees, insurance and any conditions attached to the receipt or continued receipt of such subsidies or grants; " *no paragraph stating: "This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity	*no paragraph stating that the chapter "shall not apply to subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance" *no paragraph stating: "This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or	---

	*instead of stating that this chapter shall not apply "to any measure with respect to government procurement", a separate paragraph says: "5. Government procurement of services shall be governed by Chapter 11." *no paragraph stating: "This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment. Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment." *additional phrase: 4. Annexes IV A and IV B provide supplementary provisions to this	of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment. Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment."	impair the benefits accruing to the other Party under the terms of a specific commitment. Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment."	

	Chapter with respect to measures affecting the supply of financial services and of telecommunications services respectively.			
Definitions	*additional phrase: "(p) the term "measures by a Party" means measures taken by: (i) central or local governments; and (ii) non-governmental bodies in the exercise of powers delegated by central or local governments; **in fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by its local governments and nongovernmental bodies in the exercise of powers delegated by its central or local governments within its territory**;" *specified further: (k) the term "natural person of the other Party" means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party: **(i) in respect of Japan, is a national of Japan; and** **(ii) in respect of Singapore, is a national of Singapore or has the right of permanent residence in Singapore;**	*instead of "juridical person", the word "enterprise" is used. Both terms have the same usage as in other agreements. *additional phrase: "(p) the term "measures by a Party" means measures taken by: (i) central or local governments; and (ii) non-governmental bodies in the exercise of powers delegated by central or local governments; **in fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by its local governments and nongovernmental bodies in the exercise of powers delegated by its central or local governments within its territory**;" Additional definitions: (b) the term "Area" means with respect to a Party: (i) the territory of that Party, including its territorial sea; and	*no definition of service supplier of the other Party *no definition of a state enterprise	*instead of "Party", the word "Country" is used. *specified further: " k) the term "natural person of the other Country" means a natural person who resides in the other Country or elsewhere and who under the law of the other Country: **(i) in respect of Japan, is a national of Japan; and** **(ii) in respect of Malaysia, is a national of Malaysia or has the right of permanent residence in Malaysia"**

	*no definition of a state enterprise *additional term: (x) the term "direct taxes" comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.	(ii) the exclusive economic zone and the continental shelf with respect to which that Party exercises sovereign rights or jurisdiction in accordance with international law; (h) the term "existing" means in effect as of the date of entry into force of this Agreement;		
Market Access	*use of "territory" instead of "area."	---	---	*use of "Country" instead of "Area"
National Treatment	---	---	---	---
Additional Commitments	*no provision on additional commitments	---	---	---
Schedule of Specific Commitments	*no paragraph stating: "3. With respect to sectors or subsectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) above, shall be limited to existing non-conforming measures." *additional pars: 4. (a) If a Party has entered into an international agreement on trade in services with a non-Party, or enters into such an agreement after this Agreement comes into force, it	*additional pars: 5. For the purposes of transparency, sectors and subsectors which are not subject to any specific commitment under Article 74, 75 or 76 shall also appear in the Schedules of specific commitments in Annex 5. Note: Services Sectoral Classification List (GATT Secretariat's Document MTN.GNS/W/120, dated 10 July 1991) serves as a guideline for the Parties in listing all services sectors in their respective	*no paragraph stating: "3. With respect to sectors or subsectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) above, shall be limited to existing non-conforming measures."	*additional in bold: 3. With respect to sectors or sub-sectors where the specific commitments are undertaken in Annex 6 and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 2(a) and (b) of this Article, **other than those based on measures pursuant to immigration laws and regulations,** shall be limited to those based on non-conforming measures, which are in effect on the date of entry into force of this

	shall favourably consider according to services and service suppliers of the other Party, treatment no less favourable than the treatment that it accords to like services and service suppliers of that non-Party pursuant to such an agreement. (b) An international agreement referred to in subparagraph (a) above shall not include an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.	schedules.		Agreement.
Most-Favored Nation Treatment	1. Each Country shall accord to services and service suppliers of the other Country treatment no less favourable than that it accords to like services and service suppliers of any third State. 2. The provision of paragraph 1 of this Article shall not apply to any measure by a Country with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 7. 3. If a Country has entered into an agreement on trade in services with a third State or enters into such an agreement after this Agreement comes into force, with respect to sectors, sub-sectors or activities included in its Schedule in Annex	If, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non- Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement.	1. Unless otherwise specified in Annex 6, each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of any non-Party. 2. Treatment granted under other agreements concluded by a Party and notified under Article V or Article V bis of the GATS shall not be subject to paragraph 1. 3. If, after this Agreement enters into force, a Party concludes or amends an agreement of the type referred to in paragraph 2 with a non-Party, it shall provide the other Party an opportunity to consult on	1. Each Country shall accord to services and service suppliers of the other Country treatment no less favourable than that it accords to like services and service suppliers of any third State. 2. The provision of paragraph 1 of this Article shall not apply to any measure by a Country with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 7. 3. If a Country has entered into an agreement on trade in services with a third State or enters into such an agreement after this Agreement comes into force, with respect to sectors, sub-sectors or activities

	7, it shall, upon the request of the other Country, consider according to services and service suppliers of the other Country, treatment no less favourable than that it accords to like services and service suppliers of that third State pursuant to such an agreement.		the possibility of according treatment no less favorable than that granted to services and service suppliers of the non-Party under that agreement to like services and service suppliers of that other Party.	included in its Schedule in Annex 7, it shall, upon the request of the other Country, consider according to services and service suppliers of the other Country, treatment no less favourable than that it accords to like services and service suppliers of that third State pursuant to such an agreement.
Modification of Schedules	1. Each Country may modify or withdraw any commitments in its Schedule of Specific Commitments in Annex 6. 2. The modifying Country shall notify its intention of such modification or withdrawal to the other Country and thereafter enter into negotiations in line with subparagraph 2(a) of Article XXI of the GATS, to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in its Schedule of Specific Commitments in Annex 6 prior to such negotiations. 3. Such modification or withdrawal shall be approved by the Countries in accordance with their respective legal procedures, and shall enter into force on the date to be agreed upon by the Countries.	1. Any modification or withdrawal of specific commitments on trade in services shall be made in accordance with paragraph 1 of Article 171. In the negotiations for such modification or withdrawal, the Parties shall endeavour, in line with subparagraph 2(a) of Article XXI of the GATS, to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in their Schedules of specific commitments in Annex 5 prior to such negotiations. 2. With regard to the same commitment that appears in a Party's Schedule of specific commitments under both the GATS and this Agreement, if modification or withdrawal has been made to such commitment with regard to its Schedule of specific commitments under the GATS and compensatory adjustment has been made to the other Party as an "affected	*no article	*no article

		Member" in accordance with Article XXI of the GATS, the Parties shall agree to amend this Agreement to incorporate such modification or withdrawal into it without further negotiation, subject to their applicable domestic procedures.		
Service Suppliers of any non- Party	Each Party shall also accord treatment granted under this Chapter to a service supplier other than those of the Parties, that is a juridical person constituted under the laws of either Party, and who supplies a service through commercial presence, provided that it engages in substantive business operations in the territory of either Party.	*no article	*no article	*no article
Qualifications, Technical Standards and Licensing	*same as PJEPA except for the use of the word "Country", instead of "Party"	*no article	*entitled Authorization, Licensing or Qualification With a view to ensuring that measures by a Party relating to **qualification requirements and procedures, technical standards, and licensing requirements of service suppliers of the other Party** do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure that such measures: (a) are based on objective and transparent criteria, such as competence and the ability to supply the service;	*no article

			(b) are not more burdensome than necessary to ensure the quality of the service; and (c) in the case of licensing procedures, are not in themselves a restriction on the supply of the service.	
Domestic Regulation	*first 4, the same with India- JEPA 5. In sectors where a Party has undertaken specific commitments subject to any terms, limitations, conditions or qualifications set out therein, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which: (a) does not comply with the following criteria: (i) based on objective and transparent criteria, such as competence and the ability to supply the service; (ii) not more burdensome than necessary to ensure the quality of the service; or (iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service; and (b) could not reasonably have been	*same with SJEPA	*no article	*no article

	expected of that Party at the time the specific commitments in those sectors were made. 6. In determining whether a Party is in conformity with its obligations under paragraph 5 above, account shall be taken of international standards of relevant international organisations (Note) applicable to that Party. Note: The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties.			
Business Practices	1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 65 above, may restrain competition and thereby restrict trade in services. 2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 above. The Party addressed shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its	*no article	*no article	*no article

	domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.			
Transparency	1. Each Country shall, upon the request by the other Country, provide in the English language, as appropriate, the other Country with information on its laws and regulations and any amendment thereof affecting Articles 96 and 97. 2. Each Country shall provide, as appropriate, the other Country with copies of its publicly released guidelines or policy statements affecting Articles 96 and 97 in relation to its specific commitments as set out in Annex 6. 3. Each Country shall provide, as appropriate, the other Country with copies of its annual reports or any other publication that are made generally available to the public. Note: The information provided by the Countries under this Article will be supplied solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of the Countries under this Chapter.	Each Party shall prepare a non-legally binding list providing all relevant laws and regulations affecting the obligations under Articles 74, 75 and/or 76 in all sectors. Such a list shall be exchanged with the other Party and made public at the time of entry into force of this Agreement and shall be subject to future review and revision as necessary. Note: The list under this Article is made solely for the purposes of transparency, and shall not be construed to affect the rights and obligations of a Party under this Chapter. Any review or revision under this Article is solely for the purposes of updating such list.	*no article	*no article
Mutual Recognition	*same as PJEPA	*same as PJEPA	*same as PJEPA	*same as PJEPA
Monopolies and Exclusive Service Suppliers	*same as India- JEPA	*same as India- JEPA	*same as India- JEPA	*same as PJEPA

Payments and Transfers	1. Except under the circumstances envisaged in Article 68 below, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments. 2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund (hereinafter referred to in this Chapter as "the Fund") under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 68 below, or at the request of the Fund.	*same as SJEPA	*same as PJEPA	*same as SJEPA.
Emergency Safeguard Measures	1. The Countries shall initiate discussions within one year from the entry into force of this Agreement to develop mutually acceptable guidelines and procedures for the application of emergency safeguard measures within five years of the entry into force of this Agreement. 2. (a) Notwithstanding the provision of paragraph 1 of this	The Parties shall enter into consultations with a view to starting negotiations on emergency safeguard measures no later than 6 months after the date of entry into force of this Agreement. The results of such negotiations, if any, shall be incorporated into this Chapter in accordance with paragraph 1 of Article 171.	In the event that the implementation of this Agreement causes substantial adverse impact to a Party in a specific service sector, the Party may request consultations with the other Party for the purposes of taking appropriate measures to address such adverse impact. In such consultations, the Parties shall take into account the circumstances of the particular	

	Article, if a Country deems itself to be affected by the negative impact caused by its specific commitments in Annex 6, the Country may request to hold a consultation with the other Country to deal with such situation and the other Country shall respond to the request in good faith. (b) In the consultation, the Countries shall endeavour to reach a mutually acceptable solution within a reasonable time.		case and the result of the multilateral negotiations pursuant to Article X of the GATS if the said negotiations have been concluded at the time of such consultations.	
Restrictions to Safeguard the Balance of Payments	1 same with PJEPA 2 same also with PJEPA but with additional condition: **(a) shall not discriminate between the Parties;** (b)-(f) are letters a-e of PJEPA respectively 3 and 4- same with PJEPA **Additional:** **5. Where a Party has adopted restrictions pursuant to paragraph 1 of this Article:** **(a) that Party shall commence consultations with the other Party promptly in order to review the restrictions adopted by the former Party;**	1 same with PJEPA 2 same also with PJEPA but with additional condition: **(a) shall be applied on a national treatment basis;** (b)-(f) are letters a-e of PJEPA respectively 3 and 4- same with PJEPA **Additional:** **5. The Party applying any restrictions in accordance with paragraph 1 above may, upon request by the other Party, commence consultations with the other Party promptly in order to review the restrictions adopted by the former Party.**	**Additions in bold** 1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions **related to such commitments. It is recognized that particular pressure on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its program of economic development or economic**	*no article

	(b) the restrictions shall be subjected to annual review through further consultations, beginning one year after the date that the consultations referred to in sub-paragraph (a) above commenced. At these consultations, all restrictions applied for balance-of-payments purposes shall be reviewed. The Parties may also agree to a different frequency of such consultations; **(c) such consultations shall assess the balance-ofpayments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:** **(i) the nature and extent of the balance-ofpayments and the external financial difficulties;** **(ii) the external economic and trading environment of the consulting Party; and** **(iii) alternative corrective measures which may be available;** **(d) the consultations shall address the compliance of the restrictions with paragraph 2 of this Article, in particular the progressive phaseout of restrictions in accordance with**		**transition.** 2-4 same with PJEPA	

	sub-paragraph (f) of paragraph 2 of this Article; and **(e) in such consultations, all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balance-of-payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Party.**			
Denial of Benefits	A Party may deny the benefits of this Chapter: (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party; (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied: (i) by a vessel registered under the laws of a non-Party, and (ii) by a person which operates or uses the vessel in whole or in part but which is of a non-Party;54 (c) to any service supplier that is a juridical person, if it establishes that the service supplier is neither a "service supplier of the other Party" as defined in sub-paragraph (j) of paragraph 6 of Article 58 nor	1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party that is an enterprise where the Party establishes that the service supplier is owned or controlled by persons of a non-Party. *(no 2 of JPEPA but is stated in a different way)* 2 – No 1 of PJEPA	Same with PJEPA	*no article

	a "service supplier other than those of the Parties" granted benefits under Article 62.			
Sub-Committee on Trade in Services	1- same with PJEPA but it's Article 14 instead of 13. Also, 2 of PJEPA is included in 1 of SJEPA. ***bold – not in SJEPA but in PJEPA** (a) reviewing commitments, **including the scope of commitments to be indicated with "SS" pursuant to paragraph 3 of Article 75,** with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalization on a mutually advantageous basis and securing an overall balance of rights and obligations; (b) same with PJEPA (c) reviewing and discussing the issues concerning the effective implementation of Articles 103 and 106; (d) letter e of PJEPA; and (e) letter f of PJEPA **Additional:** **2. The Sub-Committee shall be:** **(a) composed of representatives of the Governments, and may invite representatives of relevant entities other than the**	1 same with PJEPA 2. The functions of the Sub-Committee shall be: *no (a) of PJEPA (a) – (b) of PJEPA (b) – (c) of PJEPA (c) discussing any issues related to this Chapter as may be agreed upon; (d) – (e) of PJEPA (e) – (f) of PJEPA	1- same with PJEPA but it's Article 11 instead of 13 2. The functions of the Sub-Committee shall be: (a) same with SJEPA (b) reviewing **and monitoring** the implementation and operation of this Chapter; (c) – (d) of PJEPA but without " including deadlines for preparing, forwarding to the other Party and making public the list referred to in Article 79;" (d) – (e) of PJEPA (e) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 11. **Additional:** **3. The Sub-Committee shall be:** **(a) composed of representatives of the Governments of the Parties and may invite representatives of relevant entities other than the Governments of the Parties with necessary expertise relevant to the issues to be discussed; and**	*no article

