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WTO Plus Elements on the Peru-Japan Economic Partnership Agreement (EPA)

Submitted by: Peru, Japan




APEC
PHILIPPINES
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**Trade Policy Dialogue on WTO-Plus Aspects of
Recently Concluded Regional Trade
Agreements and Free Trade Agreements
Boracay, Philippines
14 May 2015**



PERÚ Ministerio de Comercio Exterior y Turismo



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WTO Plus Elements on the Peru - Japan Economic Partnership Agreement (EPA)


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Peru – Japan EPA

Base Agreement	Implementation Agreement
CHAPTER 1: General Provisions	CHAPTER 1: Customs Procedures and Trade Facilitation
CHAPTER 2: Trade in Goods	CHAPTER 2: Competition
CHAPTER 3: Rules of Origin	CHAPTER 3: Cooperation
CHAPTER 4: Customs Procedures and Trade Facilitation	CHAPTER 4: Final Provisions
CHAPTER 5: Sanitary and Phytosanitary Measures	
CHAPTER 6: Technical Regulations, Standards and Conformity Assessment Procedures	
CHAPTER 7: Cross-Border Trade in Services	
CHAPTER 8: Telecommunications	
CHAPTER 9: Entry and Temporary Entry of Nationals for Business Persons	
CHAPTER 10: Government Procurement	
CHAPTER 12: Competition	
CHAPTER 13: Improvement of the Business Environment	
CHAPTER 14: Cooperation	
CHAPTER 15: Dispute Settlement	
CHAPTER 16: Final Provisions	

Entry into force: March 1, 2012



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WTO Plus Elements in EPA Peru - Japan

- I. **Financial Services (Annex 7 of Chapter 7)**
- II. **Telecommunications Services (Chapter 8)**
- III. **Entry and Temporary Stay of Nationals for Business Purposes (Chapter 9)**
- IV. **Government Procurement (Chapter 10)**
- V. **Competition (Chapter 12)**
- VI. **Improvement of the Business Environment (Chapter 13)**



I. Financial Services

WTO BACKGROUND: The financial services commitments in the EPA Peru-Japan should be compared with the GATS, including the Annex on Financial Services.

The WTO Plus elements in EPA regarding financial services are mainly contained in **Annex 7 of Chapter 7**, which includes the following provisions:

- ▶ **NEW FINANCIAL SERVICES (ARTICLE 3)**
- ▶ **PAYMENT AND CLEARING SYSTEMS (ARTICLE 4)**
- ▶ **SELF-REGULATORY BODIES (ARTICLE 5)**
- ▶ **TRANSPARENCY (ARTICLE 6)**
- ▶ **EXPEDITIOUS APPLICATION PROCEDURES (ARTICLE 7)**
- ▶ **EFFECTIVE AND TRANSPARENT REGULATION (ARTICLE 9)**
- ▶ **TRANSFERS AND PROCESSING OF INFORMATION (ARTICLE 11)**



I. Financial Services

In addition to Annex 7 of Chapter 7 of the EPA regarding financial services, WTO Plus elements in this regard are also included in:

CROSS BORDER TRADE IN SERVICES -Chapter 7-

- A **negative list** approach. Therefore, **all financial services are liberalized, except for those listed in the Non-Conforming Measures of each Party** (Annex 5 and Annex 6 of EPA).
- GATS follows a **positive list** approach.
- In comparison with the GATS, **EPA establishes a higher liberalization to financial services.**
- Moreover, Chapter 7 includes a **Local Presence (LP)** provision (Art. 107) under **negative list** approach.

AGREEMENT FOR THE PROMOTION PROTECTION AND LIBERALIZATION OF INVESTMENT (BIT) -Article 2, par. 3 of Chapter 1-

- The BIT provisions, incorporated to the EPA, are also applicable to **investment in financial services.**
- The BIT also follows a **negative list** approach which promotes **higher liberalization of investment** in this sector.
- The BIT also includes **investment-protection commitments** that would be applicable to the financial services sector. i.e. expropriation.



