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Committee on Regional Trade Agreements

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**FREE TRADE AGREEMENT BETWEEN JAPAN AND THE MEMBER STATES OF THE
ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN), SERVICES**

QUESTIONS AND REPLIES

Revision

The following communication, dated 9 April 2024, is being circulated at the request of the delegations of the ASEAN Member States and Japan.

Questions from Canada

1.1. With regards to Chapters 6 and 7 of the agreement:

- a. What is the rationale for including two prudential carve out provisions in the agreement (i.e. in Chapter 6 – Trade in Services – Financial Services Annex - A.4 Domestic Regulation and Chapter 7 – Investment - 51.20 Prudential Measures)?**

Response from Japan

In the financial services sector, if there is a need to take measures for prudential reasons, the measures might be inconsistent with various provisions of those Chapters in some cases. Thus, Article A.4 and Article 51.20 was designed to allow a Party to take prudential measures.

[Reference]

Article A.4 Domestic Regulation

1. Notwithstanding any other provisions of Chapter 6, including Annexes A and B to Chapter 6 and Annexes 6 through 8, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the Party's financial system. Where such measures do not conform with the provisions of Chapter 6, they shall not be used as a means of avoiding the commitments or obligations of the Party under that Chapter.

2. Nothing in Chapter 6, including Annexes A and B to Chapter 6 and Annexes 6 through 8, shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 51.20 Prudential Measures

1. Notwithstanding any other provisions in 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 entity supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where the measures taken by a Party pursuant to paragraph 1 do not conform with this Chapter, they shall not be used as a means of avoiding the commitments or obligations of the Party under this Chapter.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Response from the ASEAN Members

The rationale for having separate prudential carve-out provisions in Chapter 6 (Trade in Services - Financial Services Annex) and Chapter 7 (Investment) is as follows:

- Prudential carve-out is common on ASEAN+ FTA/CEPA. Reflecting from the previous financial crisis and understanding the spillover effect of financial services towards other sectors, ASEAN Member States always carve out financial services as long as for the purpose of prudential reason, to ensure the integrity and stability of the financial system. This process covers the market access stage, when financial service suppliers are entering the market of the other party, to post-establishment period.
- While in Chapter 7, prudential carve-out is for all services sectors in general, and applies to covered investment, covering the process/period of post-establishment.

b. Do the parties take on any MFN commitments in relation to Financial Services?

Response from Japan

As described in 3.3.2 National and MFN treatment (paragraph 3.10) of the Secretariat's report, Japan takes on MFN commitments in relation to Financial Services (In the list of Japan of Annex 7 (Lists of Most-Favored Nation Treatment Exemptions), measures related to Financial Services are not listed), while all the ASEAN Member States are exempted from MFN provisions (according to Annex 8) in accordance with paragraph 3 of Article 50.3.

[Reference]

Article 50.3 Most-Favoured-Nation Treatment

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any other Party or a non-Party.

2. Paragraph 1 shall not apply to any measure by a Party with respect to sectors, subsectors or activities, as set out in Annex 7.

3. Notwithstanding paragraphs 1 and 2, the Parties listed in Annex 8 shall be exempted from paragraphs 1 and 2 and shall endeavour to consider according to services and service suppliers of another Party treatment no less favourable than that they accord to like services and service suppliers of any other Party or a non-Party. Any decision of a Party with regard to this paragraph shall not be subject to dispute settlement procedures provided for in Chapter 9.

Annex 8 List of the Parties in relation to paragraph 3 of Article 50.3

1. Brunei Darussalam
2. Kingdom of Cambodia
3. Republic of Indonesia
4. Lao People's Democratic Republic
5. Malaysia
6. Republic of the Union of Myanmar
7. Republic of the Philippines
8. Republic of Singapore
9. Kingdom of Thailand
10. Socialist Republic of Viet Nam

Response from the ASEAN Members

While AJCEP Agreement amendment contains article relating to MFN (Chapter 6 – Trade in Services, Article 50.3 Most-Favoured-Nation Treatment), only Japan commits MFN for financial services sector (Annex 7) while all ASEAN parties are listed in Annex 8 for exemption of MFN obligations for all sectors including financial services