	Governments with the necessary expertise relevant to the issues to be discussed; and **(b) co-chaired by officials of the Governments.** **3. The Sub-Committee shall hold its inaugural meeting within one year after this Agreement enters into force. The subsequent meeting of the Sub-Committee shall be held at such frequency as the Countries may agree upon.** **4. The Sub-Committee shall establish a working group on financial services (hereinafter referred to in this Article as "the Working Group"). The details and procedures of the Working Group shall be specified in Annex 5.**		**(b) co-chaired by officials of the Governments of the Parties.** **4. The working group on financial services (hereinafter referred to in this Article as "the Working Group") shall be established under the Sub-Committee. The details and procedures of the Working Group shall be specified in Annex 4**.	
Subsidies	*no article	*no article	*no article	*no article
Review of Commitments	1. The Countries shall review commitments on trade in services with the first review within five years from the date of entry into force of this Agreement, with the aim of improving the overall commitments undertaken by the Countries under this Agreement. 2. In reviewing the commitments in accordance with paragraph 1 of this Article, the Countries shall take into account paragraph 1 of Article IV of the GATS.	1. The Parties shall enter into negotiations within 5 years after the date of entry into force of this Agreement for a general review of all services sectors including transport services, tourism services, financial services and telecommunications services. Such general review shall include a review on the scope of commitments scheduled "SS". 2. The Parties shall enter into separate negotiations within 3 years after the date of entry into	1. The Parties shall review commitments on trade in services within five years from the date of entry into force of this Agreement, with the aim of improving the overall level of commitments undertaken by the Parties under this Chapter. 2. In reviewing their commitments pursuant to paragraph 1, the Parties shall take into account the principles in paragraph 1 of Article IV and paragraph 2 of Article XIX of the GATS.	*no article

		force of this Agreement for a review of maintenance and repair services, wholesale trade and retailing services and rental services. 3. The review referred to in paragraph 1 or 2 above shall include a review on the scope of any commitments as well as the terms, limitations, conditions, qualifications or undertakings inscribed in the Schedules of specific commitments in Annex 5 of the Parties regarding the above-mentioned services and be guided by the principle of progressive liberalization as embodied in the GATS. 4. The Parties shall enter into negotiations within 5 years after the date of entry into force of this Agreement for a review of the provisions of paragraph 4 of Article 72 and paragraph 1 of Article 87.		
General Exceptions	1-iii – same with PJEPA **Additional:** **(d) inconsistent with Article 60, provided that the difference in treatment is aimed at ensuring the equitable or effective(Note) imposition or collection of direct taxes in respect of services or service suppliers of the other**	*no article	*no article	*no article

	Party. **Note: Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:** **(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;** **(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;** **(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;** **(iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;** **(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax**			

	base between them; or **(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base. Tax terms or concepts in sub-paragraph (d) of paragraph 1 of Article 69 and in this note are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.** **2. In the application of paragraph 1 above, the relevant interpretations and operation of the WTO Agreement shall, where appropriate, be taken into account.**			
Security Exceptions	*no article	*no article	*no article	*no article

Annex C- I. Provision Comparison of Investments of PJEPA, BJEPA, India- JEPA and Indonesia- JEPA

ARTICLE	PJEPA	BJEPA	I(n)JEPA	I(ndo)JEPA
Scope and Coverage	Art. 87: 1. This Chapter shall apply to measures adopted or maintained by a Party relating to: (a) investors of the other Party; and (b) Investments of investors of the other Party in the Area of the former Party. 2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations. 3. Nothing in this Chapter shall be construed to expand the scope of the specific commitments undertaken by either Party pursuant to Chapter 7. 4. Articles 89, 90 and 93 shall not apply to any measure that the Philippines adopts or maintains relating to investors of Japan and their investments in service sectors with respect to the establishment, acquisition or expansion of investments.	55: 1 is the same with PJEPA **Additional:** **2. This Chapter shall not apply to:** **(a) government procurement; and** **(b) Services supplied in the exercise of governmental authority as defined in subparagraph (q) of Article 74.** **3. In the event of any inconsistency between this Chapter and Chapter 6:** **(a) with respect to matters covered by Articles 57, 58 and 61, Chapter 6 shall prevail to the extent of inconsistency; and** **(b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of inconsistency.** 4 – is the number 2 of PJEPA No 3 and 4 of PJEPA	83: 1 – same with PJEPA but is stated in a paragraph form **Additional:** **Note: For greater certainty, this Chapter shall also apply to measures adopted or maintained by a Party relating to investments made by investors of the other Party in the Area of the former Party prior to the entry into force of this Agreement**. **2. An investor of a Party whose investments are not made in compliance with the laws and regulations of the other Party which are consistent with this Agreement shall not be entitled to submit an investment dispute to conciliations or arbitrations referred to in paragraph 4 of Article 96.** **3. In the event of any inconsistency between this Chapter and Chapter 6:** **(a) with respect to matters covered by Articles 85, 86 and 89, Chapter 6 shall prevail to the extent of the inconsistency; and** **(b) With respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of the inconsistency.** 4 – 2 of PJEPA	57: 1 – same with PJEPA **Additional:** **2. same with i(n)JEPA 3** **(a) with respect to matters covered by Articles 59, 60 and 63, Chapter 6 shall prevail to the extent of inconsistency; and** **(b) same with i(n)JEPA 3b** **3. This Chapter shall not apply to measures affecting the movement of natural persons of a Party.**

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Definitions	Art. 88: For the purposes of this chapter: (a) the term "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS; (b) the term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party, including: (i) a juridical person; (ii) shares, stocks or other forms of equity participation in a juridical person, including rights derived there from; (iii) bonds, debentures, and 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 claims to any performance under contract having a financial value; (vi) intellectual property rights, including copyrights, patent rights, rights relating to trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;	56: For the purposes of this Chapter: **Addition:** **(a) "enterprise" means any legal person or any other entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship or association;** **(b) an enterprise is:** **(i) "owned" by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and** **(ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;** (c) "enterprise of a Party" means an enterprise constituted or organised under the applicable law of a Party; (d) "freely usable currency" means any currency designated as such by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, as may be amended; (e) "ICSID" means the International Centre for Settlement of Investment Disputes;	84: For the purposes of this Chapter: (a) same with PJEPA (b) the term "freely usable currencies" means freely usable currencies as defined under the Articles of Agreement of the International Monetary Fund; (c) same with BJEPA (l) (d) same with BJEPA (m) (i) in respect of India, is a citizen of India; and (ii) same with BJEPA m, (ii) (e) same with BJEPA (n) (f) same with PJEPA	58: For the purposes of this Chapter: (a) same with BJEPA (b) same with BJEPA (c) Same with BJEPA but instead of "enterprise of the part", the term "enterprise of the other Party" is used here. (d) the term "financial services" means financial services as defined in subparagraph 2(a)(i) of Section 1 of Annex 7; (e) the term "freely convertible currencies" means currencies which are, in fact, widely used to make payments for international transactions and are widely traded in the principal exchange markets; (f) the term "investments" means every kind of asset invested by an investor, in accordance with applicable laws and regulations, including, though not exclusively: (i) an enterprise and a branch of an enterprise; (ii) – (vii) same with PJEPA b (ii-vii) (viii) same with PJEPA b, viii but only until the words "mortgages, liens and pledges" Note 1: same with BJEPA h, note 1

	(vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations, and permits; and (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges; investments also include profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments. A change in the form in which assets are invested does not affect their character as investments; (c) the term "investor of a Party" means: (i) a natural person who is a national of a Party and who is not a national of the other Party; or (ii) Juridical person of a Party, that seeks to make, is making, or has made investments in the Area of the other Party. A branch of a juridical person of a non-Party, which is located in the Area of a Party, shall not be deemed as an investor of that Party; (d) a juridical person is: (i) "owned" by persons if more than fifty (50) percent of the equity interest in it is owned by such persons; or (ii) "controlled" by persons if such persons have the power to name a majority of its directors or otherwise	(f) "ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes, as may be amended; (g) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965, as may be amended; (h) same as PJEPA, (b) (i) an enterprise and a branch of an enterprise; (ii) same as PJEPA b,ii (iii) same as PJEPA b,iii **Additional:** **(iv) futures, options and other derivatives;** (v) same as PJEPA b,iv (vi) PJEPA's b (v) + "which relate to a business activity"; (**vii) intellectual property rights;** **(viii) goodwill;** (ix) same with PJEPA b, vii (x) same with PJEPA b, viii but only until the words "mortgages, liens and pledges		Note 2: For the purposes of subparagraphs (ii) and (iii), a Party may, on a non-discriminatory basis, exclude portfolio investments which are determined by the use of the non-discriminatory and objective criteria adopted by the Party. (g) same with BJEPA (i) (h) the term "investor of the other Party" means a national or an enterprise of the other Party; (i) the term "national of the other Party" means a natural person having the nationality of the other Party in accordance with the applicable laws and regulations of the other Party; (j) same with i(n)JEPA (e) (k) same with PJEPA f

	to legally direct its actions; (e) the term "a juridical person of a Party" means a juridical person duly constituted or otherwise organized under the law of a Party, with its seat of control or substantial business activities in the Area of that Party; and (f) The term "transfers" means transfers and international payments.	Note 1: Investments also include amounts yielded by investments, 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 investments. Note 2: Investments do not include an order or judgment entered in a judicial or administrative action. Note 3: Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk. (i) "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments; (j) "investor of a Party" means a Party or a natural person or an enterprise of a Party that seeks to make, is making, or has made, investments; (k) "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form; (l) "measure adopted or maintained by a Party" means any measure adopted or maintained by: (i) central or local governments and		

		authorities of a Party; and (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities of a Party; (m) "natural person of a Party" means a natural person who under the law of a Party: (i) in respect of Brunei Darussalam, is a national of Brunei Darussalam or is a permanent resident in Brunei Darussalam; and (ii) in respect of Japan, is a national of Japan; (n) "New York Convention" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, as may be amended; and (o) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended.		
Observance of the Provisions of this Chapter	*no article	*no article	*no article	*no article
National Treatment	Art. 89: Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation,	57: 1. Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to investment activities. 2. Notwithstanding paragraph 1, each	85: 1. Same with BJEPA + "in its Area" in the end. 2. The treatment accorded by a Party under paragraph 1 means, with respect to a regional or local government or authority, treatment no less favourable than the most favourable treatment accorded, in	59: Same with BJEPA

	maintenance, use, possession, liquidation, sale, or other disposition of investments (hereinafter referred to in this Chapter as "investment activities").	Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, such as compliance with registration requirements, provided that such special formalities do not impair the substance of the rights of such investors under this Chapter.	like circumstances, by that regional or local government or authority to investors, and to investments of investors, of the Party of which it forms a part.	
Most-Favored-Nation Treatment	Art. 90: Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities.	58: Same with PJEPA	86: Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party and to their investments with respect to **the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its Area.** ***addition**	60: Same with PJEPA
General Treatment (Brunei: Art 59; Thai: 95-Minimum Standard of Treatment)	Art. 91: Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security. Note: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of	Same with PJEPA Note: The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by customary international law minimum standard of treatment of aliens.	87: 1. Same with PJEPA Note: This paragraph prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens. A determination that there	61: Each Party shall accord to investments of investors of the other Party fair and equitable treatment and full protection and security.

	aliens. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not ipso facto establish that there has been a breach of this Article.		has been a breach of another provision of this Agreement, or of a separate international agreement, **does not establish that there has been a breach of this paragraph.** + same with PJEPA except the bold letters. **2. Each Party shall observe any obligation it may have entered into with regard to investment activities in its Area of investors of the other Party.**	
Access to the Courts of Justice	Art. 92: Each Party shall in its Area accord to investors of the other Party treatment no less favourable than the treatment which it accords, in like circumstances, to its own investors or investors of a non-Party with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights.	60: Same with PJEPA	88: Same with PJEPA	62: Same with PJEPA
Performance Requirements	*no article	*no article	*no article	*no article
Schedule of Specific Commitments	*no article	*no article	*no article	*no article
Modification of Commitments	*no article	*no article	*no article	*no article
acquired treatment	*no article	*no article	*no article	*no article
Transparency	*no article	*no article	*no article	*no article
Prohibition of Performance Requirements	93: 1. Neither Party shall impose or enforce, as a condition for investment activities in its Area of an investor of the other Party, any of the following requirements: (a) to export a given level or percentage of goods or services;	61: 1. For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended, is incorporated into and forms part of this Agreement, mutatis mutandis. 2. The Parties shall enter into further	89: 1. Neither Party shall impose or enforce any of the following requirements, in connection with investment activities in its Area of an investor of the other Party: (a) same with PJEPA (b) same with PJEPA	63: 1. Same with i(n)JEPA (a) same with PJEPA (b) same with PJEPA (c) same with I(N)JEPA (d) same with I(N)JEPA (e) same with I(N)JEPA

	(b) to achieve a given level or percentage of domestic content; (c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from persons in its Area; (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments related to such investment activities; (e) to restrict sales of goods or services in its Area that investments related to such investment activities produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings; (f) to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality; (g) to hire a given level of its nationals; (h) to transfer technology, a production process or other proprietary knowledge to a person in its Area, except when the requirement: (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or	consultations, at the earliest possible time. The aim of such consultations is to review issues pertaining to prohibition of performance requirements within five years from the date of entry into force of this Agreement.	(c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from **natural or legal persons or any other entity in** its Area; *same with PJEPA but with additional words in **bold** (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of the investor; (e) to restrict sales of goods or services in its Area **that investments of the investor** produce or provide by relating such sales **in any way** to the volume or value of its exports or foreign exchange earnings; *same with PJEPA but with additional words in **bold** (f) to restrict the exportation or sale for export; (g) same with (f) of PJEPA (h) to transfer technology, a production process or other proprietary knowledge to **natural or legal persons or any other entity** in its Area, except when the requirement: *same with PJEPA but with additional words in **bold** (i) is imposed or enforced by a court of justice, administrative tribunal or	(f) same with PJEPA (g) same with PJEPA (i); (h) same with PJEPA (j) (i) to supply to a specific region or the world market exclusively from its Area, one or more of the goods that the investor produces or the services that the investor provides. 2. Paragraph 1 does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs 1 **(g) through (i). *difference on the bold letters**

	(ii) concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to in this Chapter as "the TRIPS Agreement"); (i) to locate the headquarters of that investor for a specific region or the world market in its Area; (j) to achieve a given level or value of research and development in its Area; or (k) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or world market, exclusively from its Area. 2. The provision of paragraph 1 above does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs (g) through (k) of paragraph 1 above.		competition authority to remedy an alleged violation of competition laws **and regulations**; or *same with PJEPA but with additional words in **bold** (ii) same with PJEPA (i) to supply **to a specific region or the world market exclusively from its Area,** one or more of the goods that the investor produces or the services that the investor provides. (same with PJEPA but bold letters are placed in the end of the sentence) 2. **Paragraph 1 does not preclude either** Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs 1 (h) and (i). ***difference on bold**	
Reservations and Exceptions	94: 1. Articles 89, 90 and 93 shall not apply to: (a) any existing non-conforming measure that is maintained by a Party at the central government level, as set out in its Schedule to	62: 1. Articles 57 and 58 shall not apply to: (a) any non-conforming measure that is maintained by the central government or authorities of a Party, on the date of entry into force of this	90: 1. Articles 85, 86 and 89 shall not apply to: (a) any existing non-conforming measure that is maintained by the following, as set out in Schedules in Annex 8:	64: 1. Neither Party shall impose or enforce any of the following requirements, in connection with investment activities in its Area of an investor of the other Party: (a) to export a given level or