II. Entry and Temporary Stay of Nationals for Business Purposes

Definition of the WTO plus : GATS Plus

• GATS Plus elements of the Japan- Peru EPA

1. Addition of the categories of nationals for business purposes

- Japan: "Investors", "Nationals for Business Purposes who engage in business activities, which require technology or knowledge at an advance level or which require specialized skills belonging to particular fields of industry, on basis of a personal contract with a Public or Private Organization in Japan".
- Peru: "Business Visitors", "Intra-corporate Transferees", "Investors", "Professionals and Technicians".

2. Commitments specifically in the field of entry and temporary stay over such as "Provisions of information and Facilitation of Procedures", "Cooperation", and "Transparency"

- Provisions of info over the requirements for entry and temporary stay (**Article 137**)
- Cooperation on exchanging views such as visa policy (**Article 139**)
- Provisions of info over the decision of visa application within 20 working days (**Article 142**)



III. Government Procurement

Definition of the WTO plus : GPA plus
Japan is a party to GPA and Peru is not.

• Thresholds for Japan and Peru - Valued Expressed in SDR (Special Drawing Rights)

	Annex 9, Section 1			Annex 9, Section 2			Annex 9, Section 3		
	Goods	Services except construction services	Construction Services	Goods	Services except construction services	Construction Services	Goods	Services except construction services	Construction Services
Japan	130,000	130,000	4,500,000 Architectural Services: 450,000	200,000	200,000	15,000,000 Architectural Services: 1,500,000	130,000	130,000	4,500,000 (Japan Post and Group B) and 15,000,000 (Group A except Japan Post) Architectural Services: 450,000
Peru	130,000	130,000	5,000,000 Architectural Services: 450,000	200,000	200,000	15,000,000 Architectural Services: 1,500,000	160,000	160,000	15,000,000 Architectural Services: 450,000

- Section 1: Central government entities.
- Section 2: Sub-central government entities.
- Section 3: All other entities which procure in accordance with the Agreement, in general public enterprises or public authorities such as utilities.

IV. Competition Policy

- ▶ WTO BACKGROUND: At the multilateral level, **there is no specific agreement or section establishing obligations regarding competition.**
- ▶ Chapter 12 of the EPA established substantial obligations as well as obligations regarding cooperation (**Art. 190 of Chapter 12 and Chapter 2 of the Implementing Agreement**).

Substantial obligations

- Establishes the commitment to implement appropriate measures or actions against anticompetitive practices in order to facilitate trade and investment.
- Types of anticompetitive practices are not listed.
- The parties agree on the following principles:
 - **non-discriminatory** (Art. 189);
 - **due process** (Art. 192); and,
 - **transparency** (Art. 193).

Cooperation obligations

- **Base Agreement:** To cooperate in controlling anti-competitive practices, subject to the availability of resources (Art. 190).
- **The Implementing Agreement** includes the following provisions:
 - **Notifications** (Art. 10)
 - **Coordinate and cooperate in enforcement activities** (Arts. 11-12)
 - **Cooperate against anticompetitive activities** (Art. 13)
 - **Cooperate with technical assistance** (Art. 15)
 - **Transparency** (art. 16)
 - **Coordinate directly** (Art. 20)

IV. Competition Policy

- ▶ WTO BACKGROUND: At the multilateral level, **there is no specific agreement or section establishing obligations regarding competition.**
- ▶ Chapter 12 of the EPA established substantial obligations as well as obligations regarding cooperation (**Art. 190 of Chapter 12 and Chapter 2 of the Implementing Agreement**).

Substantial obligations

- Establishes the commitment to implement appropriate measures or actions against anticompetitive activities in order to facilitate trade and investment.
- Types of anticompetitive practices are not listed.
- The parties agree on the following principles:
 - **non-discriminatory** (Art. 189);
 - **procedural fairness**(Art. 192); and,
 - **transparency** (Art. 193).

Cooperation obligations

- **Basic Agreement:** To cooperate in controlling anti-competitive practices, subject to the availability of resources (Art. 190).
- **Implementing Agreement** includes the following provisions:
 - **Notification** (Art. 10)
 - **Cooperate and coordinate in enforcement activities** (Arts. 11-12)
 - **Cooperate against anticompetitive activities** (Art. 13)
 - **Positive and Negative Comity** (Art. 14-15)
 - **Transparency** (art. 16)
 - **Communications** (Art. 20)



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