	Part l of Annex 7; (b) any existing non-conforming measure that is maintained by: (i) a prefecture in the case of Japan or a province in the case of the Philippines, for one (1) year after the date of entry into force of this Agreement, and thereafter as to be set out by a Party in its Schedule to Part l of Annex 7 in accordance with paragraph 2 below; or (ii) a local government other than prefectures and provinces referred to in subparagraph (i) above; (c) the continuation or prompt renewal of any nonconforming measure referred to in subparagraphs (a) and (b) above; or (d) an amendment to any non-conforming measure referred to in subparagraphs (a) and (b) above, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 89, 90 and 93. 2. Each Party shall set out in its Schedule to Part l of Annex 7, within one (1) year of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a prefecture or a province referred to in subparagraph 1(b)(i) above and shall notify thereof the other Party by a diplomatic note. 3. Articles 89, 90 and 93 shall not	Agreement, with respect to the sectors or matters specified in Annex 4; (b) any non-conforming measure that is maintained by local governments or authorities of a Party on the date of entry into force of this Agreement; (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); (d) an amendment or modification to any non-conforming measure referred to in: (i) subparagraph (a), unless the sectors or matters are indicated with an asterisk (“*”) in Annex 4; and (ii) subparagraph (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 57 and 58; and (e) an amendment or modification to any non-conforming measure referred to in subparagraph (a), where the sectors or matters are indicated with an asterisk (“*”) in Annex 4, provided that the amendment or modification: (i) does not decrease the conformity of that measure with Articles 57 and 58; and (ii) is not more restrictive to existing investors and existing investments than the measure applied to such	(i) the central government of a Party; or (ii) a prefecture of Japan or a state or an Union territory of India; (b) any existing non-conforming measure that is maintained by a local government other than a prefecture and a state or an Union territory referred to in subparagraph (a)(ii); (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or (d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 85, 86 and 89. 2. Articles 85, 86 and 89 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors and activities set out in its Schedule in Annex 9. 3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 9, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure	percentage of goods or services; (b) to achieve a given level or percentage of domestic content; (c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area; (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of the investor; (e) to restrict sales of goods or services in its Area that investments of the investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; (f) to appoint, as executives or members of board of directors, individuals of any particular nationality; (g) to locate the headquarters of the investor for a specific region or the world market in its Area; (h) to achieve a given level or value of research and development in its Area; or (i) to supply to a specific region or the world market exclusively from its Area, one or more of the goods that the investor produces or the services that the investor provides.

	apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Part 2 of Annex 7, subject to the conditions set out therein. 4. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by Part 2 of Annex 7, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective. 5. In cases where a Party makes an amendment referred to in subparagraph 1(d) above, or where a Party adopts any new or more restrictive measure with respect to sectors, subsectors or activities as set out in its Schedule to Part 2 of Annex 7 after the date of the entry into force of this Agreement, that Party shall, prior to the implementation of the amendment or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter: (a) notify the other Party of the following elements: (i) sector and subsector or activity; (ii) type of reservation; (iii) level of Government; (iv) measures; and (v) description; and (b) hold, upon request by the other	investors and investments immediately before the amendment or modification. 2. For the purposes of this Article: (a) "existing investors" and "existing investments" mean respectively investors whose investments are present in the Area of a Party, and investments that are present in the Area of a Party, immediately before the amendment or modification of any non-conforming measure; and (b) any expansion or diversification of existing investments by existing investors after the amendment or modification of any non-conforming measure shall not be regarded as existing investments to the extent of such expansion or diversification. 3. Each Party shall, on the date of entry into force of this Agreement, notify the other Party of the following information on any non-conforming measure referred to in subparagraph 1(a): (a) the sector or matter, with respect to which the measure is maintained; (b) the domestic or international industry classification codes, where applicable, to which the measure relates; (c) the obligations under this Agreement with which the measure does not conform; 52 (d) the source of the measure; and	becomes effective. 4. In cases where a Party makes an amendment or a modification to any existing non-conforming measure set out in its Schedule in Annex 8 or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 9 after the entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter: (a) notify the other Party of detailed information on such amendment, modification or measure; and (b) hold, upon request by the other Party, consultations in good faith with that other Party with a view to achieving mutual satisfaction. 5. Each Party shall endeavour, where appropriate, to reduce or eliminate the exceptions specified in its Schedules in Annexes 8 and 9 respectively. 6. Articles 85 and 86 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement. 7. Articles 85, 86 and 89 shall not	2. Paragraph 1 does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs 1 (g) through (i).

	Party, consultations in good faith with that other Party with a view to achieving mutual satisfaction. 6. Each Party shall endeavor, where appropriate, to reduce or eliminate the reservation set out in its Schedules to Parts 1 and 2 of Annex 7 respectively. 7. Articles 89, 90 and 93 shall not apply to any measure that a Party adopts or maintains with respect to government procurement. 8. Articles 89 and 90 shall not apply to any measure covered by an exception to the obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement. 9. Nothing in this Article shall be construed so as to derogate from the obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement.	(e) the succinct description of the measure. 4. Articles 57 and 58 shall not apply to any measure that a Party adopts or maintains with respect to the sectors or matters specified in Annex 5. 5. Where a Party maintains any non-conforming measure on the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, the Party shall, on the same date, notify the other Party of the following information on the measure: (a) the sector or matter, with respect to which the measure is maintained; (b) the domestic or international industry classification codes, where applicable, to which the measure relates; (c) the obligations under this Agreement with which the measure does not conform; (d) the source of the measure; and (e) the succinct description of the measure. 6. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at	apply to any measure that a Party adopts or maintains with respect to government procurement. Note: For greater certainty, the term “existing” in this Article means being in effect on the date of entry into force of this Agreement.	

		the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority. 7. In cases where a Party makes an amendment or a modification to any non-conforming measure notified pursuant to paragraph 3 or 5, or where a Party adopts any new measure with respect to the sectors or matters specified in Annex 5, after the date of entry into force of this Agreement, the Party shall, prior to the amendment or modification or the adoption of the new measure, or in exceptional circumstances, as soon as possible thereafter: (a) notify the other Party of detailed information on such amendment, modification or new measure; and (b) respond, upon the request by the other Party, to specific questions from the other Party with respect to such amendment, modification or new measure. 8. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures that it adopts or maintains with respect to the sectors or matters specified in Annexes 4 and 5 respectively. 9. Articles 57 and 58 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3, 4 and 5 of the TRIPS Agreement.		
Special Formalities and Information			91: 1. Nothing in Article 85 shall be construed to prevent a Party	

Requirements			from prescribing special formalities in connection with investment activities of investors of the other Party and their investments in the Area of the former Party, provided that such special formalities do not materially impair the protections afforded by the former Party to investors of the other Party and their investments pursuant to this Chapter. 2. Notwithstanding Articles 85 and 86, a Party may require an investor of the other Party or its investments in the Area of the former Party, to provide business information concerning those investments, to be used solely for informational or statistical purposes. The former Party shall protect such business information that is confidential from disclosure that would prejudice the competitive position of the investor or the investments. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws and regulations.	
Expropriation and Compensation	95: 1. Neither Party shall expropriate or nationalize investments in its Area of investors of the other Party or take any measure equivalent to expropriation or nationalization (hereinafter referred to in this Chapter as "expropriation") except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due	63: 1. Same with PJEPA but the word tantamount was used instead of equivalent (a) –(b) – same with PJEPA (c) in accordance with law; and (d) upon payment of prompt, adequate and effective compensation **pursuant to paragraphs 2, 3 and 4.** 2. The compensation shall be equivalent to the fair	92: 1. Neither Party shall **take any measure of expropriation or nationalisation against investments** in its Area of investors of the other Party or take any measure **tantamount** to expropriation or Nationalisation (hereinafter referred to in this Chapter as "expropriation") except: ***same with PJEPA except the bold characters**	65: 1. Same with PJEPA but the word tantamount was used instead of equivalent (a) –(b) – same with PJEPA (c) in accordance with due process of law **and Article 61;** and ***same (c) with additional words in bold**

	process of law; and (d) upon payment of prompt, adequate and effective compensation. 2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred without public announcement, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier. 3. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of the expropriation, into the currency of the Party of the investors concerned and freely usable currencies defined in the Articles of Agreement of the International Monetary Fund. 4. The investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investor's case and the amount of compensation in accordance with the principles set out in this Article	market value of the expropriated investments: (a) at the time when the expropriation was publicly announced; or (b) when the expropriation occurred, whichever is the earlier. (same with PJEPA but is stated in a different way) 3. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier. 4. The compensation shall: (a) be paid without undue delay; (b) include interest at a commercially reasonable rate king into account the length of time from the time of expropriation to the time of payment; and (c) be effectively realisable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned and freely usable currencies. 5. (a) This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation. (b) Where subparagraph (a) applies, Articles 60 and shall also apply in respect of taxation measures.	(a)-(c) – same with PJEPA (d) – same with PJEPA 1(d) with additional phrase "**pursuant to paragraphs 2 through 4"** in the end 2. same with PJEPA 3. same with PJEPA but only until freely usable currencies. 4. Without prejudice to Article 96, the investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article. 5. This Article shall not apply with respect to the grant of compulsory licences concerning intellectual property in accordance with the TRIPS Agreement. 6. This Article shall be interpreted in accordance with Annex 10.	(d) – same with PJEPA 1(d) with additional phrase "**pursuant to paragraphs 2 through 4"** in the end 2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, **whichever is the earlier**. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier. ***bold is different from PJEPA** 3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate taking into account the length of time from the time of expropriation to the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned and freely convertible currencies. 4. Without prejudice to Article 69, the investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.
Protection from	96: 1. Each Party shall accord to	64: 1. Each Party shall accord to	93: 1. Each Party shall accord to	66: 1. Each Party shall accord to

Strife	investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than the most favorable treatment which it accords to any investors. 2. Any payments made pursuant to paragraph 1 above shall be effectively realizable, freely convertible and freely transferable.	investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party **owing to war, armed conflict or state of emergency** such as revolution, insurrection, civil disturbance, riot or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than **that it accords to its own investors or to investors of a non-Party.** ***same to PJEPA except the words in bold in the last part** 2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible **at the market exchange rate into the currency of the Party of the investors concerned and freely usable currencies.** ******same with PJEPA except that the words "freely convertible and freely realizable" interchanged and that this one has an **additional phrase in bold**.	investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable **than that it accords to its own investors or to investors of a non-Party.** ***same with PJEPA except the bold letters in the last part.** 2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible **at the market exchange rate into the currency of the Party of the investors concerned and freely usable currencies.** ******same with PJEPA except that the words "freely convertible and freely realizable" interchanged and that this one has an **additional phrase in bold**. **Additional:** **3. Notwithstanding the provisions of Article 11, neither Party shall be relieved of its obligation under paragraph 1 by reason of its measures taken pursuant to that Article**.	investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable **than that it accords to its own investors or to investors of a non-Party**. ***same with PJEPA except the bold letters in the last part.** 2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realizable, freely transferable and freely convertible **at the market exchange rate into the currency of the Party of the investors concerned and freely convertible currencies.** ******same with PJEPA except that the words "freely convertible and freely realizable" interchanged and that this one has an **additional phrase in bold**.
Transfers	97: 1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely into and	65: 1. Each Party shall allow all transfers relating to investments in its Area of an investor of the other Party to be made freely into and out of its	94: 1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely	67: 1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely into and

	out of its Area without delay. Such transfers shall include: (a) the initial capital and additional amounts to maintain or increase investments; (b) profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments; (c) proceeds from the total or partial sale or liquidation of investments; (d) payments made under a contract including loan payments in connection with investments; (e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party; and (f) payments made in accordance with Articles 95 and 96. 2. Neither Party shall prevent transfers into and out of its Area from being made without delay in freely usable currencies at the market rate of exchange prevailing on the date of the transfer. 3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or prevent a transfer into and out of its Area through the equitable, non-discriminatory and good-faith application of its laws relating to: (a) bankruptcy, insolvency or the protection of the rights of creditors;	Area without **undue** delay. Such transfers shall include **those of:** *same with PJEPA but ensure was changed into allow and **a word (in bold) was added.** (a) same with PJEPA (b) **net** profits, capital gains, dividends, royalties, interest, fees, and other current incomes accruing from investments; ****same with PJEPA with additional word in bold** (c) same (d) same (e) **net** earnings and remuneration of personnel from the other Party who **are employed and allowed to** work in connection with investments in the Area of the former Party; ****same with PJEPA with additional word in bold** (f) payments made pursuant to Articles 63 and 64; and Additional: **(g) payments arising out of the settlement of a dispute under Article 67.** 2. Each Party shall further ensure that such transfers may be made in a freely usable currency at the market exchange rate prevailing on the date of each transfer. 3. Notwithstanding paragraphs 1 and	into and out of its Area without delay. Such transfers shall include, **though not limited to, those of:** **same with PJEPA with additional words in bold (a) – (c) same with PJEPA (d) payments made under a contract including payments made pursuant to loan agreements; (e) same (f) payments made in accordance with Articles 92 and 93; and Additional: (**g) Payments arising out of the settlement of a dispute under Article 96.** 2. Each Party shall further ensure that such transfers may be made in freely usable currencies at the market exchange rate prevailing on the date of each transfer. 3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers through the equitable, non-discriminatory and good faith application of its laws relating to: (a) – (c) same with PJEPA (d) ensuring compliance with orders or judgments in judicial proceedings **or administrative rulings;** or **same with PJEPA (e) with additional/different words in bold	out of its Area without delay. Such transfers shall include **those of:** **same with PJEPA with additional words in bold (a) –(e) same with PJEPA (f) payments made in accordance with Articles 65 and 66; and Additional: **(g) payments arising out of the settlement of a dispute under Article 69.** 2. Each Party shall further ensure that such transfers may be made in freely convertible currencies at the market exchange rate prevailing on the date of each transfer. 3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers through the equitable, non-discriminatory and good-faith application of its laws relating to: (a) – (c) same with PJEPA (d) letter (e) in PJEPA

	(b) issuing, trading or dealing in securities, futures, options or derivatives; (c) criminal or penal offences; (d) registration, reportorial and prior approval requirement concerning transfers of currency or other monetary instruments; or Note: Prior approval requirement applies only to short-term foreign currency loans with the original maturity of up to one (1) year. (e) ensuring compliance with orders or judgments in adjudicatory proceedings.	2, a Party may delay or prevent **such transfers through the equitable,** non-discriminatory and good faith application of its laws relating to: ****same with PJEPA but words in bold were stated in a different way** (a) - (c) same with PJEPA (d) ensuring compliance with orders or judgments in **judicial proceedings or administrative rulings; and** *same with PJEPA (e) with additional/different words in bold (e) obligations of investors arising from social security, and public retirement or compulsory savings scheme.	(e) obligations of investors arising from social security, and public retirement or compulsory savings scheme. Note: With respect to India, obligations of investors referred to in this subparagraph include, inter alia, those arising from provident funds, and retirement gratuity/allowance and employees' state insurance programmes under the laws and regulations of India.	
Subrogation	98: 1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, arising from or pertaining to an investment of that investor within the Area of the other Party, that other Party shall: (a) recognize the assignment, to the former Party or its designated agency, of any right or claim of such investor that formed the basis of such payment; and (b) recognize the right of the former Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.	66: 1. Same with PJEPA (a) - (b) same with PJEPA 2. **Articles 63, 64 and 65** shall apply mutatis mutandis as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment. *same with PJEPA but different articles	95: 1.same with PJEPA (a) - (b) same with PJEPA 2. **Articles 92, 93 and 94**, shall apply mutatis mutandis as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment. *same with PJEPA but different articles Additional: **3. An investor shall not be entitled to seek any relief in an investment dispute under Article 96, to the extent of indemnification or other compensation received by that**	68: 1. If a Party or its designated agency makes a payment to any of its investors under an indemnity, guarantee or contract of insurance given in respect of an investment of that investor within the Area of the other Party, the other Party shall: (a) - (b) same with PJEPA 2. **Articles 65 through 67** shall apply mutatis mutandis as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment. *same with PJEPA but different articles

	2. Articles 95, 96 and 97 shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency first mentioned in paragraph 1 above by virtue of such assignment of right or claim, and the transfer of such payment.		**investor under paragraph 1.**	
Settlement of Investment Disputes between a Party and an Investor of the Other Party	*no article	67: 1. For the purposes of this Chapter, an "investment dispute" is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under this Chapter with respect to the investor and its investments. 2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement within the Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party"). 3. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties"). 4. If the investment dispute cannot be settled through such consultation or negotiation within five months from the date on which the disputing investor requested for the consultation or negotiation in writing and if the disputing investor has not submitted the investment dispute for	96: 1. For the purposes of this Chapter, an "investment dispute" is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under this Chapter and other provisions of this Agreement as applicable with respect to the investor and its investments. 2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking settlement by domestic administrative or judicial fora of the Party that is the other party to the investment dispute hereinafter referred to in this Article as "disputing Party"). However, in the event that the disputing investor has submitted the investment dispute for resolution under one of the international conciliations or arbitrations referred to in paragraph 4, no proceedings may be initiated by the disputing investor for the resolution of the investment dispute before courts of justice or administrative tribunals or agencies.	69: 1. For the purposes of this Chapter, an "investment dispute" is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under this Agreement with respect to the investor and its investments. 2. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between an investor who is a party to the investment dispute (hereinafter referred to in this Article as "disputing investor") and the Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party"). 3. Nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement within the disputing Party in accordance with the laws and regulations of the disputing Party. 4. If the investment dispute cannot be settled through consultation or negotiation referred to in paragraph 2 within five months from the date on which the disputing investor requested for the consultation or negotiation in

		resolution under courts of justice or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations: (a) conciliation or arbitration in accordance with the ICSID Convention, so long as the ICSID Convention is in force between the Parties; (b) conciliation or arbitration under the ICSID Additional Facility Rules, so long as the ICSID Convention is not in force between the Parties; (c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976, as may be amended; and (d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules. 5. For greater certainty, an investor of a Party may not submit to conciliation or arbitration referred to in paragraph 4 a dispute arising out of events which occurred, or a dispute which had been settled, prior to the date of entry into force of this Agreement. 6. A disputing investor may not submit to conciliation or arbitration referred to in paragraph 4 an investment dispute with respect to the	3. An investment dispute shall, as far as possible, be settled amicably through consultations or negotiations between the disputing investor and the disputing Party (hereinafter referred to in this Article as “the disputing parties”). 4. If the investment dispute cannot be settled through such consultation or negotiation within six months from the date on which the disputing investor requested for the consultation or negotiation in writing, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations: (a) conciliation or arbitration in accordance with the Convention on the Settlement of Investment Dispute between States and Nationals of Other States (hereinafter referred to as “the ICSID Convention”), so long as the ICSID Convention is in force between the Parties; (b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, so long as the ICSID Convention is not in force between the Parties; (c) conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law or arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law; or	writing and if the disputing investor has not submitted the investment dispute for resolution under courts of justice or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations: (a) conciliation or arbitration in accordance with the Convention on the Settlement of Investment Dispute between States and Nationals of Other States(hereinafter referred to in this Article as “the ICSID Convention”), so long as the ICSID Convention is in force between the Parties; (b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, so long as the ICSID Convention is not in force between the Parties; (c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976; and (d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules. 5. The applicable conciliation or arbitration rules shall govern the conciliation or arbitration set forth in paragraph 4 except to the extent modified in this Article.

		establishment, acquisition or expansion of its investments. 7. The applicable arbitration rules shall govern the arbitration set forth in paragraph 4 except to the extent modified in this Article. 8. A disputing investor who intends to submit an investment dispute to conciliation or arbitration pursuant to paragraph 4 shall give to the disputing Party written notice of intent to do so at least 90 days before the investment dispute is submitted. The notice of intent shall specify: (a) the name and address of the disputing investor; (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Chapter alleged to have been breached; (c) conciliation or arbitration set forth in paragraph 4 which the disputing investor will choose; and (d) the relief sought and the approximate amount of damages claimed. 9. (a) Each Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4 chosen by the disputing investor. (b) The consent given by	(d) any arbitration in accordance with other arbitration rules if agreed with the disputing Party. 5. The applicable conciliation or arbitration rules shall govern the conciliation or arbitration set forth in paragraph 4 except to the extent modified in this Article. 6. No investment dispute may be submitted to international conciliation or arbitration referred to in paragraph 4 if the disputing investor has initiated any proceedings for the resolution of the investment dispute before courts of justice or administrative tribunals or agencies. However, in the event that those proceedings are withdrawn within 30 days from the date of filing the case, the disputing investor may submit the investment dispute to such international conciliations or arbitrations. 7. The disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 4 shall give to the disputing Party written notice of intent to do so at least 90 days before the investment dispute is submitted. The notice of intent shall specify: (a) the name and address of the disputing investor; (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute	6. A disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 4 shall give to the disputing Party written notice of intent to do so at least 90 days before the investment dispute is submitted. The notice of intent shall specify: (a) the name and address of the disputing investor; (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the provisions under this Agreement alleged to have been breached; and (c) conciliation or arbitration set forth in paragraph 4 which the disputing investor will choose. 7. (a) Each Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4. (b) The consent given by subparagraph (a) and the submission by a disputing investor of an investment dispute to conciliation or arbitration shall satisfy the requirements of: (i) Chapter II of the ICSID Convention or the Additional Facility Rules of the International

		subparagraph (a) and the submission by a disputing investor of an investment dispute to arbitration shall satisfy the requirements of: (i) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules, for written consent of the parties to a dispute; and (ii) Article II of the New York Convention for an agreement in writing. 10. Notwithstanding paragraph 9, no investment dispute may be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1. 11. Notwithstanding paragraph 4, a disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or agency or a court of justice under the applicable laws of the disputing Party. 12. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the	sufficient to present the problem clearly, including the obligations under this Agreement alleged to have been breached; (c) conciliation or arbitration set forth in paragraph 4 which the disputing investor chooses to invoke; and (d) the relief sought and the approximate amount of damages claimed. 8. (a) Each Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4 chosen by the disputing investor. (b) The consent given under subparagraph (a) and the submission by a disputing investor of an investment dispute to conciliation or arbitration shall satisfy the requirements of: (i) Chapter II of the ICSID Convention or the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, for written consent of the parties to a dispute; and (ii) Article II of the New York Convention for an agreement in writing. 9. Notwithstanding paragraph 8, no investment dispute may be submitted to conciliation or arbitration set forth in paragraph 4,	Centre for Settlement of Investment Disputes, for written consent of the parties to a dispute; and (ii) Article II of the New York Convention for an agreement in writing. 8. Notwithstanding paragraph 7, no investment dispute may be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1. 9. Notwithstanding paragraph 4, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or agency or a court of justice under the law of the disputing Party. 10. Unless the disputing investor and the disputing Party (hereinafter referred to in this Article as “the disputing parties”) agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on

		disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the ICSID may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 13 and 14. 13. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity. 59 14. In the case of arbitration referred to in paragraph 4, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the ICSID may be requested not to appoint as arbitrator any person whose nationality is indicated by either of the disputing parties. 15. Unless the disputing parties agree otherwise, an arbitration shall be held in a country that is a party to the New York Convention. 16. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this	if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1. 10. Notwithstanding paragraph 6, the disputing investor may initiate or continue an action that seeks interim injunctive relief not involving the payment of damages or resolution in substance of the dispute before an administrative tribunal or agency or a court of justice under the law of the disputing Party. 11. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes in the case of arbitration referred to in subparagraph 4 (a) or (b), or the Secretary-General of the Permanent Court of Arbitration, at The Hague in the case of	which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as “ICSID”), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 11 and 12. 11. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity. 12. In the case of arbitration referred to in paragraph 4, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the ICSID may be requested not to appoint as arbitrator any person whose nationality is indicated by either of the disputing parties. 13. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the New York Convention. 14. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in

		Agreement and applicable rules of international law. 17. The disputing Party shall deliver to the other Party: (a) written notice of the investment dispute submitted to the arbitration no later than 30 days after the date on which the investment dispute was submitted; and (b) copies of all pleadings filed in the arbitration. 18. On written notice to the disputing parties, the Party which is not the disputing Party may make submissions to the arbitral tribunal on a question of interpretation of this Agreement. 19. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1. 20. The award rendered by the arbitral tribunal shall include: (a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Chapter with respect to the disputing investor and its investments; and	arbitration referred to in subparagraph 4 (c) or (d), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed, subject to the requirements of paragraph 12. 12. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of Japan nor citizen of India, nor have his or her usual place of residence in either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity. 13. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the New York Convention. 14. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Chapter and other provisions of this Agreement as applicable and applicable rules of international law. 15. The disputing Party shall deliver to the other Party: (a) written notice of the investment dispute submitted to the arbitration no later than days after the date on which the investment dispute was submitted; and (b) copies of all pleadings filed in the arbitration. 16. On written notice to the	accordance with this Agreement and applicable rules of international law. 15. The disputing Party shall deliver to the other Party: (a) written notice of the investment dispute submitted to the arbitration no later than 30 days after the date on which the investment dispute was submitted; and (b) copies of all pleadings filed in the arbitration. 16. On written notice to the disputing parties, the Party which is not the disputing Party may make submissions to the arbitral tribunal on a question of interpretation of this Agreement. 17. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1. 18. The award rendered by the arbitral tribunal shall include: (a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Agreement with respect to the disputing

		(b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following: (i) payment of monetary damages and applicable interest; and (ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution. Costs may also be awarded in accordance with the applicable arbitration rules. 21. The award rendered in accordance with paragraph 20 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations. 22. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Party and an investor of the former Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.	disputing parties, the Party which is not the disputing Party may make submission to the arbitral tribunal on a question of interpretation of this Chapter and other provisions of this Agreement as applicable. 17. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1. 18. The award rendered by the arbitral tribunal shall include: (a) a decision whether or not there has been a breach by the disputing Party of any obligation under this Chapter and other provisions of this Agreement as applicable with respect to the disputing investor and its investments, together with the basis and the reasons for such decision; and (b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following: (i) payment of monetary damages and applicable interest; and (ii) restitution of property, in	investor and its investments; and (b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following: (i) payment of monetary damages and applicable interest; and (ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution. Costs may also be awarded in accordance with the applicable arbitration rules. 19. The award rendered in accordance with paragraph 18 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations. 20. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Party and an investor of the former Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the

			which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution. Costs may also be awarded in accordance with the applicable arbitration rules. Note: For the purposes of this paragraph, it is understood that where the disputing Party asserts as a defence that the measure alleged to constitute a breach referred to in paragraph 1 is within the scope of a security exception as set out in Article 11, the arbitral tribunal shall not review the merits of any such measure in its award. However, the arbitral tribunal shall not be prevented from assessing the remedy referred to in subparagraph (b) in the light of the treatment as set out in paragraph 1 of Article 93 for any loss or damage relating to the investments caused by the measure in question. 19. The award rendered in accordance with paragraph 18 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations. 20. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Party and an investor of the former	purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute. 21. Annex 6 provides additional provisions with respect to the settlement of investment disputes.

			Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party has failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute. 21. An arbitral tribunal shall address and decide as a preliminary question any objection by the disputing Party that the investment dispute is not within the competence of the arbitral tribunal, provided that the disputing Party so requests immediately after the establishment of the arbitral tribunal.	
Special Formalities	*no article	*no article	*no article	*no article
Facilitation of Movement of Investors	*no article	*no article	*no article	*no article
General and Security Exceptions	99: 1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investments of investors of the other Party in the Area of a Party, nothing in this Chapter other than Article 96 shall be construed to prevent a Party from adopting or enforcing measures: (a) necessary to protect human, animal or plant life or health; (b) necessary to protect public			

	morals or to maintain public order; Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society. (c) which it considers necessary for protection of its essential security interests; (i) taken in time of war, or armed conflict, or other emergency in that Party or in international relations; or (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons; or (d) in pursuance of its obligations under United Nations Charter for the maintenance of international peace and security. 2. In cases where a Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Chapter other than Article 96, that Party shall, prior to the entry into force of the measure or as soon thereafter as possible, notify the other Party of the following elements: (a) sector and subsector or activity; (b) obligation or article in respect of the measure;			

	(c) legal source of the measure; (d) succinct description of the measure; and (e) purpose of the measure. 3. Notwithstanding the provisions of Article 89, each Party may prescribe special formalities in connection with the establishment of investments by investors of the other Party in its Area such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.			
Temporary Safeguard Measures	100: 1. A Party may adopt or maintain measures inconsistent with its obligations provided for in Article 89 relating to cross-border capital transactions and Article 97: (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. 2. Measures referred to in paragraph 1 above: (a) shall be consistent with the Articles of Agreement of the International Monetary Fund so long as the Party taking the measures is a party to the said Articles of Agreement;	68: 1. A Party may adopt or maintain measures not conforming with its obligations under Article 57 relating to cross-border capital transactions and Article 65: (a) – (b) same with PJEPA 2. The measures referred to in paragraph 1 shall: (a) be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended; (b) same with PJEPA (c) be temporary and eliminated as soon as conditions permit; *same with PJEPA but is stated differently (d) same with PJEPA	97: 1. A Party may adopt or maintain measures not conforming with its obligations under Article 85 relating to cross-border capital transactions and Article 94: (a) – (b) same with PJEPA 2. Measures referred to in paragraph 1 shall: (a) be consistent with the Articles of Agreement of the International Monetary Fund; (b) same with PJEPA (c) be temporary and eliminated as soon as conditions permit; *same with PJEPA but is stated differently (d) same with PJEPA (e) avoid unnecessary damages to	70: 1. A Party may adopt or maintain measures not conforming with its obligations under Article 59 relating to cross-border capital transactions and Article 67: (a) – (b) same with PJEPA 2. Measures referred to in paragraph 1: (a) shall be consistent with the Articles of Agreement of the International Monetary Fund; (b) same with PJEPA (c) shall be temporary and eliminated as soon as conditions permit; and *same with PJEPA but is stated differently (d) same with PJEPA 3. Nothing in this Article shall be

	(b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 above; (c) shall be temporary and shall be eliminated as soon as conditions permit; and (d) shall promptly be notified to the other Party. 3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.	(e) avoid unnecessary damages to the commercial, economic and financial interests of the other Party; and **Additional:** **(f) ensure that the other Party is treated as favourably as any non-Party.** 3. Nothing in this Article shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, **as may be amended.** ****same with PJEPA bold letters are added in the end	the commercial, economic and financial interests of the other Party. Additional: **3. The Party adopting any measures under paragraph 1 shall, on request by the other Party, commence consultations in order to examine the possibility of reviewing the measures adopted by the former Party.** 4. same with PJEPA	regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.
Prudential Measures	101: Notwithstanding any other provisions of this Chapter, a Party may adopt or maintain measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a person supplying financial services, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.	69: 1. Notwithstanding any other provisions of this Chapter, a Party **shall not be prevented from taking measures** relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed **by an enterprise** supplying financial services, or to ensure the integrity and stability of the financial system. 2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter. ***same with PJEPA but is divided into 1 and 2. The bold letters are words that are differently stated**. **Additional:** **Note: For the purposes of this**	98: Where a Party takes measures relating to financial services for prudential reasons, the provisions of paragraph 1 of Section 2 in Annex 4 shall apply accordingly.	71: 1. Notwithstanding any other provisions of this Chapter, a Party **shall not be prevented from taking measures** relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed **by an enterprise** supplying financial services, or to ensure the integrity and stability of the financial system. 2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter. * **same with PJEPA but is divided into 1 and 2. The bold letters are words that are differently stated**.

		Article, "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS.		
Environmental Measures	102: Each Party recognizes that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion in its Area of investments by investors of the other Party.	71: Same with PJEPA	99: Each Party recognises that it is inappropriate to encourage investment activities in its Area of investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its Area.	74: Same with PJEPA but without "of investments by investors of the other Party" in the end.
Relation to Other Obligations	*no article	*no article	100: Nothing in this Agreement shall be construed so as to derogate from laws and regulations of each Party or any other international agreements that entitle investors of the other Party and to their investments treatment more favourable than that accorded by this Agreement.	*no article
Duration and Termination	*no article	*no article	101: In respect of investments made prior to the date of termination of this Agreement, the provisions of this Chapter, as well as provisions of this Agreement which are directly related to this Chapter, shall continue to be effective for a period of ten years from the date of termination of this Agreement.	*no article
Investment and Labor	103: 1. The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or	*no article	*no article	*no article

	otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in paragraph 2 below as an encouragement for the establishment, acquisition, expansion or retention of an investment in its Area. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement. 2. For purposes of this Article, "labor laws" means each Party's laws or regulations that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.			
Taxation Measures as Expropriation	104: 1. Article 95 shall apply to taxation measures, to the extent that			73: 1. Same with PJEPA but it's Article 65 instead of 95

	such taxation measures constitute expropriation as provided for in paragraph 1 of Article 95. 2. Where paragraph 1 above applies, Articles 92 and 106 shall also apply in respect of taxation measures. Note: A taxation measure which is applied in a nondiscriminatory manner shall not be considered to constitute expropriation.			2. Where Article 65 applies to taxation measures in accordance with paragraph 1, Articles 62 and 69 shall also apply in respect of taxation measures. 3. Notwithstanding paragraph 2, no investor may invoke Article 65 as the basis for an investment dispute under Article 69, where it has been determined pursuant to paragraph 4 that the taxation measure is not an expropriation. 4. The investor shall refer the issue, at the time that it gives a written notice of intent under paragraph 6 of Article 69, to the competent authorities of both Parties, through the contact points referred to in Article 16, to determine whether such measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of five months of such referral, the investor may submit the investment dispute to conciliation or arbitration under Article 69. 5. Paragraphs 2 through 4 shall apply only to taxation measure taken in the form of or in the applications of the laws and regulations which are enacted or amended after the entry into force of this Agreement. Note: With respect to Indonesia, taxation measures referred to in this paragraph do not include those taken

				by tax administrative authorities in the applications of the relevant laws and regulations. 6. For the purposes of paragraph 4, the term “competent authorities” means: (a) with respect to Japan, the Minister of Finance or his or her authorized representative, who shall consider the issue in consultation with the Minister of Foreign Affairs or his or her authorized representative; and (b) with respect to Indonesia, the Minister of Finance or his or her authorized representative.
Denial of Benefits	105: A Party may deny the benefits of this Chapter to an investor of the other Party that is a juridical person of such Party and to an investment of such investor if the juridical person is owned or controlled by investors of a non-Party and the denying Party: (a) does not maintain diplomatic relations with the non-Party; or (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or to its investments.	70: 1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the denying Party: (a) same with PJEPA (b) same with PJEPA but the word enterprise was used instead of juridical person **Additional:** **2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and**	*no article	72: 1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the denying Party: (a) same with PJEPA (b) same with PJEPA but the word enterprise was used instead of juridical person (same with BJEPA) **Additional:** **2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled**

		the enterprise has no substantial business activities in the Area of the other Party.		**by an investor of a non-Party and the enterprise has no substantial business activities in the Area of the other Party.**
Co-operation in Promotion and Facilitation of Investments	*no article	*no article	*no article	*no article
Sub-Committee on Investment	106: 1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13. 2. The functions of the Sub-Committee shall be: (a) reviewing the implementation and operation of this Chapter; (b) reviewing the reservations set out in the Schedules to Parts 1 and 2 of Annex 7 for the purposes of contributing to the reduction or elimination, where appropriate, of such reservation, and encouraging favorable conditions for investors of both Parties; (c) discussing any issues related to this Chapter, including issues related to taxation measures as expropriation; (d) reporting the findings of the Sub-Committee to the Joint Committee; and (e) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.	72: 1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "Sub-Committee") shall be established **on the date of entry into force of this Agreement. *same with PJEPA but the bold letters are different** 2. The functions of the Sub-Committee shall be: **Additional:** **(a) exchanging information on any matters related to this Chapter;** (b) same with 2(a) of PJEPA (c) discussing any issues related to this Chapter; * same with PJEPA's 2(d) but lacks the end part "including issues related to taxation measures as expropriation" (d) reporting the findings **and the outcome of discussions** of the Sub-Committee to the Joint Committee; and *same with PJEPA but with additional words in **bold** (e) **carrying out** other functions as may be delegated		75: For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be: (a) reviewing **and monitoring** the implementation and operation of this Chapter; *same with PJEPA but with additional word in **bold** (b) reviewing the specific reservations and exceptions under Article 64; (c) discussing any issues related to this Chapter; * same with PJEPA's 2(d) but lacks the end part "including issues related to taxation measures as expropriation" (d) same with PJEPA (e) **carrying out** other functions as may be delegated by the Joint Committee in accordance with **Article 14.** *same with PJEPA but letters in **bold are changed**

		by the Joint Committee in accordance with **Article 11.** *same with PJEPA but letters in **bold are changed** **Additional:** **3. The Sub-Committee shall be:** **(a) composed of representatives of the Governments of the Parties; and** **(b) co-chaired by officials of the Governments of the Parties.** **4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.** **5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.**		
Further Negotiation	107: 1. The Parties shall enter into negotiations after the date of entry into force of this Agreement to establish a mechanism for the settlement of an investment dispute between a Party and an investor of the other Party. 2. In the absence of the mechanism for the settlement of an investment dispute between a Party and an investor of the other Party, the resort to international conciliation or arbitration tribunal is subject to mutual consent of the parties to the dispute. This means that the disputing Party may, at its option or discretion, grant or deny its consent in respect of each particular investment dispute and that, in the	*no article	*no article	*no article

	absence of the express written consent of the disputing Party, an international conciliation or arbitration tribunal shall have no jurisdiction over the investment dispute involved.			
Review	*no article	*no article	*no article	*no article

Annex C- II. Provision Comparison of Investments of MJEPA, SJEPA and TJEPA

	MJEPA	SJEPA	TJEPA
Scope and Coverage	73: 1. Same with PJJEPA (a) same with PJEPA (b) investments of investors of the other Country in the former Country. Additional: 2. In the event of any inconsistency between this Chapter and Chapter 8: (a) with respect to matters covered by Articles 75, 76 and 79, Chapter 8 shall prevail to the extent of inconsistency; and (b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of inconsistency. 3. same with PJEPA 2 but the word "Country" is used here instead of "Party" Note: In respect of Malaysia, measures referred to in this paragraph include those pursuant to the immigration policies endorsed by the Cabinet, and announced and made publicly available in a written form by the Government of Malaysia.	71: 1.same with PJEPA (a) investors of the other Party **in the territory of the former Party;** ***same with PJEPA with additional words in bold** (b) same with PJEPA but used "territory" instead of "area". 2. This Chapter shall not apply to government procurement. 3.Movement of natural persons who are investors shall be governed by Chapter 9.	90: 1. This Chapter shall apply to measures by a Party relating to: (a) – (b) same with PJEPA *additional in **bold** **(c) with respect to Article 111, all investments in the Area of the former Party.** 2. same with PJEPA 3. This Chapter shall not apply to measures by a Party relating to investors of the other Party and their investments in service sectors. 4. Notwithstanding paragraph 3 above: (a) Articles 94, 95, 96, 100, 102, 103, 105, 106, 107, 109, 110, 111 and 112 shall apply to measures by a Party relating to investors of the other Party and their investments in service sectors other than financial services sector with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments; and (b) Articles 94, 102, 103, 105, 109 and 112 shall apply to measures by a Party relating to investors of the other Party and their investments in financial services sector with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments. Note 1: For the purposes of subparagraph (b) above, compensation under Article 102, if any, shall be no more than the net asset value which is calculated from the difference between the value of assets and the value of liabilities including contingent liabilities of the affected enterprise supplying financial services. Note 2: Within the definition of investments under this

			Chapter, investments referred to in subparagraph (b) above shall be limited to equity interest, reinvested earnings and permanent debt (that is loan capital). 5. Articles 93 and 96 shall not apply to any measure covered by an exception to, or derogation from, the obligations under Article 3 or 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended (hereinafter referred to in this Agreement as "the TRIPS Agreement"), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement. 6. This Chapter shall not apply to laws, regulations or procedures and practices governing the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale.
Definitions	74: For the purposes of this Chapter: (a) an enterprise is: (i) "owned" by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and (ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions; (b) the term "enterprise of a Country" means any legal entity duly constituted or organised under the law of a Country, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organisation, company or branch;	72: For the purposes of this Chapter: (a) same with PJEPA (i) an enterprise; (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom; (iii) – (v) same with PJEPA Note: For the purposes of this Chapter, "loans and other forms of debt" described in (iii) of sub-paragraph (a) of Article 72 and "claims to money and claims to any performance under contract" described in (v) of sub-paragraph (a) of Article 72 refer to assets which relate to a business activity and do not refer to assets which are of a personal nature, unrelated to any business activity. (vi) intellectual property rights, including trademarks, industrial designs, layout-designs of integrated circuits, copyrights, patents, trade names, indications of source or geographical indications and undisclosed	91: For the purposes of this Chapter: (a) the term "Area" means with respect to a Party: (i) the territory of that Party, including its territorial sea; and (ii) the exclusive economic zone and the continental shelf with respect to which that Party exercises sovereign rights or jurisdiction in accordance with international law; (b) the term "buyer credit" means a fixed amount of credit under a financing contract between an investor and a buyer or a consumer, under which the investor of a Party makes a loan directly to the buyer of imported goods or the consumer of services other than financial services in the Area of the other Party specifically for the purpose of enabling the buyer or the consumer to make payments to a seller of the goods or a provider of the services in the Area of the former Party in relation to the sales contract of the goods or the services between the seller or

	(c) same with PJEPA (a) (d) the term "freely usable currency" means any currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets as defined under the Articles of Agreement of the International Monetary Fund, as may be amended; (e) same with PJEPA (b) (i) an enterprise; (ii) – (v) same with PJEPA (b),ii – v respectively (vi) intellectual property rights, including copyrights, patent rights, and rights relating **to utility models**, trademarks, industrial designs, layout-designs of integrated circuits, new plant varieties, trade names, indications of source or geographical indications, undisclosed information, **which are conferred pursuant to the laws and regulations of each Country;** *same with PJEPA (b), vi with additional words in **bold** (vii) – (viii) same with PJEPA (b), vii – viii respectively (viii) same with PJEPA (b), viii Note 1: Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.	information; *somewhat the same with PJEPA (vii) same with PJEPA (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges; (b) the term "investments" also includes amounts yielded by investments, 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 investments; (c) the term "investor" means any person that seeks to make, is making, or has made, investments; (d) the term "person" means either a natural person or an enterprise; (e) the term "investor of the other Party" means any natural person of the other Party or any enterprise of the other Party; (f) the term "natural person of the other Party" means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party: (i) in respect of Japan, is a national of Japan; and (ii) in respect of Singapore, is a national of Singapore or has the right of permanent residence in Singapore; (g) the term "enterprise" means any legal person or any other entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organization, company or branch;	the provider and the buyer or the consumer, but does not include a credit which is repaid within 3 years from the starting date of the financing contract; (c) the term "direct investment enterprise" means: (i) an enterprise in the Area of a Party in which an investor of the other Party directly owns at least 10 per cent of the total equity interest in the enterprise; or (ii) an enterprise in the Area of a Party in which an investor of the other Party, whether directly and indirectly, or indirectly, owns equity interest such that at least 10 per cent of the total equity interest in that enterprise is attributable to such investor; (d) the term "direct investor" means: (i) an investor of a Party who directly owns at least 10 per cent of the total equity interest in an enterprise in the Area of the other Party; or (ii) an investor of a Party who directly and indirectly, or indirectly, owns equity interest in an enterprise in the Area of the other Party such that at least 10 per cent of the total equity interest in that enterprise is attributable to such investor; Note: For the purposes of subparagraphs (c) and (d) above, "indirectly owns" means ownership of equity interest in an enterprise by an investor through one or more successive enterprises, each of which directly owns at least 10 per cent of the total equity interest of the next enterprise. Such ownership by the investor shall be based on the investor's level of equity interest in such enterprises. The level of equity interest in each enterprise shall be sufficient to ensure attribution of at least 10 per cent of the total equity interest of that enterprise to that investor. (e) the term "enterprise of the other Party" means any legal entity duly constituted or organised under applicable law of the other Party, whether for profit or otherwise, and whether privately-

	Note 2: Whether a particular right conferred pursuant to laws and regulations or contracts, as referred to in subparagraph (vii), has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of the Country. For greater certainty, the foregoing is without prejudice to whether any asset associated with such right has the characteristics of an investment. Note 3: Investments do not include an order or judgment entered in a judicial or administrative action. (f) the term "investor of a Country" means a natural person of a Country or an enterprise of a Country, except branch of an enterprise of a third State which is located in the Country; (g) the term "natural person of a Country" means a natural person who resides in a Country or elsewhere and who under the law of the Country: (i) in respect of Japan, is a national of Japan; and (ii) in respect of Malaysia, is a national of Malaysia or has the right of permanent residence in Malaysia; and (h) the term "portfolio investment" means: (i) shares, stocks or other forms of equity participation in an enterprise traded in a securities exchange, which amount to less than 10 percent of the total capital of such enterprise; or (ii) debt securities, such as bonds, notes	(h) the term "enterprise of the other Party" means any enterprise duly constituted or otherwise organized under applicable law of the other Party, except an enterprise owned or controlled by persons of non-Parties and not engaging in substantive business operations in the territory of the other Party; and (i) an enterprise is: (i) "owned" by persons of non-Parties if more than 50 percent of the equity interest in it is beneficially owned by persons of non-Parties; and (ii) "controlled" by persons of non-Parties if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organisation, company or branch; (f) an enterprise is: (i) "owned" by persons of a Party or a non-Party if more than 50 per cent of the equity interest in it is beneficially owned by such persons; and (ii) "controlled" by persons of a Party or a non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; (g) same with PJEPA (a) (h) the term "freely usable currencies" means freely usable currencies as determined by the International Monetary Fund under the Articles of the Agreement of the International Monetary Fund, as may be amended; (i) the term "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments; Note: With respect to Article 111, the term "investment activities" includes those activities by investors of non-Parties, in which case the term "investments" also includes those owned by investors of non-Parties. (j) the term "investments" means: (i) the following assets owned by a direct investor: (AA) shares, stocks or other forms of equity interest in a direct investment enterprise, including rights derived therefrom;

	and financial derivatives, the original maturity of which is less than 12 months, unless such debt securities are arising out of intra-company debt transactions between an investor of a Country and an enterprise in the other Country of which 10 percent or more of the shares, stocks, or other forms of equity are directly or indirectly owned by the investor, or which is directly or indirectly controlled by the investor.		(BB) reinvested earnings in a direct investment enterprise; or (CC) bonds, debentures, other debt instruments and loans between a direct investor and its direct investment enterprise, including rights derived therefrom; (ii) the following assets owned by a direct investment enterprise or its direct investor, arising out of transactions between the direct investor and the direct investment enterprise: (AA) claims to money and claims to any performance under contracts having a financial value; (BB) intellectual property rights as recognised by the laws and regulations of the Party in whose Area the investment is made; (CC) rights conferred pursuant to the laws and regulations of the Party in whose Area the investment is made or contracts such as concessions, licences, authorisations, and permits; or (DD) any other tangible and intangible, movable and immovable property, and any property rights, such as leases, mortgages, liens and pledges; or (iii) the following assets directly owned by an investor: (AA) supplier credit where the original maturity is at least 3 years; (BB) buyer credit where the original maturity is at least 3 years; (CC) project financing where the original maturity is at least 5 years; or (DD) rights under turnkey contracts; Note 1: The term “investments” includes amounts

			yielded by investments, in particular, profits, capital gains, dividends, royalties, interests, fees and other current incomes. A change in the form in which assets are invested does not affect their character as investments. Note 2: With respect to subparagraph 1(c) of Article 90, the term "investments" also includes those owned by investors of non-Parties. (k) the term "investor of the other Party" means a national or an enterprise that is making, or has made, investments in the Area of a Party and is a national or an enterprise of the other Party, except a branch of an enterprise of a non-Party which is located in the Area of the other Party; (l) the term "measure" means any measure by a Party whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form; (m) the term "measures by a Party" means measures adopted or maintained by central or local governments and authorities; (n) the term "national of the other Party" means a natural person having the nationality of the other Party in accordance with its applicable laws and regulations; (o) the term "person" means either a natural person or an enterprise; (p) the term "project financing" means a loan under a financing contract under which an investor of a Party makes a loan of a fixed amount to an enterprise established in the Area of the other Party for the specific purpose of enabling that enterprise to carry out a particular project, where the assets of the project are furnished as collateral for the loan, but does not include a loan which is repaid within 5 years from the starting date of the financing contract; Note: The project referred to in subparagraph (p) above shall be economically value-added and not purely engaged in financial transactions only.

			(q) the term "reinvested earnings" means direct investor's share, in proportion to equity interest, of earnings which are not distributed as dividends or remitted from a direct investment enterprise to its direct investor; (r) the term "supplier credit" means a fixed amount of credit under a financing contract between an investor and a buyer or a consumer, under which the investor who is a seller of exported goods or a provider of services other than financial services in the Area of a Party allows the buyer of the goods or the consumer of the services in the Area of the other Party to defer payment under the sales contract of the goods or the services between the investor and the buyer or the consumer, but does not include a credit which is repaid within 3 years from the starting date of the financing contract; and (s) same with PJEPA (f)
Observance of the Provisions of this Chapter	*no article	*no article	92: In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by its local governments and authorities within its Area.
National Treatment	75: 1. Same with PJEPA but instead of the word Party, Country was used. **Additional:** **2. This Article shall not apply to the establishment, acquisition and expansion of portfolio investments.** **3. Notwithstanding the provisions of paragraph 1 of this Article, each Country may prescribe special formalities in connection with the establishment of investments by investors of the other Country in the former Country such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.**	73: Each Party shall within its territory accord to investors of the other Party and to their investments in relation to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments, treatment no less favorable than the treatment which it accords in like circumstances to its own investors and investments (hereinafter referred to in this Chapter as "national treatment").	93: 1. In the sectors inscribed in Part 1 of Annex 6, and subject to any conditions and qualifications set out therein, each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to the establishment, acquisition and expansion of investments in its Area. 2. Each Party shall, subject to its laws and regulations existing on the date of entry into force of this Agreement, accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its Area. 3. Paragraph 2 above shall not apply to any measures

			specified by a Party in Part 2 of Annex 6.
Most-Favored-Nation Treatment	76: same with PJEPA but instead of "non-Party", "third State" was used.		96: 1. If, after this Agreement enters into force, a Party enters into any agreement on investment with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement with respect to the establishment, acquisition and expansion of investments. 2. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party and to their investments with respect to **the management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its Area.** ***same with PJEPA but the last two words in PJEPA was changed into the bold letters.** 3. Paragraph 2 above shall not be construed so as to oblige a Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege which may be extended by the former Party by virtue of any customs union, free trade area, a monetary union, similar international agreements leading to such unions or free trade areas, or other forms of regional economic cooperation to which either Party is or may become a party. 4. Paragraph 2 above shall not apply to any measures specified by a Party in Part 3 of Annex 6.
General Treatment (Brunei [Art 59]; Thai [95]-Minimum Standard of Treatment)	77: Each Country shall accord to investments of investors of the other Country fair and equitable treatment and full protection and security.	*no article	95: same with PJEPA Note: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, **and do not create additional substantive rights.** A determination that there has been a breach of another provision of this Agreement, or of a

			separate international agreement, does not establish that there has been a breach of this Article. *same with PJEPA with additional words in **bold**
Access to the Courts of Justice	78: Each Country shall in that Country accord to investors of the other Country treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of a third State with respect to access to its courts of justice and administrative tribunals and **agencies**, both in pursuit and in defence of such investors' rights. *almost the same. Party → Country Non-Party → third state *no "in all degrees" after the bold word. **Additional :** **Note: This Article shall apply in respect of taxation measures, where Article 81 applies to taxation measures.**	74: Each Party shall **within its territory** accord to investors of the other Party treatment no less favorable than the treatment which it accords in like circumstances to its own <u>investors</u>, with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction both in pursuit and in defense of such investors' rights. *same with PJEPA but: - no "or investors of a non-Party" after the underlined word - addition of **bold words**	94: same with PJEPA
Performance Requirements	*no article	*no article	97: 1. Nothing in this Chapter shall prevent either Party from imposing or enforcing, as a condition for investment activities in its Area, any performance requirements, unless otherwise specified in Part 1 of Annex 6. 2. Nothing in this Chapter shall prevent either Party from imposing or enforcing, as a condition for granting or continued granting of an advantage, any performance requirements in connection with investment activities in its Area, unless otherwise specified in Part 1 of Annex 6. 3. Nothing in this Article and Annex 6 shall affect the rights and obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended.
Schedule of Specific Commitments	*no article	*no article	98: 1. Each Party shall set out in a schedule the specific commitments it undertakes under paragraph 1 of Article 93 and paragraphs 1 and 2 of Article 97. 2. With respect to sectors where the commitments are undertaken, each Schedule of specific commitments in

			Part 1 of Annex 6 shall specify, where applicable: (a) conditions and qualifications on national treatment; and (b) any commitments on performance requirements. 3. Schedule of specific commitments shall be annexed to this Agreement as Part 1 of Annex 6.
Modification of Commitments	*no article	*no article	99: Any modification or withdrawal of specific commitments under this Chapter shall be made in accordance with Article 171. In the negotiations for such modification or withdrawal, the Parties shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to investment than that provided for in their Schedules of specific commitments in Annex 6 prior to such negotiations.
Acquired Treatment	*no article	*no article	100: Each Party shall maintain, in accordance with its laws and regulations, the level of treatment which has been accorded to investors of the other Party and their investments with respect to investment activities.
Transparency	*no article	*no article	101: 1. Each Party shall ensure that its laws, regulations, administrative procedures, and administrative rulings of general application with respect to any matter covered by this Chapter are published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them. 2. To the extent possible under its domestic laws and regulations, each Party shall: (a) publish any such laws, regulations, administrative procedures and administrative rulings of general application that it adopts; and (b) provide interested persons and the other Party a reasonable opportunity to comment on such measures.
Prohibition of Performance Requirements	79: 1. For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended, is incorporated into and forms part of this	75: 1. Neither Party shall impose or enforce any of the following requirements as a condition for the establishment, acquisition, expansion, management, operation, maintenance, use or possession of investments in its territory of an	*no article

	Agreement, mutatis mutandis. 2. The Countries shall enter into further consultations, at the earliest possible time. The aim of such consultations is to review issues pertaining to prohibition of performance requirements within five years from the date of entry into force of this Agreement. 3. The aim of consultations referred to in paragraph 2 of this Article may include the review of reservations relating to prohibition of performance requirements.	investor of the other Party: (a) – (b) same with PJEPA (c) to purchase or use goods produced or services provided in the territory of the former Party, or to purchase goods or services from natural or legal persons in the territory of the former Party; (d) same with PJEPA but without "related to such investment activities;" in the end (e) to restrict sales of goods or **services in the territory of the former Party that such investments produce or provide** by relating such sales to the volume or value of its exports or foreign exchange earnings; *non-bold words are same with PJEPA but the **bold ones are not (or are stated in a different way)** (f) to transfer technology, a production process or other proprietary knowledge to a **natural or legal person of the former Party**, except when the requirement: *same with PJEPA but instead of "person in its Area" the words in bold were used. (i) same with PJEPA (h),i (ii) same with PJEPA (h), ii but without the "(hereinafter…)" (g) same with PJEJA (i) except that the "in its Area" was changed into "in the territory of the former Party;" (h)) same with PJEJA (j) except that the "in its Area" was changed into "in the territory of the former Party;" (i) to supply one or more of the goods that it produces or the services that it provides to a specific region outside the territory of the former Party exclusively from the territory of the former	

		Party. 2. Each Party is not precluded by paragraph 1 above from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory of an investor of the other Party, on compliance with any of the requirements set forth in sub-paragraphs (f) through (i) of paragraph 1 above. 3. Nothing in this Article shall be construed so as to derogate from the obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement.	
Specific Exceptions	*no article	76: 1. Articles 73 and 75 shall not apply to investors and investments, in respect of: (a) any exception specified by the Parties in Annexes V A and V B; and (b) an amendment or modification to any exception referred to in sub-paragraph (a) above, provided that the amendment or modification does not decrease the level of conformity of the exception with Articles 73 and 75. 2. The exceptions referred to in sub-paragraph (a) of paragraph 1 above shall include the following elements, to the extent that these elements are applicable: (a) sector or matter; (b) obligation or article in respect of which the exception is taken; (c) legal source or authority of the exception; and (d) succinct description of the exception. 3. If a Party makes an amendment or modification referred to in sub-paragraph (b) of paragraph 1 of this Article, that Party shall, prior to the implementation of the amendment or modification, or in exceptional circumstances, as soon as possible	*no article

		thereafter: (a) notify the other Party of the elements set out in paragraph 2 above; and (b) provide to the other Party, upon request, particulars of the amended or modified exception. 4. Each Party shall endeavor, where appropriate, to reduce or eliminate the exceptions specified in Annexes V A and V B respectively.	
Reservations and Exceptions	80: 1. Articles 75 and 76 and paragraph 1 of Article 79 shall not apply to: (a) any existing non-conforming measure that is maintained by the following, as set out in sectors, sub-sectors or activities listed in Annex 4 and indicated with an asterisk ("*"): (i) the central government of a Country; or (ii) a prefecture of Japan or a state of Malaysia, as set out in Annex 4 in accordance with paragraph 5 of this Article; (b) any existing non-conforming measure that is maintained by a local government of a Country other than prefectures and states referred to in subparagraph (a)(ii); (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or (d) an amendment or modification of any measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the level of conformity of the measure, as it existed immediately before the amendment or modification, with Articles 75 and 76 and	*no article	*no article

	paragraph 1 of Article 79. 2. Each Country reserves the right to adopt or maintain any measure not conforming with the obligations imposed by Articles 75 and 76 and paragraph 1 of Article 79, for sectors, sub-sectors or activities listed in Annex 4 other than those referred to in paragraph 1 of this Article. 3. Any amendment or modification of an existing measure or adoption of a new measure for sectors, sub-sectors or activities referred to in paragraph 2 of this Article, shall not be more restrictive to existing investors and existing investments than the measure applied to such investors and investments immediately before such amendment or modification or adoption, unless such sectors, sub-sectors or activities are indicated with the symbol "+" in Annex 4. 4. For the purposes of this Article: (a) the terms "existing investors" and "existing investments" mean respectively investors whose investments are present in a Country, and investments that are present in a Country, immediately before the modification or amendment of existing measures, or adoption of new measures; and (b) any expansion or diversification of existing investments by existing investors after the modification or amendment of existing measures or adoption of new measures shall not be regarded as existing investments to the extent of such expansion or diversification. 5. Each Country shall set out in Annex 4,		

	within six months after the entry into force of this Agreement, any existing non-conforming measure, with an asterisk (“*”), maintained by a prefecture or a state as referred to in subparagraph 1(a)(ii) of this Article and shall notify thereof the other Country by a diplomatic note. 6. Neither Country may, under any measure adopted pursuant to paragraph 2 of this Article after the entry into force of this Agreement, require an investor of the other Country, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority. 7. In cases where a Country makes an amendment or modification of existing measures or adopts new measures with respect to sectors, sub-sectors or activities listed in Annex 4: (a) that Country shall notify the other Country to the extent possible, the amendment or modification or new measures, and whenever possible prior to implementation, if not, as soon as possible thereafter; and (b) that Country upon the request by the other Country shall hold consultation in good faith with that other Country with a view to achieving mutual satisfaction. 8. Notwithstanding the provisions of this Article, each Country may, in exceptional financial, economic or industrial circumstances, adopt exceptional measure inconsistent with Articles 75 and 76 and paragraph 1 of Article 79 in the sectors, sub-sectors or		

	activities listed in Annex 4 with an asterisk ("*"), provided that such Country shall, to the extent possible prior to the entry into force of the measure, or as soon as possible thereafter: (a) notify the other Country of the elements of the measure; and (b) hold, upon the request by the other Country, consultations in good faith with the other Country with a view to achieving mutual satisfaction and take appropriate action thereafter. 9. Each Country shall endeavour, where appropriate, to reduce or eliminate the reservations specified in Annex 4. 10. Articles 75, 76 and 79 shall not apply to any measure that a Country adopts or maintains with respect to government procurement. 11. Articles 75 and 76 shall not apply to any measure covered by an exception to, or derogation from, the obligations under Articles 3 and 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended (hereinafter referred to as "the TRIPS Agreement"), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.		
Special Formalities and Information Requirements	*no article	*no article	*no article
Expropriation and Compensation	81: 1. Neither Country shall take any measures of or equivalent to expropriation or nationalisation against the investments in that Country of investors of the other Country (hereinafter referred to in this Chapter as "expropriation") except:	77: 1. Each Party shall accord to investments in its territory of investors of the other Party fair and equitable treatment and full protection and security. 2. Neither Party shall expropriate or nationalize investments in its territory of an investor of the	102: 1-2 Same with PJEPA 3. The compensation shall be paid without delay and shall carry an appropriate interest, in accordance with the laws and regulations of the Party making the

	(a) for a **lawful or** public purpose; *same with PJEPA with added words in bold (b) – (d) same with PJEPA 2. Such compensation shall be equivalent to the fair market value of the expropriated investments: (a) at the time when or immediately before the expropriation was publicly announced; or (b) when the expropriation occurred, whichever is the earlier. 3. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier. 4. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. It shall be: (a) effectively realisable; (b) freely transferable; and (c) freely convertible at the market exchange rate prevailing on the date of the expropriation into the currency of the Country of the investors concerned and freely usable currencies. 5. This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation.	other Party or take any measure equivalent to expropriation or nationalization (hereinafter referred to in this Chapter as "expropriation") except for a public purpose, on a nondiscriminatory basis, in accordance with due process of law, and upon payment of compensation in accordance with this Article. 3. Compensation shall be equivalent to the fair market value of the expropriated investments. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier, but may, insofar as such expropriation relates to land, reflect the market value before the expropriation occurred, the trend in the market value, and adjustments to the market value in accordance with the laws of the expropriating Party concerning expropriation. 4. same with PJEPA 5. The investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investor's case or the amount of compensation **that has been assessed** in accordance with the principles set out in this Article. *same as PJEPA but with additional words in **bold**	expropriation. It shall be effectively realisable and freely transferable in a freely usable currency and shall be freely convertible, at the market exchange rate prevailing on the date of the expropriation, into the currency of the Party of the investors concerned and freely usable currencies. 4. same with PJEPA
Repurchase of Leases	*no article	78: If an agency of the government of a Party responsible for leasing industrial land repurchases a	

		leasehold interest in land owned by an investor of the other Party, that agency shall take into consideration the following matters: (a) the value attributable to the remaining period of such leasehold interest; (b) priority allocation by the agency of a suitable, alternative property for the investor; and (c) reasonable relocation costs that would be incurred by the investor in relocating to the alternative property within the territory of the Party.	
Protection from Strife	82: 1. Each Country shall accord to investors of the other Country that have suffered loss or damage relating to their investment activities in the former Country due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the former Country, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than **that which it accords to its own investors or to investors of a third State, whichever is more favourable to the investors of the other Country.** *same with PJEPA except: *** bold words are additional and rephrased words** *****used the word "country" instead of "party" 2. same with PJEPA	79: 1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the territory of the former Party due to armed conflict, or state of emergency such as revolution, insurrection and civil disturbance, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than **that which it accords to its own investors.** * no "or any other similar event in the Area of that former Party," after civil disturbance * bold words are stated in a different way 2. same with PJEPA	103: 1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than **that which it accords to its own investors or to investors of a non-Party.** *same with PJEPA except the last two lines which were stated differently 2. same with PJEPA with additional "in a freely usable currency" in the end.
Transfers	83: 1. Each Country shall allow all transfers to be made into and out of that Country freely and without delay in any freely usable currency. Such transfers shall include: (a) same with PJEPA	80: 1. Each Party shall allow all payments relating to investments in its territory of an investor of the other Party to be freely transferred into and out of its territory without delay. Such transfers shall include: (a) – (d) – same with PJEPA	104: 1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely in a feely usable currency and without delay. Such transfers shall include: (a) – (e) same with PJEPA

	(b) same with PJEPA + **"of the investors of the other Country;"** in the end (c) same with PJEPA + **"of investors of the other Country;"** in the end (d) same with PJEPA (e) earnings, remuneration and other compensation of personnel from the other Country who work in connection with investments in the former Country; (f) payments made in accordance with Articles 81 and 82; and (g) payments arising out of the settlement of a dispute under Article 85. **Additional:** **2. Each Country shall allow transfers referred to in paragraph 1 of this Article to be made in a freely usable currency at the market rate of exchange prevailing on the date of the transfer.** **3. Subject to paragraphs 1 and 2 of this Article, each Country shall accord to the transfer referred to in paragraph 1 of this Article treatment no less favourable than that accorded to the transfer originating from investments made by investors of any third State.** 4. Notwithstanding paragraphs 1 and 2 of this Article, a Country may delay or prevent a transfer referred to in paragraph 1 of this Article through the equitable, non-discriminatory and good-faith application of its laws relating to: (a) same with PJEPA (b) issuing, trading or dealing in	(e) earnings of investors of a Party who work in connection with investments in the territory of the other Party; (f) payments made in accordance with Articles 77 and 79; and (g) payments arising out of the settlement of a dispute under Article 82. 2. Each Party shall allow transfers to be made without delay in a freely usable currency at the market rate of exchange prevailing on the date of transfer. 3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or prevent a transfer through the equitable, nondiscriminatory and good-faith application of its laws relating to: *same with PJEPA but no "into and out of its Area" after the word transfer (a) same with PJEPA (b) the issuing, trading or dealing in securities; (c) criminal matters; (d) same with PJEPA's (e) (e) obligations of investors arising from social security and public retirement plans.	(f) payments made in accordance with Articles 102 and 103; and (g) payments arising out of the settlement of a dispute under Article 106. 2. Neither Party shall prevent transfers **referred to in paragraph 1 above** from being made without delay in a freely usable currency at the market rate of exchange prevailing on the date of the transfer. * same except the **bold words** 3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or prevent a transfer **referred to in paragraph 1 above** through the equitable, non-discriminatory and good-faith application of its laws relating to: * same except the **bold words** (a) same with PJEPA (b) issuing, trading or dealing in securities; (c) criminal matters; or (d) same with PJEPA (e)

	securities; (c) same with PJEPA (d) same with PJEPA (e) (e) obligations of investors arising from social security and public retirement plans.		
Subrogation	84: 1. If a Country or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to an investment of that investor within the other Country, the other Country shall: (a) – (b) same but the used "Country" instead of "Party" 2. same to PJEPA but the articles are Articles 81, 82 and 83	81: 1. Same with PJEPA but used "territory" instead of "area" (a) – (b) same with PJEPA 2. same but article are "Paragraphs 2 to 5 of Article 77, and Articles 79 and 80"	105: Same with PJEPA but no. 2's articles were "Articles 102, 103 and 104"

Settlement of Investment Disputes between a Party and an Investor of the Other Party	85: 1. For the purposes of this Chapter, an "investment dispute" is a dispute between a Country and an investor of the other Country that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Chapter with respect to the investments of the investor of the other Country. Note: This Article shall apply in respect of taxation measures, where Article 81 applies to taxation measures. 2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement within the Country that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Country"). 3. An investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute. 4. If the investment dispute cannot be settled through such consultations within five months from the date on which the disputing investor requested for the consultations in writing and if the disputing investor concerned has not submitted the investment dispute for resolution under administrative or judicial settlement, the disputing investor may: (a) submit the investment dispute to the Kuala Lumpur Regional Centre for Arbitration (hereinafter referred to as "KLRCA") for settlement by conciliation or arbitration;	82: 1. For the purposes of this Chapter, an investment dispute is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Chapter with respect to the investments of the investor of that other Party. 2. In the event of an investment dispute, such investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute. 3. If an investment dispute cannot be settled through such consultations within five months from the date on which the investor requested for the consultations in writing, and if the investor concerned has not submitted the investment dispute for resolution (i) under administrative or judicial settlement, or (ii) in accordance with any applicable, previously agreed dispute settlement procedures, that investor may either: (a) request the establishment of an arbitral tribunal in accordance with the procedures set out in Annex V C and submit the investment dispute to that tribunal; (b) submit the investment dispute to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965 (hereinafter referred to in this Chapter as "the ICSID Convention"), so long as the ICSID Convention is in force between the Parties, or conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Chapter as "ICSID") so long as the ICSID Convention is not in force between the Parties; or (c) submit the investment dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade	106: 1. For the purposes of this Chapter, an investment dispute is a dispute between a Party and an investor of the other Party concerning a claim that the investor has incurred loss or damage by reason of, or arising out of, an alleged breach of an obligation under this Chapter by the former Party. 2. In the event of an investment dispute, such investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute. 3. If the investment dispute cannot be settled through such consultations within 6 months from the date on which the investor requested for the consultations in writing and if the investor concerned has not submitted the investment dispute for resolution to courts of justice or administrative tribunals under the law of the Party that is a party to the investment dispute (hereinafter referred to in this Article as the "disputing Party"), that investor may submit the investment dispute to one of the following international conciliations or arbitrations: (a) conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, 18 March 1965, as may be amended (hereinafter referred to in this Article as "the ICSID Convention"), provided that both Parties are parties to the ICSID Convention; (b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, as may be amended provided that one of the Parties is a party to the ICSID Convention; or (c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on 28 April 1976, as may be amended.

	(b) submit the investment dispute to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965, as may be amended; (c) submit the investment dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976, as may be amended; or (d) if agreed with the disputing Country, submit the investment dispute to arbitration in accordance with other arbitration rules. 5. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified in this Article. 6. The disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 4 of this Article shall give to the disputing Country written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify: (a) the name and address of the disputing investor; (b) the specific measures of the disputing Country at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the	Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976. 4. Each Party hereby consents to the submission of investment disputes to international conciliation or arbitration as provided for in paragraph 3 above, in accordance with the provisions of this Article, provided that: (a) less than three years have elapsed since the date the investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the investor; and (b) in the case of arbitration in accordance with the provisions of the ICSID Convention referred to in sub-paragraph (b) of paragraph 3 above, if the Chairman of ICSID is asked to appoint an arbitrator or arbitrators pursuant to Article 38 or 56(3) of the ICSID Convention, the Chairman: (i) allows both the Party and the investor to each indicate up to three nationalities, the appointment of arbitrators of which pursuant to Article 38 or 56(3) of the ICSID Convention is unacceptable to it; and (ii) does not appoint as arbitrator any person who is, by virtue of sub-paragraph (i) above, excluded by either the Party or the investor or both the Party and the investor. 5. When the condition set out in sub-paragraph (a) of paragraph 4 above is not met, the consent given in paragraph 4 above shall be invalidated. 6. When the conditions set out in sub-paragraph (b) of paragraph 4 of this Article are not met, the consent to arbitration by ICSID given in paragraph 4 of this Article shall be invalidated. In such circumstances, a different method of dispute settlement can be chosen from among those methods provided for in paragraph 3 of this Article other than ICSID arbitration. 7. Paragraphs 3 and 4 of this Article shall not apply if an investor which is an enterprise of a Party owned or controlled by persons of non-Parties	In respect of a particular claim, exercise of the right under this paragraph to submit an investment dispute to an arbitration shall be deemed to have been made to the exclusion of any other dispute settlement procedures specified in this paragraph and proceedings before courts of justice or administrative tribunals under the law of the disputing Party, unless the arbitration proceedings have been terminated before a final award on the merit of the case has been rendered. 4. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified by this Article. 5. An investor that is a party to an investment dispute who intends to submit an investment dispute pursuant to subparagraph 3(a), (b) or (c) above (hereinafter referred to in this Article as the "disputing investor") shall give to the disputing Party written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify: (a) the name and address of the disputing investor; (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and (c) the dispute settlement procedures set forth in subparagraph 3(a), (b) or (c) above which the disputing investor intends to choose. 6. Each Party hereby consents to the submission of investment disputes to international conciliation or arbitration as provided for in this Article. If more than 2 years have elapsed since the date the disputing investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the disputing investor, the consent above shall be invalidated.

	provisions of this Chapter alleged to have been breached; and (c) the dispute settlement procedures set forth in paragraph 4 of this Article which the disputing investor will seek. 7. Each Country hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration chosen by the disputing investor as provided for in paragraph 4 of this Article. If more than three years have elapsed since the date the disputing investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the disputing investor, the consent above shall be invalidated. 8. Notwithstanding paragraph 4 of this Article and subject to the laws of the disputing Country, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or a court of justice. 9. Unless the disputing investor and the disputing Country (hereinafter referred to as "the disputing parties") agree otherwise, an arbitral tribunal established under subparagraphs 4(a), (b) and (c) of this Article shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Country fails to appoint an arbitrator within 60 days from the date on which the investment dispute was submitted to arbitration, the Director of KLRCA, in the	submits an investment dispute with respect to its investments in the territory of the other Party, unless the investments concerned have been established, acquired or expanded in the territory of that other Party. 8. An investor to an investment dispute who intends to submit an investment dispute pursuant to paragraph 3 of this Article shall give to the Party that is a party to the investment dispute written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify: (a) the name and address of the investor concerned; (b) the specific measures of that Party at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and (c) the dispute settlement procedures set forth in sub-paragraph (a), (b) or (c) of paragraph 3 of this Article which the investor will seek. 9. When an investor of a Party submits an investment dispute pursuant to paragraph 3 of this Article and the disputing Party invokes Article 84 or 85, the arbitrators to be selected shall, on the request of the disputing Party or investor, have the necessary expertise relevant to the specific financial matters under dispute. 10. (a) The award shall include: (i) a judgment whether or not there has been a breach by a Party of any rights conferred by this Chapter in respect of the investor of the other Party and its investments; and (ii) a remedy if there has been such breach. (b) The award rendered in accordance with subparagraph (a) above shall be final and binding upon the Party and the investor, except to the extent provided for in sub-paragraphs (c) and (d) below.	7. Paragraph 3 above shall not prevent the disputing investor from initiating or continuing an action that seeks interim injunctive relief that does not involve the payment of damages before courts of justice or administrative tribunals under the law of the disputing Party provided that the action is brought for the sole purpose of preserving the disputing investor's rights and interests while the arbitration is pending. 8. Unless the disputing investor and the disputing Party (hereinafter referred to in this Article as the "disputing parties") agree otherwise, the arbitral tribunal shall comprise 3 arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator within 75 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes, upon request by either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed subject to the requirement of paragraphs 9 and 10 below. 9. Unless the disputing parties agree otherwise, the third arbitrator shall not be of the same nationality as the disputing investor, nor be a national of the disputing Party, nor have his or her usual place of residence in the Area of either of the Parties, nor be employed by either of the disputing parties at the time of his or her appointment. 10. Each of the disputing parties may indicate up to 3 nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the International Centre for Settlement of Investment Disputes may not appoint as an arbitrator any person whose nationality is indicated by any of the disputing parties. 11. Any arbitration under this Article shall be held in a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, as may be

	case of arbitration referred to in subparagraph 4(a) of this Article, or the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID"), in the case of arbitration referred to in subparagraphs 4(b) and (c) of this Article, on the request of either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed from the KLRCA or ICSID Panel of Arbitrators respectively subject to the requirement of paragraphs 10 and 11 of this Article. 10. Unless the disputing parties agree otherwise, the third arbitrator shall not be of the same nationality as the disputing investor, nor be a national of the disputing Country, nor have his or her usual place of residence in either of the Countries, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity. 11. In the case of arbitration referred to in subparagraph 4(a), (b) and (c) of this Article, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Director of KLRCA, in the case of arbitration referred to in subparagraph 4(a) of this Article, or the Secretary-General of ICSID, in the case of arbitration referred to in subparagraphs 4(b) and (c) of this Article, may not appoint as arbitrator any person whose nationality is indicated by any of the disputing parties. 12. Unless the disputing parties agree otherwise, the arbitration shall be held in the disputing Country.	(c) Where an award provides that there has been a breach by a Party of any rights conferred by this Chapter in respect of the investor of the other Party and its investments, the Party to the dispute is entitled to implement the award through one of the following remedies, in lieu of the remedy indicated pursuant to (ii) of subparagraph (a) of this paragraph: (i) pecuniary compensation, including interest from the time the loss or damage was incurred until time of payment; (ii) restitution in kind; or (iii) pecuniary compensation and restitution in combination, provided that: (A) the Party notifies the investor, within 30 days after the date of the award, that it will implement the award through one of the remedies indicated in (i), (ii) or (iii) of this subparagraph; and (B) where the Party chooses to implement the award in accordance with (i) or (iii) of this sub-paragraph, the Party and the investor agree as to the amount of pecuniary compensation, or in lieu of such agreement, a decision pursuant to sub-paragraph (d) below is made. (d) If the Party and the investor are unable to agree, within 60 days after the date of the award, as to the amount of pecuniary compensation as provided for in (B) of sub-paragraph (c) above, the matter may be referred, by either the Party or the investor, to the arbitral tribunal that rendered the award. The award on the amount of pecuniary compensation in accordance with this paragraph is final and binding on both the Party and the investor. (e) The award shall be executed by the applicable laws and regulations concerning the execution of such awards in force in the Party in whose territory such execution is sought. 11. Nothing in this Article shall be construed so as to prevent an investor to an investment dispute	amended. 12. Where an arbitral tribunal makes a final award against a disputing Party, it may award, separately or in combination, only: (a) payment of monetary damages and applicable interest; and (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution. Costs may also be awarded in accordance with the applicable arbitration rules. 13. Any arbitral award rendered pursuant to this Article shall be final and binding upon the disputing parties. Each Party shall carry out without delay the provisions of any such award and provide in its Area for the enforcement of such award in accordance with its relevant laws and regulations. 14. In an arbitration under this Article, a Party shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages. 15. This Article shall not apply to investment disputes: (a) arising out of events which occurred, or to investment disputes which had been settled, prior to the entry into force of this Agreement; (b) with respect to obligations under Article 97; and (c) with respect to measures other than those relating to the management, conduct, operation, maintenance, use, enjoyment, and sale or other disposition of investments.

	13. On written notice to the disputing parties, the Country other than the disputing Country may make submission to the arbitral tribunal on a question of interpretation of this Agreement. 14. The award shall include: (a) a judgment whether or not there has been a breach by the disputing Country of any rights conferred by this Chapter in respect of the disputing investor and its investments; and (b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following: (i) payment of monetary damages and applicable interest; and (ii) restitution of property, in which case the award shall provide that the disputing Country may pay monetary damages and any applicable interest in lieu of restitution. Costs may also be awarded in accordance with the applicable arbitration rules. 15. The award rendered in accordance with paragraph 14 of this Article shall be final and binding upon the disputing parties. The disputing Country shall carry out without delay the provisions of any such award and provide in the disputing Country for the enforcement of such award in accordance with its relevant laws and regulations. 16. Neither Country shall, in respect of an investment dispute which one of its investors shall have submitted to arbitration in accordance with paragraph 4 of this Article, give diplomatic protection,	from seeking administrative or judicial settlement within the territory of the Party that is a party to the investment dispute. 12. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which one of its investors and the other Party shall have consented to submit or shall have submitted to arbitration under this Article, unless such other Party shall have failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.	

	or bring an international claim before another forum, unless the other Country shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute. 17. This Article shall not apply to any dispute arising between a Country and an investor of the other Country on any right or privileges conferred or created by Articles 75 and 79. 18. An investor of a Country whose investments are not made in compliance with the laws and regulations of the other Country which are not inconsistent with this Agreement: (a) shall not be entitled to submit an investment dispute to conciliation or arbitration referred to in paragraph 4 of this Article; and (b) shall not resort to dispute settlement procedures under Chapter 13 as a means to settle the investment disputes between the investor and the other Country. Note: For the purposes of this paragraph, in respect of Malaysia, investments that are not made in compliance with the laws and regulations include investments that are not made in compliance with national policies endorsed by the Cabinet and announced and made publicly available in a written form by the Government of Malaysia.		

Special Formalities	*no article	*no article	107: Notwithstanding Articles 93 and 96, each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.
Facilitation of Movement of Investors	86: 1. Subject to its immigration laws and regulations relating to entry, stay and authorisation to work, each Country shall grant entry, temporary stay and authorisation to work to investors, and executives, managers and members of the board of directors of an enterprise of the other Country, for the purpose of establishing, developing, administering or advising on the operation in the former Country of an investment to which they, or an enterprise of the other Country that employs such executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources, so long as they continue to meet the requirements of this Article. Note: In respect of Malaysia, its obligations under this paragraph are also subject to the immigration policies, relating to entry, stay and authorisation to work, endorsed by the Cabinet, and announced and made publicly available in a written form by the Government of Malaysia. 2. Each Country shall, to the extent possible, make publicly available, requirements and procedures for application for a renewal of the period of temporary stay, a change of status of temporary stay or an issuance of a work permit for a natural person of the other Country who has been granted entry and temporary stay with respect to an investment. Each Country shall endeavour	*no article	*no article

	to facilitate the procedures to the extent possible, in accordance with its laws and regulations.		
General and Security Exceptions	87: In cases where a Country takes any measure pursuant to Article 10 that does not conform with the obligations of the provisions of this Chapter other than the provisions of Article 82, that Country shall so notify the other Country, to the extent possible prior to the entry into force of the measure, or if not, as soon thereafter as possible.	83: 1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investments of investors of a Party in the territory of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures: (a) and note - same with PJEPA (b) (b) same with PJEPA (c) necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to: (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract; (ii) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts; (iii) safety; (d) relating to prison labor; (e) imposed for the protection of national treasures of artistic, historic, or archaeological value; (f) to conserve exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.	*no article

		2. In cases where a Party takes any measure pursuant to paragraph 1 above or Article 4, which it implements after this Agreement comes into force, such Party shall make reasonable effort to notify the other Party of the description of the measure either before such measure is taken or as soon as possible thereafter, if such measure could affect investments or investors of the other Party in respect of obligations made under this Chapter.	
Temporary Safeguard Measures	88: 1. A Country may adopt or maintain measures not conforming with its obligations under Article 75 relating to cross-border capital transactions and Article 83: (a) – (b) same with PJEPA 2. Measures referred to in paragraph 1 of this Article: (a) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended, as applicable; (b) same with PJEPA (c) same with PJEPA + "or be phased out progressively as the situation specified in paragraph 1 of this Article improves; and" at the end (d) same but Party is change in Country 3. same with PJEPA + "as may be amended." at the end	84: 1. A Party may adopt or maintain measures inconsistent with its obligations provided for in **Article 73** relating to cross-border capital transactions **or Article 80:** *same with PJEPA except for the bold words (a) same with PJEPA (b) where, in exceptional circumstances, movements of capital result in serious economic and financial disturbance in the Party concerned. 2. The measures referred to in paragraph 1 above: (a) shall be consistent with the Articles of Agreement of the International Monetary Fund; (b) – (d) same with PJEPA; (e) shall not discriminate between the Parties; (f) shall ensure that the other Party is treated as favorably as any non-Party; and (g) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party. 3. same with PJEPA	108: 1. A Party may adopt or maintain measures inconsistent with its obligations under Article 93 relating to cross-border capital transactions and Article 104: (a) same with PJEPA (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause economic or financial crisis. 2. The measures referred to in paragraph 1 above: (a) shall ensure that the other Party is treated as favourably as any non-Party; (b) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended; (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party; (d) same with PJEPA (b) (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 above improves. 3. In determining the incidence of such measures, a Party may give priority to the sectors which are more essential to its economic development. However, such measures shall not be adopted or maintained for the purposes of protecting a particular sector. 4. Any measures adopted or maintained under paragraph 1 above, or any changes therein, shall be promptly

			notified to the other Party. 5. The Party applying any measures in accordance with paragraph 1 above may, upon request by the other Party, commence consultations with the other Party promptly in order to review the measures adopted by the former Party. 6. same with PJEPA 3 + "as may be amended" at the end
Prudential Measures (Thai: Prudential Measures and Measures to Ensure the Stability of the Macroeconomy or the Exchange Rate)	89: Notwithstanding any other provisions of this Chapter**, a Country shall not be prevented from taking** measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by **an enterprise** supplying financial services, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Country's commitments or obligations under this Chapter. *same but different in **bold words** *used Country instead of Party	85: 1. Notwithstanding any other provisions of this Chapter, **a Party shall not be prevented from taking measures for** prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by **an enterprise** supplying financial services, or to ensure the integrity and stability of the financial system. 2. same with the last sentence in PJEPA *words in **bold** were different	109: 1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking: (a) measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system; or (b) measures to ensure the stability of the macroeconomy or the exchange rate. Note: The measures referred to in subparagraph (b) above include measures relating to monetary policy or measures to deter speculative capital flows. Such measures shall be no more than necessary to meet the objectives of ensuring the stability of the macroeconomy or the exchange rate. Measures to ensure the stability of the macroeconomy or the exchange rate do not cover measures relating to promotion or protection of a particular sector. 2. same with the last sentence in PJEPA
Intellectual Property Rights	* no article	86: Notwithstanding the provisions of Article 73, the Parties agree in respect of intellectual property rights that national treatment as provided for in that Article shall apply only to the extent as provided for in the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement.	* no article
Environmental Measures	90: Each Country shall not encourage investments by investors of the other Country by relaxing its environmental	* no article	111: Each Party recognises that it is inappropriate to encourage investment by relaxing its environmental measures. To this effect, each Party shall not waive or

	measures.		otherwise derogate from such environmental measures as an encouragement for investment activities in its Area.
Relation to Other Obligations	* no article	* no article	* no article
Duration and Termination	* no article	* no article	* no article
Investment and Labor	* no article	* no article	* no article
Taxation Measures as Expropriation	* no article	87: 1. **Article 77** shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in **paragraph 2 of Article 77.** 2. Where paragraph 1 above applies, **Articles 74, 82, 88 and paragraph 1 of Article 89** shall also apply in respect of taxation measures. ***same with PJEPA but differs in bold words**	110: 1. **Article 102** shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of **Article 102.** 2. Where paragraph 1 above applies, **Articles 94 and 106** shall also apply in respect of taxation measures. ***same with PJEPA but differs in bold words** **Additional:** **3. (a) No investor may invoke Article 102 as the basis for an investment dispute under Article 106, where it has been determined pursuant to subparagraph (b) below that the measure is not an expropriation.** **(b) The investor who seeks to invoke Article 102 with respect to a taxation measure shall refer the issue, at the time that it gives a written request under paragraph 5 of Article 106, to the competent authorities of both Parties to determine whether such a measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 106.** **(c) For the purpose of subparagraph (b) above, the term "competent authorities" means:** **(i) in the case of Japan, the Minister of Finance or his authorised representative; and** **(ii) in the case of Thailand, the Minister of Finance or his authorised representative.**
Denial of Benefits	91: 1. A Country may deny the benefits of	*no article	112: 1. A Party may deny the benefits of this Chapter to

	this Chapter to an investor of the other Country that is an enterprise of the other Country and to an investment of such investor if investors of a third State own or control the enterprise, and the denying Country: (a) same but "non-Party" was changed into "third state" (b) same with PJEPA but: Non-party → third party Juridical person → enterprise **Addition:** **2. Subject to prior notification and consultation, a Country may deny the benefits of this Chapter to an investor of the other Country that is an enterprise of the other Country and to investments of such investor if investors of a third State own or control the enterprise and the enterprise has no substantial business activities in the Country under whose law it is constituted or organised.**		an investor of the other Party that is **an enterprise of that other Party and to investments of such investor where the Party establishes that the enterpris**e is owned or controlled by persons of a non-Party and the denying Party: *bold are written in a different way (a) same with PJEPA (b) same but "juridical person" was changed into "enterprise" **Additional:** **2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of such investor where the Party establishes that the enterprise is owned or controlled by persons of a non-Party and the enterprise has no substantive business operations in the Area of that other Party.**
Co-operation in Promotion and Facilitation of Investments	92: 1. Both Countries shall co-operate in promoting and facilitating investments between the Countries through ways such as: (a) discussing effective ways on investment promotion activities and capacity building; (b) facilitating the provision and exchange of investment information including information on their laws, regulations and policies to increase awareness on investment opportunities; and (c) encouraging and supporting investment promotion activities of each Country or their business sectors.	* no article	*no article

	2. The implementation of this Article shall be subject to the availability of funds and the applicable laws and regulations of each Country.		
Sub-Committee on Investment (Joint-Committee for Singapore)	1. For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 14 shall be: (a) exchanging information on any matters related to this Chapter; (b) reviewing and monitoring the implementation and operation of this Chapter and the reservations set out in Annex 4; (c) undertaking consultation to review the issues pertaining to the prohibition of performance requirements; (d) discussing any issues related to this Chapter, including issues related to co-operation in the promotion and facilitation of investments; (e) reporting the findings **and the outcome** of discussions of the Sub-Committee to the Joint Committee; and * same with PJEPA 2(d) with additional words in bold (f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13. 2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries. 3. The Sub-Committee shall be:	88: 1. For the purposes of effective implementation of this Chapter, a Joint Committee on Investment (hereinafter referred to in this Article as "the Committee") shall be established. The functions of the Committee shall be: (a) reviewing and discussing the implementation and operation of this Chapter; (b) reviewing the specific exceptions under paragraph 1 of Article 76 for the purpose of contributing to the reduction or elimination, where appropriate, of such exceptions, and encouraging favorable conditions for investors of both Parties; and (c) discussing other investment related issues concerning this Chapter. 2. The Committee may decide to hold a joint meeting with the private sector.	114: 1. – 2(a) same with PJEPA (b) exchanging information on any matters related to this Chapter; (c) discussing any issues related to this Chapter as may be agreed upon; (d) reporting the findings **and the outcome** of discussions of the Sub-Committee to the Joint Committee; and *same with PJEPA with additional words in bold (e) carrying out other functions which may be delegated by the Joint Committee in accordance with Article 13.

	(a) composed of representatives of the Governments; and (b) co-chaired by officials of the Governments.		
Further Negotiation	*no article	*no article	*no article
Review	*no article	*no article	114: The Parties shall enter into negotiations within 5 years after the date of entry into force of this Agreement for a general review of their commitments made under Articles 93 and 97 in all non-service sectors and shall enter into negotiation within the sixth year after the date of entry into force of this Agreement for a review of the provisions of paragraphs 4 and 6 of Article 90 and of Article 96.
Application of Chapter	*no article	89: 1. In fulfilling the obligations under this Chapter, each Party shall take such reasonable measures as are available to it to ensure observance by its local governments and non-governmental bodies in the exercise of power delegated by central or local governments within its territory. 2. If a Party has entered into an international agreement on investment with a non-Party, or enters into such an agreement after this Agreement comes into force, it shall favorably consider according to investors of the other Party and to their investments, treatment, in relation to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments, no less favorable than the treatment that it accords in like circumstances to investors of that non-Party and their investments pursuant to such an agreement.	*no article

Annex D. Trade Data of Japan- ASEAN member countries

**data in green= years with JEPA implemented*

Table 1. Philippine Imports and Exports to Japan (in US Dollar)

Philippines's exports to Japan							
Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
5,768,938	7,983,390	7,206,100	7,918,337	7,304,148	7,707,063	6,208,401	7,827,498
Philippines's imports from Japan							
8,295,476	8,050,849	8,464,166	7,676,911	7,219,107	7,121,851	5,764,923	7,304,746

Source: International Trade Centre calculations based on National Statistics Office, Republic of the Philippines statistics

Philippines's imports from Japan			
Value in 2010-Q4	Value in 2011-Q1	Value in 2011-Q2	Value in 2011-Q3
1,919,912	1,780,949	1,432,500	1,831,479
Philippines's exports to Japan			
Value in 2010-Q4	Value in 2011-Q1	Value in 2011-Q2	Value in 2011-Q3
2,102,775	1,992,205	2,297,858	2,391,674

Japan's Exports to Brunei Darussalam	
Period	Value in USD
Value in 2006	101, 295, 763
Value in 2007	123, 048, 125
Value in 2008	180, 725, 214
Value in 2009	162, 767, 495
Value in 2010	149, 665, 089

Table 4. Indonesia's Imports and Exports to Japan (in US Dollar)

Indonesia's exports to Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
12,045,115	13,603,494	15,962,109	18,049,140	21,732,123	23,632,790	27,743,856	18,574,730	25,781,814
Indonesia's imports from Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
4,409,307	4,228,257	6,081,608	6,906,255	5,515,773	6,526,674	15,129,173	9,843,729	16,965,801

Source: International Trade Centre based on UN COMTRADE statistics

Table 5. Malaysia's Imports and Exports to Japan (in US Dollar)

Malaysia's exports to Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
10,449,115	11,186,038	12,762,911	13,340,230	14,244,768	16,203,924	21,186,469	15,462,309	20,611,236
Malaysia's imports from Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
14,184,657	14,220,769	16,944,509	16,578,957	17,341,034	18,866,751	19,453,713	15,430,301	20,704,520

Source: International Trade Centre based on UN COMTRADE statistics

Table 6. Singapore's Imports and Exports to Japan (in US Dollar)

Singapore's exports to Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
8,939,660	9,690,096	11,560,622	12,531,722	14,857,375	14,387,841	16,659,803	12,283,093	16,410,345
Singapore's imports from Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
14,577,958	15,393,002	19,093,622	19,233,286	19,932,136	21,547,450	25,942,796	18,727,159	24,425,410

Source: International Trade Centre based on UN COMTRADE statistics

Table 7. Thailand's Imports and Exports to Japan (in US Dollar)

Thailand's exports to Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
9,946,776	11,399,102	13,457,061	15,029,432	16,542,485	18,133,187	19,878,818	15,731,838	20,415,711
Thailand's imports from Japan								
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009	Value in 2010
14,889,174	18,260,388	22,381,170	26,049,684	25,842,606	30,032,903	33,420,401	25,023,287	37,856,129

Source: International Trade Centre based on UN COMTRADE statistics

Table 8. Vietnam's Imports and Exports to Japan (in US Dollar)

Viet Nam's exports to Japan							
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009
2,436,958	2,908,600	3,542,130	4,340,272	5,240,087	6,089,978	8,467,750	6,335,602
Viet Nam's imports from Japan							
Value in 2002	Value in 2003	Value in 2004	Value in 2005	Value in 2006	Value in 2007	Value in 2008	Value in 2009
2,504,652	2,982,059	3,552,593	4,074,117	4,702,120	6,188,907	8,240,307	7,468,092

Source: International Trade Centre based on UN COMTRADE statistics

In US million dollar		
Year	**Export Value**	**Import Value**
2010	7.728	9.016
Jan- Sep 2011	7.481	7.422